



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.08.2017

CORAM :

WEB COPY

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

S.A. (MD) No. 644 of 2014
and
M.P. (MD) No. 1 of 2014

B. Veeralakshmi

... Appellant/ Appellant/
Defendant

Vs.

1. Veeralakshmi Ammal

2. Lakshmi Narayanan

... Respondents/ Respondents/
Plaintiffs

Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure, against the Judgement and Decree, dated 17.01.2013, made in A.S.No.135 of 2011 on the file of the Sub Court, Thoothukudi, confirming the Judgement and Decree of the District Munsif Court, Srivaikundam, in O.S.No.241 of 2008, dated 28.10.2010.

For appellant : Mr.R.T.Arivukumar

For respondents : Mr.P.Santhosh Kumar

JUDGMENT

The defendant, who had lost in both the Courts below, in the suit for eviction is the appellant.

2. The case of the plaintiffs is that the defendant is a tenant in the suit property. The defendant originally paid Rs.150/- per month and as on date, it is raised to Rs.400/- per month. The said rent was being deposited into the I.C.I.C.I Bank account of the second plaintiff. However, after certain period, the defendant did not pay even the said rent. The defendant had also filed O.S.No.152 of 2008 on the file of the District Munsif Court, Srivaikundam, Thoothukudi District for injunction restraining the plaintiffs / respondents from evicting him unless by due process of law. The said suit is said to be dismissed for default on 17.09.2007. Thereafter, the plaintiffs had issued notice on 05.09.2008 under Section 106 of the Transfer of Property Act, 1882, calling upon the defendant to vacate the property. There was also a reply given by the defendant on 10.10.2008. As

the defendant did not vacate the premises, the said suit has been filed by the plaintiffs for ejectment.

3. The suit was resisted by the defendant stating that the rent has been regularly paid into the I.C.I.C.I Bank account of the second plaintiff and he had no arrear at any point of time. It is also stated that he had spent Rs.42,000/- for maintenance and repair works of the building. It is further stated by the defendant that the suit property does not have any amenities like bath room, water facility etc. As the defendant has been paying the rent regularly, he prayed for dismissal of the suit.

4. Both the Courts below have concurrently held that there was a default committed by the defendant and notice under Section 106 of the Transfer of Property Act, 1882, is valid and hence, ordered eviction. Aggrieved by the same, the above second appeal has been filed by the defendant.

5. At the time of admission, only notice was ordered.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

7. The plaintiffs have stated that there is an arrear of rent to the tune of Rs.7100/-. Whereas, the defendant has contended that he has been regularly depositing the rent in the account of the second plaintiff. However, the defendant has not produced any documents to show that he has been depositing the rent regularly into the account of the second plaintiff. If the defendant had been paying the rent regularly, he would have produced certain documents to substantiate the same especially when it is claimed to have been deposited in Bank. In the absence of any such documents, the Courts below had disbelieved the contention of the defendant and held that he had committed default in payment of the rent.

8. So far as the claim of the defendant that he had spent about Rs.42,000/- for the maintenance of the suit property, is concerned, excepting this averment in the written statement, there is no document filed in support of the same. It is also stated that he had never obtained any permission from the owner of the property before carrying out such repairs and he himself voluntarily carried out the same. The Courts below have rightly rejected the claim of the defendant as there is no evidence produced by him in support of the same.

9. As the plaintiffs have issued notice under Section 106 of the Transfer of Property Act, 1882, terminating the contract, the defendant is bound to vacate the premises. In the absence of any evidence on any question of law arising for consideration in the above said facts, this Second appeal is liable to be dismissed.

10. In the result, this second appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed by the Courts below. No costs. Consequently, connected miscellaneous petition is also dismissed.

11. The learned counsel for the appellant / defendant requested 3 months time for vacating the premises. Accordingly, 3 months time is granted to the appellant/defendant to vacate the suit premises from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub-Assistant Registrar

To

1. The Subordinate Judge,
Thoothukudi.

2. The District Munsif Court,
Srivaikundam.

3. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+One cc to Mr. RT. Arivukumar, Advocate, SR.No.72067

+One cc to Mrs. S. Mahalakshmi, Advocate, SR.No.72128

ms

RL/6C/3P/SV/MMS/SAR1/8/9/2017

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