

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.609 of 2018

Selvam ... Appellant/Appellant/Plaintiff

versus

R.Dhanraj ... Respondent/Respondent/Respondent

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure against the Judgment and Decree dated 28.03.2018 made in A.S.No.19 of 2014 on the file of the Sub-Court, Pollachi confirming the Judgment and Decree dated 29.11.2013 made in O.S.No.1068 of 2004 on the file of the District Munsif Court, Pollachi.

For Appellant : Mr.R.Krishna Prasad

For Respondent : Mr.R.Nandhakumar

JUDGMENT

Appellant herein is the landlord of the respondent. Tenancy is not in dispute though the nature of property involved in the tenancy and the quantum of rent are in dispute.

2. So far as the nature of property is concerned, while the plaintiff/appellant claims that he has let out a building to the respondent, the respondent denied the plaintiff's claim for title over the building. Ultimately, the Courts below have come to the conclusion that what was involved in the tenancy did not include the building. However, it does not matter as the suit is filed only for recovery of arrears of rent. The plaintiff claims arrears of rent from November 2001 to October 2004 at the rate of Rs.2,500/- p.m. The tenant disputes the rate of rent and contends that the monthly rent payable is only Rs.500/-. The Courts below do not find any credible evidence as to the rate of rent claimed by the plaintiff, and dismissed the suit and it came to be confirmed by the First Appellate Court.

3. The learned counsel for the appellant submitted that

defendant as DW1 in his testimony has admitted that he was in default in payment of rent from 2003 till date and that Courts below ought to have passed a decree based on this admission.

4. The only substantial question of law involved in this appeal is: should not have the Courts below passed a decree based on the admission of the defendant.

5. There is merit in the submission of the learned counsel for the appellant. In all cases where the plaintiff could not prove his case in the manner he has pleaded, yet if any part thereof is admitted by the defendant and the portion admitted can be severed to grant a relief to the plaintiff, then the Courts are duty bound to grant a decree in terms of such admission. Therefore, to that extent, the judgment of the First Appellate Court is required to be interfered with.

6. Accordingly, this appeal is partially allowed and the respondent/defendant is directed to pay the arrears of rent payable at Rs.500/- from January 2003 till October 2004 with interest at the rate of 6% p.a. throughout and with costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Subordinate Judge,
Pollachi.

2. The District Munsif,
Pollachi.

3. The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.Sarvabhuman Associates, Advocate, Sr.No. 3384

+1 cc M/s.R.Nandhakumar, Advocate, Sr.No. 3634

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CSL/17.05.2019