

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.11.2017

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.811 of 2009

The Periyar District Consumers
Co-operative Wholesale Stores Ltd
No.AA467, No.124A, Perundurai Road
Erode-1
Rep. By its Special Officer Appellant/Defendant

vs.

B.Balagopal(died)
1.B.Balasubramanian (deceased)
2.B.Balaguruvaia
N.Ramachandran (died)
3.Lakshmi Bai
4.Sundari
5.R.Krishnamoorthi
6.Baladhandayutham
7.B.Kandakumar
8.B.S.Jayalakshmi
9.Balasankari
10.Saraswathi
11.Sailakshmi
12.P.Sasikala

RR 8 to 12 brought on record
as LR's of the deceased 1st respondent
vide order of court dated 31.07.2017
made in C.M.P.Nos.12497 and 12498 of 2017
in A.S.No.811 of 2009. Respondents/Plaintiffs

Appeal suit filed under Section 96 CPC, against the
judgment and decree dated 18.08.2008 in O.S.No.37 of 2007 on the
file of Additional District Judge-cum-Fast Track Court-I, Erode.

For Appellant :Ms.AL.Ganthimathi

For Respondents :Mr.P.Valliappan
for respondents 2 to 12.
R1-died.

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

Challenge in this Appeal Suit is to the judgment and decree dated 18.08.2008, passed in O.S.No.37 of 2007 by the Additional District and Sessions Court, (Fast Track Court No.I), Erode.

2.The respondents herein, as plaintiffs, have instituted O.S.No.37 of 2007, on the file of the trial Court, praying to pass a decree of past and future damages to the tune of Rs.28,98,367/-, wherein, the present appellant has been shown as sole defendant.

3. The material averments made in the Plaint are that the suit property is the absolute property of the plaintiffs and the same has been let out to the defendant on 09.07.1980, on monthly rental of Rs.6500/- for the period of three years and subsequently monthly rent has been increased. The plaintiffs have instituted Original Suit No.95 of 1990 on the file of Sub Court, Erode, praying to vacate the defendant therein, wherein, an executable decree has been passed. Even after passing of the decree in Original Suit No.95 of 1990, the defendant has not vacated the suit property and further the defendant has handed over vacant possession of the suit property during November 2003. From 28.07.2003, the Plaintiffs are entitled to get past damages and further the plaintiffs are also entitled to get future damages, till handing over of possession of suit property to them. The Plaintiffs have calculated past damages as per the provision of Section 4 of the Tamil Nadu Building (Lease and Rent Control) Act, 1960, and in that calculation, it comes to Rs.1,04,313/-. However, the Plaintiffs have restricted their claim to the tune of Rs.89,000/- per mensem. In such circumstances, the present suit has been instituted for the relief sought therein.

4. In the Written Statement filed on the side of the defendant, it is averred to the effect that the tenancy between the Plaintiffs and defendant is admitted. In the plaint, quantum of past damages has been calculated as per Section 4 of Tamil Nadu Buildings (Lease and Rent control) Act, 1960. But the Plaintiffs have fixed excessive amount for Terrace, A.C.Roof and Madras Roof. The defendant has handed over possession of the suit property to the plaintiffs during November 2003 and there is no merit in the suit and hence, the same deserves to be dismissed.

5. On the basis of the divergent pleadings raised on either side, the trial court framed necessary issues and after analysing the available evidence on record, has fixed monthly past damages to the tune of Rs.89,000/- and the same amount has also been fixed for future damages and decreed the suit to the tune of Rs.26,98,367/- towards past damages and Rs.3,56,000/- towards future damages and to that extent, the suit has been decreed. Against the judgment and decree passed by the trial court, the present Appeal Suit has been preferred at the instance of the defendant as appellant.

6. The learned counsel appearing for the appellant/defendant has contended to the effect that in the Plaint, a calculation is found place on the basis of the provision of Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, and in fact, the Plaintiffs have claimed excessive amount for each head and further no amenities are not in existence in the suit property and the trial court, without considering the averments made in the written statement and also oral evidence adduced on the side of the defendant has erroneously fixed Rs.26,98,367/- towards past damages and Rs.3,56,000/- towards future damages and under the said circumstances, the judgment and decree passed by the trial court are liable to be modified.

7. Per contra, the learned counsel appearing for the respondents/plaintiffs laconically contended to the effect that one Jayachandramani has been examined as D.W.1 and he candidly admitted the quantum of past damages calculated in the Plaint and further on the side of the Plaintiffs, on the basis of the petition filed in C.M.P.No.20808 of 1999 in A.S.No.714 of 1995, the Plaintiffs have restricted their claim of damages to the tune of Rs.89,000/-. The trial court, after considering the available evidence on record and also previous proceedings emerged between the parties, has rightly fixed monthly damages to the tune of Rs.89,000/- and therefore, the judgment and decree passed by the trial court do not require any interference.

8. It is an admitted fact that the property mentioned in the Plaint has been let out to the respondent on 09.07.1980 on a monthly rental of Rs.6500/- and subsequently monthly rent has been raised. After termination of tenancy, Original Suit No.95 of 1990 has been instituted on the file of the Sub Court, Erode, for getting recovery of possession and also for other reliefs, wherein, an Executable decree has been passed and the same has been challenged by way of filing A.S.No.714 of 1995 on the file of this Court. During the pendency of the same, on the side of the

respondents/plaintiffs, an application in C.M.P.No.20808 of 1999 has been filed, wherein, the respondents/plaintiffs have restricted their claim to the tune of Rs.89,000/- per month towards past damages.

9. The main gravamen expressed on the side of the appellant/defendant is that the quantum fixed in the plaint towards each head is excessive.

10. As rightly pointed out on the side of the respondents/plaintiffs, during the course of cross examination, D.W.1 has clearly admitted the quantum of damages fixed in the Plaint except the quantum of damages in respect of A.C.Roof. The specific evidence given by D.W.1 in respect of A.C.Roof is that the cost of 1 square foot of A.C.Roof would be not less than Rs.25/-.

11. At this juncture, the court has to look into the calculation made in the Plaint. It has already been pointed out that in the Plaint, a detailed calculation is found place and the same has been made in consonance with the provision of Section 4 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. In that calculation, total amount comes to Rs.1,04,313/-. However, the Plaintiffs have restricted their claim to the tune of Rs.89,000/- per month towards past and future damages.

12. Considering the fact that the Plaintiffs have restricted their claim only on the basis of the petition filed in C.M.P.No.20808 of 1999 in A.S.No.714 of 1995, this court is of the view that on the basis of evidence given by D.W.1, the Plaintiffs have claimed only reasonable amount and that too, on the basis of the provision of Section 4 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

13. It has already been pointed out that the trial court has fixed Rs.89,000/- per mensem towards past and future damages. It is an admitted fact that the defendant has handed over possession of the property mentioned in the Plaint during November 2003. The Plaintiffs have claimed past damages for the period started from 28.07.2002 to 28.07.2003.

14. Considering the overall evidence available on record on the side of the Plaintiffs, this court has not found any error in the quantum of amount fixed by the trial court and further from 29.07.2003 to November 2003, the defendant is bound to pay future damages. Therefore, viewing from any angle, the argument put forth on the side of the appellant/defendant is sans merit, whereas, the arguments on the side of the respondents/Plaintiffs is really have subsisting force and in the said circumstances, this Appeal Suit deserves to be

dismissed.

In fine, this Appeal Suit is dismissed with costs. The judgment and decree passed in O.S.No.37 of 2007, by the trial Court are confirmed.

Sd/-

Assistant Registrar(CS-iii)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Additional District Judge-cum-Fast Track Court-I, Erode.

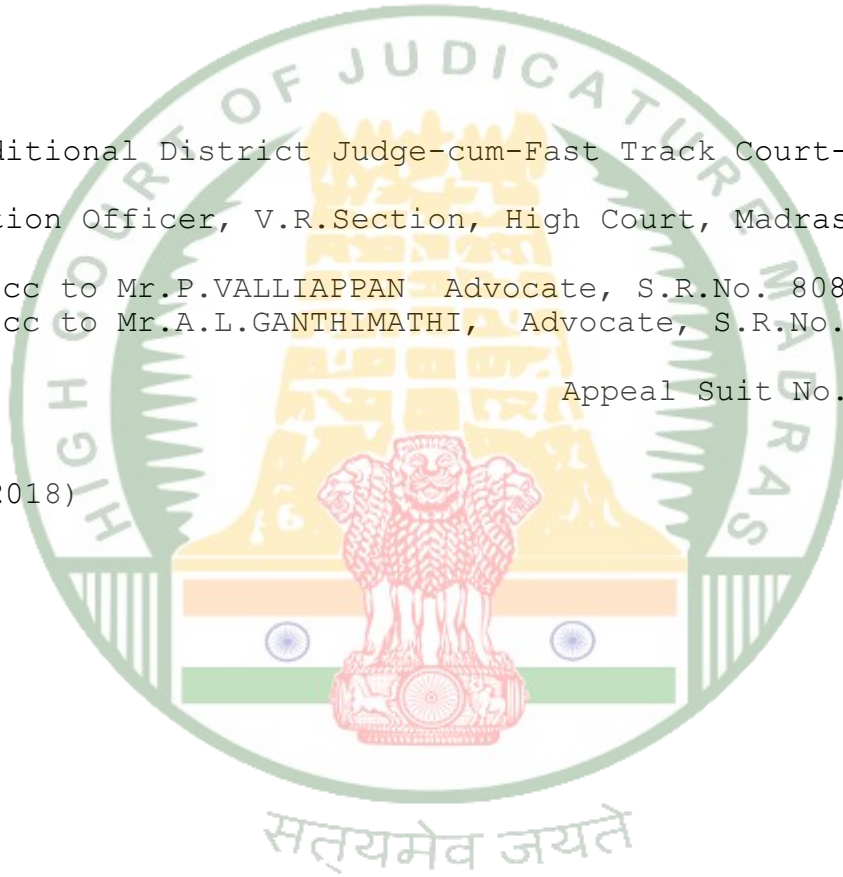
2.The Section Officer, V.R.Section, High Court, Madras.(2 COPIES)

+1cc to Mr.P.VALLIAPPAN Advocate, S.R.No. 80800

+1cc to Mr.A.L.GANTHIMATHI, Advocate, S.R.No. 80895

Appeal Suit No.811 of 2009

SAI (CO)
TR(10/01/2018)



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