

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.03.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1035 of 2008

and

M.P.No.1 of 2008

Annapoorna

... Appellant/Defendant

Vs.

Sri Vengeeswarar Alagar Perumal
and Nagathamman Koil Devasthanam,
reptd. By its Hereditary Trustee,
Mrs.Chamundeshwari
having office at Saidapet Road,
Chennai - 600 026.

[Hereditary Trustee name changed as
Mrs.Chamundeshwari instead of
G.Prem Anand vide order of Court
dated 02.03.2021 made in
C.M.P.No.3848 of 2021 in
S.A.No.1035 of 2008]

... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 29.01.2008 made in A.S.No.427 of 2007 passed by the I Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 28.09.2006 passed by the III Assistant Judge, City Civil Court, Chennai and made in O.S.No.2095 of 2004.

For Appellant : Mr.M.Bala Subramanian

For Respondent: Mr.R.Narendran

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 29.01.2008 passed in A.S.No.427 of 2007 on the file of the I Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 28.09.2006 passed in

O.S.No.2095 of 2004 on file of the III Assistant Judge, City Civil Court, Chennai.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. The defendant who has lost in both the Courts below has preferred the second appeal.

4. The suit has been laid by the plaintiff for possession and arrears of rent.

5. It is not in dispute the suit property belong to the plaintiff and it is also not in dispute that the defendant is a lessee under the plaintiff in respect of the suit property originally on a monthly rent of Rs.6/- and subsequently, the rent had been enhanced to Rs.350/- and contending that the defendant has not paid the rent regularly and kept not paying the rent for several months and accordingly, the case of the plaintiff is that, it had terminated the tenancy of the defendant by issuing the notice marked as Ex.A1 and thereafter has come forward with the suit for appropriate reliefs.

6. The defendant has putforth the defence that subsequent to the issuance of Ex.A1 notice, he has paid the arrears of rent in respect of the suit property and contended that following Ex.A1 notice, the suit has not been laid by the plaintiff immediately and also putforth the contention that inasmuch as, subsequent to Ex.A1 notice, the plaintiff had received the arrears of rent, it would amount to waiver of the notice Ex.A1 and therefore according to the defendant, the plaintiff's suit is misconceived and not maintainable for want of a valid notice under section 106 of the Transfer of Property Act and prayed for the dismissal of the plaintiff's suit.

7. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 and A2 were marked. On the side of the defendant, D.W.1 was examined. No document has been marked.

8. Considering the pleas and the materials putforth by the respective parties, as rightly concluded by the Courts below, merely because, the defendant had paid the arrears of rent subsequent to Ex.A1 notice that by itself would not amount to waiver of Ex.A1 notice on the part of the plaintiff, unless the evidence had been adduced by the defendant in an acceptable manner to show that the plaintiff has indeed waived the notice issued under Ex.A1. As rightly held by the Courts below, no fresh agreement had been entered into between the parties after Ex.A1, on the footing that the defendant had paid the arrears of rent subsequent to Ex.A1 notice and on the other hand, it is

found that the plaintiff had received the arrears of rent from the defendant without prejudice to his contentions raised under Ex.A1 notice. The Courts below are found to be justified in rejecting the abovesaid contention of the defendant, particularly by relying upon the decision of the Apex Court reported in 2006 (2) MLJ 414.

9. It has not been explained by the defendant as to why he had kept huge arrears of rent till the issuance of Ex.A1 notice. When the receipt of Ex.A1 notice has not been controverted by the defendant, the claim of the defendant that inasmuch as, the plaintiff's agent did not turn up for collecting the rent, he was unable to remit the rent, however the abovesaid contention putforth by the defendant has been rightly disbelieved and rejected by the Courts below. The defendant being the lessee, he is bound to pay the rent to the plaintiff without any default as per the terms of the agreement entered into between the parties. In such view of the matter, the contention of the defendant that as the plaintiff's agent did not turn up, he was unable to pay the rent as such cannot at all be countenanced in any manner.

10. The contention has also been putforth that the defendant is entitled to claim the benefits of City Tenants Protection Act. As rightly held by the first appellate court, such pleas having not been raised by the defendant in the written statement, resultantly, the above plea of the defendant had been rightly refused to be entertained by the first appellate court.

11. The contention has also been raised by the defendant that the suit property has not been properly described by the plaintiff and according to him, the extent of the suit property has been wrongly described. However, as rightly held by the Courts below, considering the boundaries of the suit property as given in the plaint schedule, and when it is not disputed by the defendant as regards the lie of the suit property within the abovesaid boundaries, assuming for the sake of arguments that the extent has not been properly given and when the identity of the property has not been disputed, the Courts below are found to be justified in holding that the boundaries of the suit properties having not been disputed, the same would prevail and accordingly rejected the contention of the defendant that the suit property has not been properly given by the plaintiff and the decree obtained by the plaintiff is not an executable decree.

12. Considering the reasonings and conclusions of the Courts below, when they are found to be founded on the proper appreciation of the materials placed on record, both oral and documentary, both on factual matrix as well as on the point of

law and when they are not shown to be in any manner, perverse, illogical and irrational, I do not find any valid reason warranting interference to the same. In such view of the matter, no substantial question of law is found to be involved in this second appeal.

13. In conclusion, the judgment and decree dated 29.01.2008 passed in A.S.No.427 of 2007 on the file of the I Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 28.09.2006 passed in O.S.No.2095 of 2004 on file of the III Assistant Judge, City Civil Court, Chennai are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(SSA)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The I Additional Judge,
City Civil Court,
Chennai.
- 2.The III Assistant Judge,
City Civil Court,
Chennai.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.M.Bala Subramanian, Advocate, S.R.No.16833

S.A.No.1035 of 2008
and
M.P.No.1 of 2008

BR(CO)
CB(26/10/2021)