



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.07.2019
CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

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S.A.(MD)No.250 of 2019
and
C.M.P.(MD)No.4652 of 2019

1. The District Collector,
Office of the District Collector,
Velu Natchiyar Complex, Dindigul.
 2. The Commissioner,
Srilankan Refuges Rehabilitation Department,
Chepauk, Chennai.
 3. The Tahsildar,
Dindigul East Taluk Office, Dindigul.
 4. The Revenue Inspector,
Srilankan Refuges Rehabilitation Department,
Dindigul. ... Appellants/AppellantsDefendants
- Vs.

- 1.N.Radhakrishnan
- 2.N.Raju
- 3.S.Chandra
- 4.B.Saravanakumari ... Respondents/Respondents/ Plaintiffs

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, to set aside the judgment and decree made in A.S.No.65 of 2017, dated 01.10.2018 on the file of the Principal Subordinate Court, Dindigul, confirming the judgment and decree, dated 15.04.2016 made in O.S.No.626 of 2010 on the file of the Additional District Munsif Court, Dindigul.

For Appellants	: Mr.R.Sethuraman Special Government Pleader
For Respondents 1&2	: Mr.H.Lakshmi Shankar

JUDGMENT

The defendants in the suit in O.S.No.626 of 2010 on the file of the Additional District Munsif Court, Dindigul, are the appellants in this second appeal.

2.The respondents herein, as plaintiffs, filed the suit in O.S.No.626 of 2010 before the Additional District Munsif Court,

<https://hcservices.ecourts.gov.in/hcservices/>



Dindigul, for ejectment and for recovery of a sum of Rs.5990/- towards arrears of rent and for mesne profits.

3.The case of the plaintiffs in the plaint are as follows:

3.1.The suit properties are the absolute properties of the mother of plaintiffs 1, 2 and 4, by name, Smt.N.Rajathiammal by virtue of a sale deed, dated 20.08.1987. The said N.Rajathiammal executed a Will, dated 12.04.1999, bequeathing all the properties in favour of the plaintiffs. The properties became the absolute properties of plaintiffs, after the death of N.Rajathiammal, on 26.09.2000. The plaintiffs agreed to permit the defendants to use the suit properties for housing a rehabilitation camp for Sri Lankan refugees from 1989 (ie., during the life time of plaintiffs' mother). The defendants agreed to pay a sum of Rs.599/- per month as ground rent. The defendants after taking the properties on lease, paid rent upto March'2009 and failed to pay the rent from April'2009. Though the defendants agreed to vacate the property, as and when it is required by the plaintiffs, the defendants failed to hand over possession, despite repeated request from the plaintiffs. The defendants failed to honour their promise by vacating the property pursuant to the notice and hence the suit came to be filed.

3.2.The suit was contested by the defendants. There is no dispute with regard to title and the permission. However, it is stated that the properties would be handed over upon establishment of a permanent camp by the defendants for the refugees from Sri Lanka, after getting permission from the Government. It is further stated that representation sent by the third respondent, namely, Tahsildar of Dindigul, for linking the refugees camps is pending before the District Collector and that the land will be handed over to the respondents/plaintiffs, immediately, after the establishment of independent refugees camp.

3.3.After framing necessary issues and considering the entire evidence on records, the trial Court decreed the suit as prayed for, directing the defendants to vacate the suit properties on or before 31.12.2016 and the appellants were also directed to pay the arrears of rent and to compensate the plaintiffs by paying a sum of Rs.1318/- per month for use and occupation of the premises from April'2009. Aggrieved by the same, the appellants preferred an appeal in A.S.No.65 of 2017 before the Principal Subordinate Court, Dindigul. The lower appellate Court also dismissed the appeal. Aggrieved by the same, the above second appeal has been filed.

4.In support of the appeal, the appellants have raised the following substantial questions of law:

"1.The defendant is continue enjoying properties past 39 years, whether any legal notice issued by plaintiff to remove the suit property?

2.The proposal sent by District Collector Office to



create combined camp of the near of the Dindigul City, process is going on and under consideration?

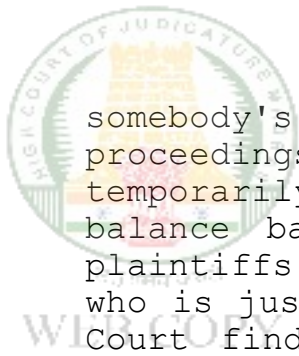
3.The rent arrears whether the plaintiff is entitled to receive it?

4.More than 157 families and 502 persons are residing said camp pending suit, the plaintiffs never claim their possession from the defendant by way of notice?

5.The facts in this case are not in dispute. The suit property is a land measuring an extent of 4 Acres 15 cents comprised in S.Nos.479 and 480 in Thottanoothu Village, Dindigul Taluk. The plaintiffs' title is not in dispute. The fact that the defendants took the property upon oral lease is also not in dispute. Though the suit property is a vacant land and it is required for the defendants for a public purpose, the appellants did not initiate any acquisition proceedings to acquire the land, which is more suitable to them for the purpose. By promising to pay a meagre sum of Rs.599/- per month as rent, the valuable property was taken on lease. When the respondents required the property for their own purpose, the appellants have no valid defence and hence they only sought time. Even in the written statement, it is stated that the proposal for allotting the land for establishment of permanent refugees camp is pending before the District Collector, from 2008. However, the appellants have not found suitable land, despite the matter is pending in Court for nearly a decade.

6.The appellants are only lessee or licensee. The appellants have agreed to pay a sum of Rs.599/- per month as ground rent. It is not in dispute that the suit land was required for the appellants temporarily till they establish a permanent refugees camp elsewhere. Having regard to the admitted facts, the appellants have no defence in the suit for ejectment. Merely because, the appellants could not establish the permanent camp for refugees within a reasonable time, they can not squat on the property of the respondents. It is seen from the memorandum of grounds submitted before the lower appellate Court that some land has been identified for the purpose, so as to enable the appellants to vacate the suit properties. For administrative convenience of appellants, the respondents can not be put to hardship.

7.A tenant or lessee can occupy the owners land, only as per the terms of the lease until such permission or lease is terminated. In this case, after terminating the lease or licence, the respondents/plaintiffs have filed the suit for ejectment. Without any valid defence, the appellants want to drag on the proceedings. It is admitted that the appellants are in enjoyment of the premises for more than 30 years. The convenience of the lessee is not a factor, that cannot be considered in a suit for ejectment after terminating the lease or licence. The person in possession of



somebody's land cannot plead convenience, as a reason to stall the proceedings for eviction. Merely because, several families are temporarily residing in the suit properties, the Court cannot tilt balance based on any misplaced sympathy. As land owners, the plaintiffs are entitled to get or recover the property from anyone, who is just a lessee or licensee. In that view of the matter, this Court find no reason or ground to interfere with the concurrent findings of the Courts below.

8.Earlier, the learned Special Government Pleader submitted that time may be given to vacate the property. Hence, this Court by order, dated 10.06.2019 requested the appellants to pay the rent at market value. Thereafter, on the request of the learned Special Government Pleader, this Court was inclined to grant time on condition that the appellants should file an affidavit of undertaking before this Court. Accordingly, an undertaking affidavit was filed. Since the said undertaking affidavit is not in the format, which was required to be submitted before this Court, this Court directed the appellants to file an affidavit of undertaking specifying the time for vacating the property and to get the assessment through Public Works Department regarding the market rent for the suit property. Accordingly, the appellants have filed an affidavit of undertaking stating that the suit property will be handed over to the land owners on or before 23.07.2020. The undertaking is also to the effect that they will pay fair rent till the date of handing over possession. As per the letter received from the Executive Engineer, (Buildings), Public Works Department, it is stated that fair rent for the suit property is fixed at Rs.2,450/- per month,

9.The appellants have further stated that the fair rent was determined by Public Works Department based on the assessment of market value of the property at Rs.67,000/- per acre. Though the learned Counsel for the respondents stated that the said fair rent suggested is very meagre, it is represented that the respondents will accept rent in view of the undertaking given by the appellants to vacate the property within one year. In that view of the matter, this Court without going into the question, whether the rent agreed to be paid by the appellants is fair or not, dismiss the appeal recording the undertaking of the appellants that they will vacate the suit properties by 23.07.2020 positively. It is made clear that the appellants are entitled to pay a sum of Rs.2,450/- per month to the respondents from the date of judgment of the trial Court till the date of vacating the property.

10.Accordingly, the Second Appeal is dismissed and the judgment and decree in A.S.No.65 of 2017, dated 01.10.2018 on the file of the Principal Subordinate Court, Dindigul, confirming the judgment and decree, dated 15.04.2016 made in O.S.No.626 of 2010 on the file of the Additional District Munsif Court, Dindigul is



confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

To

1. The Principal Subordinate Judge, Dindigul.
2. The Additional District Munsif, Dindigul.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to MR.H.LAKSHMI SHANKAR, Advocate (SR-78378[F] dated 30/07/2019)

+1 CC to SPL GP (SR-78547[F] dated 30/07/2019)

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CMR

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