

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.572 of 2018

and C.M.P.No.17307 of 2018

J. Shoban Babu

... Appellant/Defendant

Vs.

1.T.K. Thirumal

2.T. Poonkodi

... Respondents/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the learned Principal District Judge, Krishnagiri, dated 06.12.2017 in A.S.No.47 of 2017 confirming the Judgment and Decree of the learned Principal Subordinate Judge, Krishnagiri dated 28.02.2017 in O.S.No.34 of 2015.

For Appellant : Mr.M.J.Hariharan  
for Mr.V.Nicholas

JUDGMENT

The defendant is the appellant in the above Second Appeal. The Second Appeal arises out of a suit for recovery of possession filed by the respondents herein.

2.The case of the plaintiffs was that the original owner S. Rajendran under whom the appellant/defendant was a tenant, had sold the property to the defendant under the Sale Deed dated 28.09.2012. On purchasing the property, the plaintiffs had requested the defendant to attorn tenancy to them. Immediately, the defendant had filed the suit O.S.No.318 of 2012 on the file of the learned District Munsif, Krishnagiri, for a bare injunction against the plaintiffs and the said Rajendran and for a perpetual injunction, restraining them from evicting the defendant except by due process of law. The said suit was decreed in favour of the defendant. Since the defendant defaulted in payment of monthly rental of Rs.4,500/- from 28.09.2012, the plaintiff had come forward with the suit, directing the defendant to deliver the possession of the suit property and to pay a sum of Rs.1,26,000/- as arrears of rents.

3.The defence to the above suit was that when the defendant had received the notice dated 24.01.2015, the defendant sent a suitable reply on 13.12.2015 enclosing a Demand Draft of Rs.12,000/- and has been depositing the monthly rents to the credit of the suit in O.S.No.318 of 2012 till the Judgment was pronounced in the said suit. It was the case of the defendant that these facts had been burked and that the suit has been filed with the false allegations.

4.The learned Principal Subordinate Judge, on a detailed examination, decreed the suit. Challenging the said Judgment and Decree, the defendant had filed A.S.No.47 of 2017 on the file of the learned Principal District Judge, Krishnagiri. The learned Principal District Judge confirmed the Judgment and Decree of the learned Subordinate Judge and challenging these concurrent Judgments and Decrees, the defendant is before this Court.

5.Mr.J. Hariharan, learned counsel for the appellant would argue that the Judgment in O.S.No.318 of 2012, which has been marked as Ex.A.4, has not been considered by the Courts below and had the same been taken into account the Courts would not have come to the conclusion that the defendant is in arrears of rents. The learned counsel for the appellant has also produced a copy of Ex.A.4 before this Court. He would submit that the learned District Munsif, Krishnagiri, in the Judgment in O.S.No.318 of 2012 has observed that the evidence of the plaintiff is cogent, consistent and convincing. The learned counsel would submit that in the said suit, the defendant had categorically stated that apart from a sum of Rs.2,00,000/-, an additional advance amount of Rs.3,00,000/- was paid by the defendant to the original owner Rajendran and this fact has been admitted by the 1<sup>st</sup> defendant. He would therefore contend that the Judgment and Decree of the Courts below are erroneous.

6.Heard Mr.J. Hariharan, learned counsel for the appellant and perused the material on record.

7.On a perusal of Ex.A.4, it is seen that the 1<sup>st</sup> defendant therein, namely, S. Rajendran, had filed a Written Statement inter alia contending that in 2009, the defendant had paid a sum of Rs.2,00,000/- towards arrears of rents and thereafter, no further payments have been forthcoming from the plaintiffs and therefore, a sum of Rs.2,32,000/- was due towards arrears of rents.

8.The learned District Munsif, has allowed the suit only on the basis that the defendant had proved his tenancy and

therefore, he could be evicted only by due process of law. Nowhere has the Courts acceded to the case of the defendant regarding his claim of having paid an additional advance amount of Rs.3,00,000/-. The learned Appellate Judge in A.S.No.47 of 2017 has also opined so in her Judgment dated 06.12.2017. I find no infirmity in the order passed by the Courts below. There is no question of law much less Substantial Questions of Law involved in the Second Appeal.

The Second Appeal therefore is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mps

To

1.The Principal District Judge,  
Krishnagiri.

2.The Principal Subordinate Judge,  
Krishnagiri.

+lcc to Mr.V.Nicholas, Advocate sr.84335

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