



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

WEB COPY

S.A.(MD).No.510 of 2017

and

C.M.P.(MD)No.10919 of 2017

Manthirammoorthy @ Mani

...Appellant/Appellant/Defendant

Vs.

Kumarakili

...Respondent/Respondent/Plaintiff

(vide order dated 12.02.2018 made in C.M.P.(MD)No.1375 of 2018, the respondent was allowed to contest in his own capacity)

Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure, against the Judgment and Decree dated 09.01.2017 passed in the appeal in A.S.No.3 of 2016 on the file of the Subordinate Judge, Ambasamudram, confirming the judgment and decree dated 25.02.2014 passed in the suit in O.S.No.177 of 2010 on the file of the District Munsif-cum-Judicial Magistrate Court, Cheranmahadevi.

For Appellant : Mr.J.Bharathan

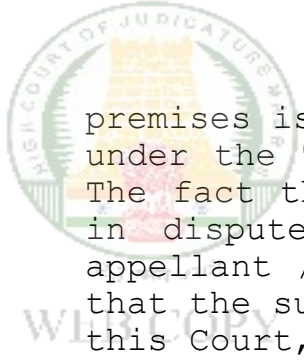
For Respondent : Mr.S.S.Thesigan

JUDGMENT

This second appeal has been filed against the Judgment and Decree dated 09.01.2017 passed in the appeal in A.S.No.3 of 2016 on the file of the Subordinate Judge, Ambasamudram, confirming the judgment and decree dated 25.02.2014 passed in the suit in O.S.No.177 of 2010 on the file of the District Munsif-cum-Judicial Magistrate Court, Cheranmahadevi.

2.The suit in O.S.No.177 of 2010 was filed by the respondent/plaintiff for ejectment and for recovery of sum of Rs.21,000/- towards arrears of rent and for mesne profits. The suit was decreed by the trial Court and the judgment and decree was also confirmed by the lower appellate Court in A.S.No.03 of 2016 on the file of the Sub Court, Ambasamudram.

3.The appellant is a tenant under the respondent and the relationship between the parties is not in dispute. Since, the Rent Control Act is not extended to the place in which the demised

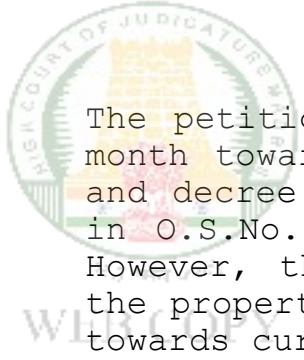


premises is located, the suit came to be filed instead of a petition under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The fact that the suit properties belonged to the plaintiff is not in dispute. However, the only defence that was taken by the appellant / tenant is that the defendant is a statutory tenant and that the suit in O.S.No.177 of 2010 is not maintainable. Even before this Court, the learned Counsel for the appellant has submitted that the land lord has not proved that there is *bona fide* in her requirements.

4. In a suit for ejection, the plaintiff is not required to prove the ingredients that are required for vacating the tenant from the premises under the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Hence, even without showing that the tenant is liable to be evicted on any of the grounds under Sections 10 and 15 of the Rent Control Act. The owner of the property is entitled to take possession of the property, after issuing a valid notice determining the tenancy in terms of Section 106 of Transfer of Property Act. In this case, the notice issued under Section 106 of Transfer of Property Act, is a valid notice and the tenancy is properly determined. Tenant has raised an issue before Courts below by contending that the suit is not maintainable, in view of the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The lower appellate Court has specifically given a finding that the Rent Control Act has not been extended to the village in which the suit property is located. After finding that Mukkoodal Village does not come under the purview of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, this suit has been decreed. Hence, the judgment and decree of the trial Court holding that the suit is maintainable cannot be faulted.

5. Having regard to the admitted facts and finding of Courts below, this Court has no hesitation to hold that the appeal is liable to be dismissed as no question of law is involved. In this case, the question of law raised by the appellants have to be answered against the appellant. The learned Counsel for the appellant, however, stated that the appellant's father is sick and that the demised premises is required for him at least for one year as he could not seek alternative accommodation within a short time with his aged and sick father. This Court suggested the appellant to file an affidavit of undertaking promising to pay arrears and continue to pay the rent at the market rate. Today, the learned Counsel for the appellant filed an affidavit of undertaking on behalf of the appellant, Thiru.Manthiramoorthy @ Mani. In the affidavit of undertaking, the appellant has undertaken to vacate the property on or before 31.01.2019 and to pay the arrears of rent in four installments and to pay Rs.6,000/- towards the rent for the period from 01.02.2018 to 31.01.2019.

6. Considering the fact the appellant has come forward with an undertaking that he would vacate the premises on or before 31.01.2019, this Court is inclined to grant time till 31.12.2018.



The petitioner shall also continue to pay a sum or Rs.2,000/- per month towards rent till vacating the premises. Hence, the judgment and decree in A.S.No.3 of 2017, confirming the judgment and decree in O.S.No.177 of 2010 is confirmed and this appeal is dismissed. However, the appellant is given time till 31.12.2018 for vacating the property. The appellant shall pay a sum of Rs.2,000/- per month towards current rent from this day till possession is handed over to the respondent / plaintiff. It is also made clear that the appellant shall not indulge in any activity, which will impair the structural stability of the building or cause any damage to the building. In case, the appellant fails to pay rent consequently for two months, it is open to the respondent to move executing Court for eviction and proceed further. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Subordinate Judge, Ambasamudram
- 2.The District Munsif-cum-Judicial Magistrate,
Cheranmahadevi.
- 3.The Section Officer, (2 copies)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.T.R.Jeyapalam, Advocate, SR.No.47785

cmr

RL/6C/3P/KK/SAR1/6/4/2018

S.A. (MD) .No.510 of 2017

12.02.2018