



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :29.06.2018

CORAM :

WEB COPY

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

Second Appeal (MD) No.209 of 2018  
and  
C.M.P. (MD) No.5435 of 2018

K.Karuppasamy : Appellant / Appellant / Defendant

-Vs-

K.Alagammal : Respondent / Respondent / Plaintiff

**PRAYER:** Second Appeal filed under Section 100 of the Code of the Civil Procedure, to set aside the judgment and decree passed by the learned Subordinate Judge, Virudhunagar in A.S.No.15 of 2017, dated 02.01.2018 by confirming the judgment and decree of the learned District Munsif, Virudhunagar in O.S.No.83 of 2013, dated 14.07.2016.

For Appellant : Ms.Lakshmi Gopinath

**JUDGMENT**

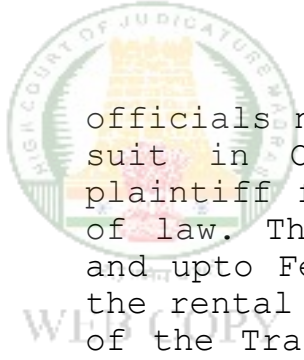
The defendant in the suit in O.S.No.83 of 2013 on the file of the District Munsif Court, Virudhunagar, is the appellant in the second appeal.

2.The respondent in this appeal, as plaintiff, filed the suit in O.S.No.83 of 2013 before the District Munsif Court, Virudhunagar for recovery of arrears of rent for a period of 108 months and for future mesne profit.

The case of the plaintiff / respondent is as follows:

3.The plaintiff and the defendant are distant relatives and the suit property belongs to the plaintiff. Since the defendant approached the plaintiff to let out the suit property, the plaintiff agreed to let out the property and there was an oral rental agreement enabling the defendant to reside in the place. The rent was also fixed at Rs.200/- and a sum of Rs.1,000/- was paid by the defendant as advance. The defendant also agreed to pay monthly rent on or before the 10<sup>th</sup> of every succeeding month.

4.The defendant, however, did not pay monthly rent as agreed and he also committed acts of waste by dumping the waste materials in the house. Though a police complaint was filed against the defendant on 25.07.2012, the defendant influenced the police

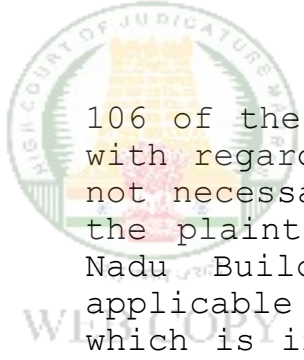


officials not to take further action. However, the defendant filed a suit in O.S.No.171 of 2012 for an injunction restraining the plaintiff from evicting the defendant otherwise than by due process of law. The defendant having failed to pay rent w.e.f. March'2004 and upto February'2013, is liable to pay a sum of Rs.21,600/- being the rental arrears. The plaintiff issued a notice under Section 106 of the Transfer of Property Act, 1882, terminating the tenancy and the defendant did not sent any reply to the same. The plaintiff is therefore, constrained to file the above suit.

5.The suit was contested by the defendant by disputing the allegations with regard to the act of waste and wilful default. It is the case of the defendant that he has been paying the property tax and the electricity charges apart from changing the tiles and maintaining the house by white washing and by other activities. It is the further case of the defendant that he has promptly paying the monthly rent at Rs.250/-. However, the plaintiff is not in the habit of giving any receipt. The reason stated by the plaintiff for eviction was specifically disputed by the defendant and the defendant stated that there is no acts of waste or any default committed by him. The defendant also specifically denied the period of default as alleged in the plaint.

6.The trial Court, after framing necessary issues, found that the tenancy has been properly terminated by the plaintiff, by relying upon the notice under Ex-A7, dated 02.03.2013. Though the defendant disputed the receipt of notice, a reply notice to the said notice was marked as Ex-B2. Though the defendant has raised a contention that the notice was not properly issued and that the tenancy was not terminated by the end of the tenancy month, the trial Court after considering the fact that 15 days time have been properly given by the plaintiff in the notice, rejected the defendant's contention. The trial Court also found that the defendant has failed to establish his case that he has been properly paying the rent. The trial Court further held that even in the suit filed by the defendant, he has admitted the default and paid the rental arrears for a period of three years in lump sum. In view of the fact that the plaintiff could seek recovery of rent only for a period of three years prior to the suit, the trial Court rightly granted the decree for recovery of a sum of Rs.7,200/- being the rental arrears for a period of 36 months prior to the suit, at the rate of Rs.200/- per month. Aggrieved by the decree for ejectment, the defendant preferred an appeal in A.S.No.15 of 2017 before the Subordinate Court, Virudhunagar. The appellate Court also confirmed the findings of the trial Court and dismissed the appeal. As against the concurrent findings and the judgment and decree of the Courts below, the present second appeal has been preferred by the defendant.

7.The learned Counsel for the appellant submitted that there is no bond filed in filing the suit for ejectment. He further stated that the eviction notice was not proper as prescribed under Section



106 of the Transfer of Property Act, 1882. He also raised an issue with regard to the arrears of rent. In a suit for ejectment, it is not necessary that the plaintiff has to prove the bona fides as to the plaintiff's requirement. It is not in dispute that the Tamil Nadu Buildings (Lease and Rent Control), Act, 1960, is not applicable to the building, as it is not extended to the property, which is in village and not within the Municipal limit. Hence, the contention of the appellant has no legal basis. Regarding the contention that the notice has not been properly issued, after the amendment to Section 106 of Transfer of Property Act, 1882, 15 days time will commence from the date of receipt of notice. After the notice was issued, the suit was filed only on 25.04.2013, giving sufficient time. The notice issued in this case is proper and valid. This Court find that the tenancy has been properly terminated.

8.The learned Counsel for the appellant challenged the findings of the Courts below with regard to the arrears of rent. In the suit filed by the defendant, the defendant has paid arrears for a period of three years, admitting that the tenant is in default. Though the Courts below have concurrently held that the defendant is liable to pay rent w.e.f., March'2004, the decree is only to recover the amount, which is due for a period of three years, just prior to the filing of the suit. In these circumstances, there is no substance in any of the substantial questions of law raised by the appellant in the memorandum of grounds.

9.As a result, the second appeal is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To

1.The Subordinate Judge, Virudhunagar.

2.The District Munsif, Virudhunagar.

3.The Section Officer,  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai. (2 Copies)

+1cc to M/s.Polax Legal Solutions, Advocate, SR.No.70845.

Second Appeal (MD) No.209 of 2018  
29.06.2018

cmr

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