



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **23.10.2019**

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

S.A(MD)No.888 of 2009

1.M/s.A.M.Muthiah Nadar & Sons
through its Proprietor
A.M.Marimuthu Noble,
S/o.Muthiah Nadar,
No.51, G.C.Road,
Tuticorin.

2.A.M.Marimuthu Noble

.. Appellants /Defendants

Vs.

The Tuticorin Diocesan Association
through its Procurator and Secretary,
Tuticorin District.

.. Respondent /
Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 26.11.2008, made in A.S.No.140 of 2005 on the file of the Sub Court, Tuticorin, confirming the judgment and decree, dated 01.12.2004, made in O.S.No.237 of 2003 on the file of the Principal District Munsif Court, Tuticorin.

For Appellants : Mr.S.C.Herold Singh

For Respondent : Mrs.P.Jessi Jeeva Priya
for Mr.G.Aravinthan

JUDGMENT

This second appeal has been filed by the appellants/defendants in the suit, against the concurrent judgment passed by the Courts below.

2.For better appreciation and understanding, the parties are referred to as per their ranking in the suit.

3.The plaintiff had filed the suit in O.S.No.237 of 2003 seeking to remove the defendants from the suit property. According



to the plaintiff, the suit property originally belonged to the plaintiff, which is a charitable and religious trust and the same was let out to the defendants and the monthly rent was fixed at Rs.600/- per month and the tenancy is oral. The defendant has committed wilful default in paying monthly rent from September 2001 till today. The total rent due from September 2001 to February, 2003 is Rs.10,800/-. Hence, the plaintiff issued notice dated 22.02.2003 upon the defendants terminating the tenancy by the end of April 2003 and also demanded to deliver vacant possession. After receipt of the same, the defendants did not send any reply notice nor vacated the suit property. Therefore, the plaintiff filed the present suit for eviction.

4.According to the defendants, the father of the defendant was doing wholesale grocery business in the suit property from the year 1928. In the year 1956, with the permission of the plaintiff, he built the superstructure in the suit property by spending a sum of Rs.1,00,000/-. The monthly rent has been gradually increased from Rs.40/- to Rs.600/-. The plaintiff collected the rent from the defendant once in a year. When he asked the plaintiff as to why he did not come to receive rent, the plaintiff without replying the same, has filed this suit. The defendant is always ready to pay the balance rent. Thus, he prayed to dismiss the suit.

5.Before the trial Court, on the side of the plaintiff, one Dasan has been examined as P.W.1 and Exs.A.1 to A.5 were marked. On the side of the defendants, the second defendant has been examined as D.W.1 and Exs.B.1 to B.3 were marked.

6.On the basis of the rival pleadings on either side, the trial Court has framed necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit as prayed for.

7.Aggrieved by the judgment and decree passed by the trial Court, the defendants as appellants had filed Appeal Suit No.140 of 2005. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, dismissed the appeal and confirmed the judgment and decree passed by the Trial Court. Challenging the said concurrent judgment and decree passed by the Courts below, the present second appeal has been preferred at the instance of the defendants as appellants.

8.At the time of admitting the present second appeal, the following substantial question of law has been formulated for consideration:

"Whether there is any proper service effected on the appellants as contemplated under Section 106 of the



Transfer of Property Act?"

9. Heard the learned counsel for the appellants and the learned counsel appearing for the respondent and perused the records carefully.

10. The main contention put forth on the side of the appellants / defendants is that the alleged notice sent by the respondent / plaintiff has not been served to the defendants and the signature found in the courier receipt is not the defendant's signature.

11. Denying the same, it is contended on the side of the respondent / plaintiff that the plaintiff did not send any notice under Section 106 of the Transfer of Property Act. Since the defendant denied to receive the notice dated 22.02.2003, the notice has been sent to him through courier as well as certificate of posting, which has been substantiated through Ex.A.2 to A.5.

12. Perusal of record shows that in the written statement, the defendants averred that the plaintiff did not come to collect the rent regularly. But, it has not been pleaded that the notice dated 22.02.2003 has been sent under Section 106 of the Transfer of Property Act and he did not receive the notice. Without pleading the said averments in the written statement, the defendants have contended in the appeal as well as in the second appeal that proper service was not effected on the appellants as contemplated under Section 106 of the Transfer of Property Act. But, the respondent / plaintiff has contended that he did not send any notice under Section 106 of the Transfer of Property Act. Therefore, the contention raised on the side of the appellants / defendants that proper notice under Section 106 of the Transfer of Property Act, was not served, is of no merit.

13. On the side of the plaintiff, they have marked Ex.A.2, A.3 and Ex.A.5 to substantiate that for the default committed by the defendants in paying rent, they issued notice terminating the tenancy and also demanded to vacate the suit property. The appellants / defendants have marked only rent receipts, dated 24.05.1990, 17.05.1992 and 14.08.1995, as Exs.B.1 to B.3. Though the defendants contended that the plaintiff did not come to collect the rent regularly, it is the duty of the appellants / defendants to pay the rent through money order or deposit the same in a bank. Without doing the same, the appellants / defendants have come forward with the contention that proper service was not effected on the appellants as contemplated under Section 106 of the Transfer of Property Act. There is also no evidence on the side of the appellants / defendants with regard to the readiness to pay the rent. In the light of the above discussions, this



Court does not find any reason to interfere with the concurrent judgment passed by the Courts below and the substantial question of law formulated in the second appeal is not having substance at all.

14. In the result, this second appeal fails and accordingly, the same is dismissed, confirming the concurrent judgment and decree passed by the Courts below. The appellants / defendants are given two weeks time from today to vacate the suit property. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Sub Judge,
Tuticorin.

2. The Principal District Munsif,
Tuticorin.

3. The Record Keeper, -2 copies
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.JESSI JEEVA PRIYA, Advocate (SR-93837[F] dated 23/10/2019)

**JUDGMENT MADE IN
S.A(MD)No.888 of 2009
23.10.2019**

KM/(28.11.2019) 4P 6C