

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2019

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

S.A.No.482 of 2019
and
C.M.P.No.7769 of 2019

S. Surendar Appellant/Appellant/Defendent
Vs.

Byragi Madam,
A/M. Thiruvengatadamudayam
A/M. Venkatesaperumal Thirukoil,
Rep. by its Manager/
Executive Officer, having his
office at the above said Temple
premises, Chennai 600 079

... Respondent/Respondent/Plaintiff

Prayer : This Second Appeal has been filed under Section 100 CPC against the judgment and decree dated 17.08.2017 passed in A.S.No.621 of 2007 on the file of the learned VII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 10.11.2006 passed on the file of the learned XVI Assistant Judge, City Civil Court, Chennai in O.S.No.5088 of 2002.

For Appellant : Mr.Ashok Menon

For respondent : Mr.M.Maharaja,
Spl. G.P.,

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O R D E R

The defendant, who has suffered a decree in both the Courts below, has come forward with this Second Appeal.

2. The respondent/plaintiff has filed a suit in O.S.No.5088 of 2002 on the file of the XVI Assistant City Civil Court,

Chennai for eviction. The case of the plaintiff is that the suit property belongs to the plaintiff temple and it was leased out to the defendant on a monthly rent of Rs.1500/-. The defendant is a chronic defaulter and there is a huge arrears of rent to the tune of Rs.66,000/- till 2002. In spite of several notices, the defendant did not pay the amount. Hence, the suit has been filed.

3. The appellant/defendant filed the written statement, wherein, he had admitted that he is the tenant under the temple and so far as the arrears of rent is concerned, he was not aware of the arrears of rent till 11.04.2002. Immediately, after receipt of the notice issued by the plaintiff, he instructed his accountant to regularize his rental arrears and accordingly, the rents have been paid to the plaintiff and there was no arrears.

4. The trial Court, after considering both the oral and documentary evidence, has come to a conclusion that there was arrears of rent due to the plaintiff and that the lease agreement has been duly terminated and there is no proof to establish the payment grant of rent and decreed the suit in favour of the plaintiff, by a judgment and decree dated 10.11.2006.

5. Aggrieved by the same, the appellant/defendant filed an appeal in A.S.No.621 of 2007 on the file of the VII Additional City Civil Court, Chennai. The First Appellate Court, after considering the entire materials available on record, dismissed the appeal by judgment and decree dated 17.08.2017. Now, challenging the judgment and decree of the appellate Court, the appellant is before this Court with this second appeal.

6. In the grounds of the Second Appeal, the following questions of law are framed:

1. Whether the learned Appellate Judge was right in dismissing the appeal on a mere presumption that the respondent/plaintiff temple is controlled by the HR & CE and hence covered under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 and the suit was maintainable ?

2. Whether the learned Appellate Judge was right in dismissing the appeal on a mere presumption when the respondent/plaintiff has failed to prove that the respondent/plaintiff is exempted from Rent Control Act ?

3. Whether the learned Appellate Judge was right in

dismissing the appeal when the appellant specifically stated that the rental arrears had accumulated due to the gross inefficiency or mischief played by the accountant of the appellant herein who failed to pay the rents, as directed by the appellant ?

4. Whether the learned appellate Judge was right in dismissing the appeal when the respondent/plaintiff has filed the suit beyond the period of limitation and had confined to its claim to Rs.54,000/- ?

7. I have heard both sides and perused the materials available on records carefully.

8. Though the defendant contended that he has paid the entire rental amount, there is no evidence to establish the same, both the Courts below on facts concurrently held that the defendant had defaulted in payment of rent and decreed the suit. I find no perversity or infirmity in the judgment passed by the Courts below. In view of the findings rendered above, the questions of law raised are answered against the appellant and the second appeal is liable to be dismissed.

9. The learned counsel appearing for the appellant submits that he has been doing business in the lease hold property for long number of years and requested six months time for evicting and handing over the property to the plaintiff.

10. The learned counsel appearing for the respondent, on instructions, submits that he has no objection in granting time to the appellant for handing over the possession.

11. Considering the fact that the appellant is doing business for long number of years, this Court inclined to grant six months time from today (i.e.) 16.04.2019, to the defendant to vacate the premises, and the defendant is directed to vacate suit premises and handover over the same to the respondent/plaintiff on or before 01.11.2019.

12. In the result, the second appeal is dismissed and the judgment and decree of the First Appellate court confirming the judgment and decree of the trial court is confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrp

To

1.VII Additional Judge,
City Civil Court, Chennai.

2.XVI Assistant Judge,
City Civil Court, Chennai.

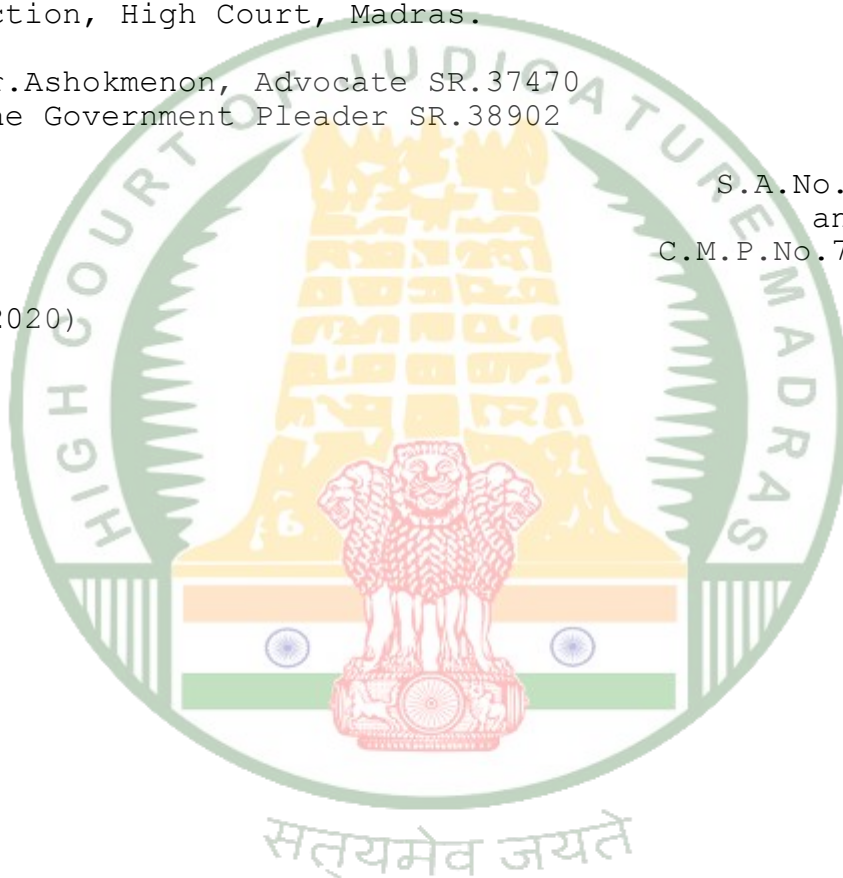
3.The Section Officer,
VR Section, High Court, Madras.

+2cc to Mr.Ashokmenon, Advocate SR.37470

+1cc to the Government Pleader SR.38902

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and
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KJI (CO)
CB(24/01/2020)



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