

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 909 of 2019

and

C.M.P.No. 19336 of 2019

A.Ajeez

..Appellant/Defendant

Vs.

1.V.S.Sankari

2.S.Ravindran

3.V.S.Hemavathi

4.V.S.Vanitha

5.V.S.Asha

..Respondents/Plaintiffs

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 28.02.2019 made in A.S.No. 77 of 2018 on the file of II-Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 05.12.2017 made in O.S.No. 2969 of 2008 on the file of the I-Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr. Tranquebar Dorai Vasu

For Respondents: Mr. R.Dinesh Kumar

J U D G M E N T

The defendant, who suffered a decree for possession has come forward with this second appeal.

2. The suit was filed by the respondents seeking recovery of possession on the following contentions. The husband of the first plaintiff and father of the plaintiffs 2 to 5 Late V.S.Shanmugasundaram leased out the first floor and open terrace of the second floor of the plaint schedule property bearing Old Door No.3, New No.5, Seven Wells Street, Mint, Chennai - 600 001 for a period of 3 years with effect from 10.03.1997, upon receipt of a sum of Rs.1,50,000/-. As per the Clause - 7 of the said lease agreement, the defendant shall deliver vacant possession of the entire premises, upon receipt of the said sum of Rs.1,50,000/-. The said V.S.Shanmugasundaram died on 06.03.2000 leaving behind the plaintiffs as his legal heirs. After the death of the V.S.Shanmugasundaram, the plaintiffs approached the defendant and offered to repay a sum of Rs.1,50,000/- and required him to vacate and deliver vacant

possession of the property. The defendant did not come forward to accept the said payment hence, the plaintiffs issued a Lawyer's notice on 18.02.2006, requiring the defendant to delivery vacant possession and also pay damages at the rate of Rs.5,000/- per month from the date of expiry of the lease deed. The defendant sent a reply notice on 02.03.2006 denying the claim and it is also claimed that he was ready to deliver vacant possession and the plaintiffs were not ready to repay the sum of Rs.1,50,000/-.

3. The defendant resisted the suit. While conceding that he came into possession as a lessee and after the expiry of the lease period, he offered to vacate and demanded payment of Rs.1,50,000/- but the original owner V.S.Shanmugasundaram was unable to pay the lease amount and requested him to continue the possession of the property. It is also claimed that the plaintiffs did not offer to return the money and have suddenly sent a legal notice. It is also claimed that the defendant had spent huge amounts in maintenance of the property and he has also paid amounts towards water tax to the Chennai Metropolitan Water Supply and Sewerage Board. On the above pleadings, the defendant sought for dismissal of the suit.

4. The Courts below, upon consideration of the evidence on record concluded that the plaintiffs are entitled to relief of delivery of possession. The fact that the title of V.S.Shanmugasundaram was not denied by the defendant and the admission of the nature of possession of the defendant was also taken note by the Courts below in coming to the said conclusion. Aggrieved, the defendant is on appeal.

5. I have heard Mr.Tranquebar Dorai Vasu, learned counsel appearing for the appellant and Mr.R.Dinesh Kumar, learned counsel appearing for the respondents.

6. Mr. Tranquebar Dorai Vasu, learned counsel appearing for the appellant would contend that the Courts below were not right in decreeing the suit as prayed for. According to him, the amounts paid by him towards water tax and the amounts spent by him towards maintenance of the property must have been taken note of and unless he is compensated for the said expenses incurred by him, it will be prejudice by the decree granted.

7. Both the Courts below have found that the defendant has not established payment of water tax or maintenance. The findings of the Courts below regarding the entitlement of the defendant to the alleged expenses incurred by him being factual in nature, I do not think that I can interfere with the same sitting in second appeal. The Courts below have also dismissed the claim of the plaintiffs for damages. I therefore, do not

see any question of law much less a substantial question of law in order to enable this Court to entertain this appeal. Hence, this appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

8. Mr. Tranquebar Dorai Vasu would however seek one year time to vacate and handover the vacant possession of the property. This request is opposed by the learned counsel appearing for the respondents. However, considering the fact that the defendant has been in possession of the property from 2008 and the fact that the claim for damages are also rejected by the Courts below, I am of the considered opinion that eight (8) months time can be granted for the appellant to vacate and handover vacant possession of the property. Hence, eight (8) months time is granted to vacate and handover vacant possession of the property subject to condition that the appellant shall file an affidavit of undertaking, agreeing to vacate and handover possession of the property on the expiry of the 8 months period i.e., on or before 04.06.2020. The affidavit shall be filed on or before 21.10.2019. If the affidavit is not filed by 21.10.2019, the respondents will be free to execute the decree as if no time is granted.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1.The II Additional Judge
City Civil Court, Chennai.

2.The I Assistant Judge
City Civil Court, Chennai

+1 CC to Mr.S.A. Samiullah, advocate sr 84842.

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CA(CO)
SP(06/01/2020)