



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 02.02.2018

CORAM:

**THE HONOURABLE MR. JUSTICE S.S.SUNDAR**

S.A.(MD)No.54 of 2018

and

C.M.P.(MD)No.919 of 2018

Kala @ Mala : Appellant/ Appellant/ Defendant

Vs.

1.Saroja

2.Uma

3.R.Shankar

S/o.Late S.Ramakrishnan,  
Partner,  
Green Readymade Street,  
Products India Pvt.Ltd.,  
Survey No.6/2A,  
Jeyamangala Village,  
Lekkur Hobli Malur Taluk,  
Kolar District - 563 130,  
Karnataka State.

(represented by Power of Attorney  
holder 1<sup>st</sup> respondent Saroja)

4.R.Ganesh

S/o.Late S.Ramakrishnan,  
1783, Cochran Street,  
Apt# Simi Valley,  
California -93065,  
United States America.

(represented by Power of Attorney

holder 1<sup>st</sup> respondent Saroja) : Respondents/ Respondents/ Plaintiffs

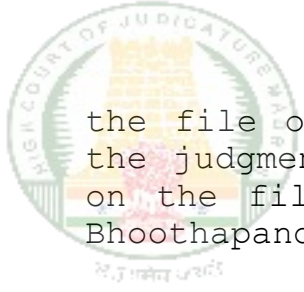
Prayer: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, against the judgment and decree dated 12.07.2017 made in A.S.No.22 of 2015, on the file of the Principal Subordinate Court, Nagercoil, confirming the judgment and decree dated 27.03.2015 made in O.S.No.6 of 2013, on the file of the District Munsif-cum-Judicial Magistrate Court, Bhoothapandy.

For Appellant

: Mr.A.Arumugam for  
Mr.R.Murugan

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J U D G M E N T



the file of the Principal Subordinate Court, Nagercoil, confirming the judgment and decree dated 27.03.2015 made in O.S.No.6 of 2013, on the file of the District Munsif-cum-Judicial Magistrate Court, Bhoothapandy.

2.The defendant in O.S.No.6 of 2013, on the file of the District Munsif-cum-Judicial Magistrate Court, Bhoothapandy, is the appellant in the present appeal. The respondents / plaintiffs have filed a suit in O.S.No.6 of 2013, praying for recovery of plaint schedule premises from the defendant/appellant and for recovery of a sum of Rs.18,900/- towards rental arrears. It is the case of the plaintiffs that the defendant is the tenant under the plaintiffs and that the properties were leased out to the defendant orally. The plaintiffs claimed title through the husband of the first plaintiff, by name, Ramakrishnan, to whom the father of the said Ramakrishnan, one Sivathanu, original owner, executed a Will bequeathing the plaint schedule properties. It is also the case of the plaintiffs that after the death of the said Ramakrishnan, first plaintiff's husband, on 22.02.1999, the property devolved on the plaintiffs and that they have been in enjoyment. The plaintiffs further stated that the suit properties were leased out orally to the defendant with effect from 01.04.2001 for a monthly rent of Rs.1,050/-.

3.It is the specific case of the plaintiffs that the first plaintiff's brother in-law, by name, S.Raveendran, who is working as a Teacher in a Government School, Boothapandy, was collecting rent from the defendant on behalf of the plaintiffs. It is the further case of the plaintiffs that the plaintiffs wanted to demolish the property, so as to re-construct a house for the use of plaintiffs and that they wanted the defendant to vacate the property. It is further stated in the plaint that the defendant begged for time and on 13.06.2011, she gave an assurance that she will vacate the building on or before 30.11.2011. Since the defendant did not vacate the property as promised, the plaintiffs were constrained to file the suit.

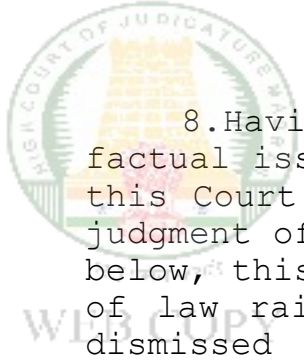
4.The suit was contested by the defendant/appellant by stating that she took lease of the suit properties from one Mr.S.Raveendran, who is none else than the first plaintiff's brother in-law, the brother of the first plaintiff's husband. In the written statement, except denying the averments, the defendant has not specifically made any statement denying the title of the plaintiffs in respect of the suit properties. It is the case of the defendant that she has spent a sum of Rs.50,000/- for maintenance of the building and that her landlord Mr.S.Raveendran, though promised to reimburse the same to the defendant, did not actually repaid the money. It is further stated that the defendant started paying rent to one Dr.Arumuga Perumal, who is the brother in-law of the deceased Mr.S.Raveendran, who, according to the defendant, is her landlord. Sum and substance, the contention of the defendant in the written statement is that there is no landlord tenant relationship between the plaintiffs and the defendant.



5.The Trial Court, after considering the pleadings and evidence, came to the conclusion that the defendant is in possession of the property as a tenant under the plaintiffs and that the notice issued by the plaintiffs on 15.05.2012 to terminate the tenancy is valid. The Trial Court has given a specific finding that the defendant has failed to pay rent for the suit schedule property and that the plaintiffs are entitled for arrears of rent as claimed by them. The Trial Court decreed the suit in favour of the plaintiffs as prayed for. Aggrieved over the same, the defendant has preferred an appeal before the Principal Subordinate Court, Nagercoil, in A.S.No.22 of 2015.

6.The Appellate Court also considered all the factual issues and ultimately held against the defendant on all issues. Though, the defendant disputed the signature in the document Ex-A12, whereby, defendant gave an undertaking and agreed to vacate the suit property by the end of November 2011, the Appellate Court accepted the document under Ex.A12, as the agreement entered into between the defendant/appellant and the respondents/plaintiffs. Relying upon Ex-P13, notice, which was sent by the plaintiffs and Ex-P14, reply notice, which was sent by the defendant to the plaintiffs, the lower appellate Court came to the conclusion that the defendant has not denied the title of plaintiffs over the suit properties. In this case, admittedly, the plaintiffs have established their title.

7.Going by the findings of the trial Court as well as the appellate Court, the fact that the defendant is a tenant in respect of the suit property is not even disputed by the defendant. The only defence raised is that there is no relationship between the plaintiffs and the defendant as landlord-tenant. The first appellate Court specifically found that the appellant, after admitting the tenancy cannot question the landlord tenant relationship. This finding is on appreciation of the documents under Ex-A12 and Ex-A14, filed on behalf of the plaintiffs. The defendant, who disputed the relationship, has miserably failed to establish her case by examining the person, with whom, she says that there is landlord-tenant relationship. No one was examined by the defendant, to prove that the defendant was a tenant only under the said Mr.S.Raveendran, the brother-in-law of first plaintiff. It is not even the case of defendant that there is rival claim by some one, particularly, the relatives of first plaintiff's husband. When it is the case of plaintiffs that the said Mr.S.Raveendran is none else than the first plaintiff's brother-in-law/brother of the first plaintiff's husband, it is quite natural that the said Mr.S.Raveendran, might have received rent on behalf of the plaintiffs from defendant. The defendant appears to have taken advantage of the situation to deny the tenancy. Having regard to the over all facts and circumstances, this Court is not able to find any infirmity or irregularity in the judgments and the findings of the Courts below with regard to the existence of landlord-tenant relationship.



8. Having regard to the findings of the Courts below on the factual issues which are supported by oral and documentary evidence, this Court is not able to find any legal error or infirmity in the judgment of the Courts below. In view of the findings of the Courts below, this Court does not find any substance in any of the question of law raised in this case. In the result, the Second Appeal is dismissed and the judgment and decree dated 12.07.2017 made in A.S.No.22 of 2015, on the file of Principal Subordinate Court, Nagercoil, confirming the judgment and decree dated 27.03.2015 made in O.S.No.6 of 2013, on the file of District Munsif-cum-Judicial Magistrate Court, Bhoothapandy, is affirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub-Assistant Registrar

To

1. The Principal Subordinate Judge, Nagercoil.
2. The District Munsif-cum-Judicial Magistrate Court,  
Bhoothapandy.

+1cc to Mr.R.Murugan, Advocate, SR.No.45719

gsp/cmr

JUDGMENT MADE IN  
S.A. (MD) No.54 of 2018  
02.02.2018

KK/RSK/SAR2/28.04.2018/4P/4C