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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1272 of 2008
and
M.P.No.1 of 2008

M.Meenakshi Sundaram
Old No.30, New No.30,
46th Street, Ashok Nagar,
Chennai 600 083.

... Appellant

Vs.

K.Jagan Mohan,
S/o, T.V.Kabali,
Rep. By his Power Agent,
T.Ilanchezian,
AG-6, New No.9,
4th Avenue, Shanthi Colony,
Anna Nagar,
Chennai 600 040.

... Respondent

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 04.03.2008 made in A.S.No.517 of 2007 on the file of the I Additional City Civil Court, Chennai, reversing the judgment and decree dated 20.03.2007 made in O.S.No.5107 of 2005 on the file of the I Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.V.K.Rajagopalan

For Respondent : Ms.Ramya
for M/s.V.K.Elango

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 04.03.2008 passed in A.S.No.517 of 2007 on the file of the I Additional Judge, City Civil Court, Chennai,



reversing the judgment and decree dated 20.03.2007 passed in O.S.No.5107 of 2005 on the file of the I Assistant Judge, City Civil Court, Chennai.

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2. The defendant in O.S.No.5107 of 2005 is the appellant in this second appeal.

3. The suit has been laid by the plaintiff for the recovery of arrears of rent for the period from March 2002 to January 2005, at the rate of Rs.4,000/- per month, after adjusting the interest free advance amount and the fair rent fixed by the rent controller at Rs.15,443/- per month and on the difference between the fair rent and the contractual rent for the period from 05.01.2005 to 28.01.2005, in all, claiming the sum of Rs.1,89,159. 60/- as arrears of rent against the defendant.

4. The defendant resisted the plaintiff's suit contending that the plaintiff's father T.V.Kabali let out the portion on the monthly rent of Rs.2,000/- and received a sum of Rs.30,000/- as advance and the defendant has been regular in the payment of rent and after the demise of T.V.Kabali, his legal heirs would project the rival claims over the property rented out and the defendant therefore was unable to pay the rent and the Will projected by the plaintiff having not been established in the manner known to law and the defendant was unable to pay the rent to the lawful owner and furthermore, according to the defendant, he vacated the portion on 01.12.2003 to the knowledge of the plaintiff and he had also paid the rent till his occupation after adjusting the advance amount as well as the expenditure incurred by the defendant towards the maintenance of the building and therefore according to the defendant, there is no arrears of rent and he has not committed willful default and the claim of the arrears of rent putforth by the plaintiff in the notice is untenable. The monthly rent as claimed by the plaintiff at Rs.4,000/- is not correct and the rent controller while deciding the rent control proceedings has not determined that any rent is due by the defendant to the plaintiff in RCOP No.2111 of 2004 and the present suit has been laid by the plaintiff only to harass the defendant and hence the suit is liable to be dismissed.

5. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A7 were marked. On the side of the defendant, D.W.1 was examined. Exs.B1 to B7 were marked.



6. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to hold that the plaintiff is only entitled to a sum of Rs.5,000/- with interest at the rate of 12% from the date of the plaint till the date of realization and accordingly disposed of the plaintiff's suit. Impugning the judgment and decree of the trial court, the first appeal has been preferred by the plaintiff and the first appellate court, on an appreciation of the materials available on record, and the submissions putforth, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal, directed the defendant to pay a sum of Rs.1,18,159.60/- together with interest at 18% per annum from the date of the plaint till the date of payment. Impugning the judgment and decree of the first appellate court, the second appeal has been preferred by the defendant.

7. It is found that the defendant was inducted as a tenant by the plaintiff's father in the property concerned. Now according to the defendant, the monthly rent is only Rs.2,000/-. On the other hand, the plaintiff would putforth the case that initially the monthly rent was Rs.3,700/- and subsequently increased to Rs.4,000/-. The rent agreement marked as Exs.A1 and A2 are not in dispute. From Exs.A1 and A2, it is found that the the monthly rent is Rs.3,700/- inclusive of amenity charges.

8. The plaintiff would claim the title to the suit property following his father's death based on the Will dated 19.05.2007. It has also admitted by the defendant that he has been paying the rent to the plaintiff. Thereafter it is noted that the plaintiff's mother demanded the rent from the defendant and accordingly, it is found that after exchange of various notices between the abovesaid parties, the plaintiff issued the legal notice on 06.08.2004 calling upon the defendant to pay the arrears of rent in a sum of Rs.1,16,000/-. The defendant responded to the same by way of a reply. Now the point is whether the plaintiff is entitled to claim the arrears of rent as putforth in the plaint.

9. In the rent control proceedings, RCOP No.2111 of 1994 laid by the plaintiff for securing the possession, on the ground of willful default, the defendant would oppose the same by



contending that he had already vacated the portion to the knowledge of the plaintiff and would further aver that he is ready and willing to hand over the key when all the legal heirs come together and receive the same from the defendant. From the materials available on record, it is seen that only on 28.01.2005, the defendant had handed over the key and delivered the vacant possession to the plaintiff. On the premise that the defendant vacate the building on 01.12.2003, the trial court on that assumption proceeded to hold that the plaintiff is not entitled to claim the arrears of rent after 2003. However when it is noted that the defendant had handed over the key only on 28.02.2005 and when the defendant has not endeavored to pay the rent to the plaintiff as and when demanded by him, the defendant cannot take the shelter for the non payment of the rent on the contention that there are rival claims to the property. Hence, as rightly concluded by the first appellate court, the defendant has failed to adhere to the provisions of section 9 of the Rent Control Act. Even when there is a dispute regarding the title to the suit property let out, the defendant cannot evade the payment of the rent and in such view of the matter, the defendant has to resort to the process outlined by the Rent Control Act. The advance amount is stated to be Rs.30,000/- and as concluded by the first appellate court, the abovesaid advance amount is found to be totally inappropriate for the alleged claim of rent as putforth by the defendant at Rs.2,000/-.

10. From the available materials it is found that the suit filed by the sister and mother of the plaintiff in C.S.No.138 of 2004 has been dismissed and the appeal preferred by them has also been dismissed. Accordingly, the plaintiff thereafter issued the legal notice Ex.A9. The defendant has not endeavored to comply with the same and issued Ex.10 reply. The plaintiff has also filed the petition for fixation of rent and the rent controller has fixed the fair rent at Rs.15,443/-. The difference in the rent fixed between the parties and the fair rent also should be taken into consideration while determining the arrears of rent.

11. Considering the abovesaid available materials when as rightly concluded by the first appellate court, the defendant had handed over the key of the premises leased out only on 28.01.2005, in such view of the matter, as rightly held by the first appellate court, the plaintiff is entitled to recover the



arrears of rent as claimed in the plaint from the defendant till the handing over of the possession of the premises as per law.

12. In view of the above, the reasonings and conclusions of the first appellate court for upholding the plaintiff's case and negating defence version being based on the proper appreciation of the materials available on record both on the factual matrix and on the points of law, I do not find any valid reason to interfere with the same. No substantial question of law is found to be involved in this second appeal.

13. In conclusion, judgment and decree dated 04.03.2008 passed in A.S.No.517 of 2007 on the file of the I Additional Judge, City Civil Court, Chennai, reversing the judgment and decree dated 20.03.2007 passed in O.S.No.5107 of 2005 on the file of the I Assistant Judge, City Civil Court, Chennai are confirmed. Accordingly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

MEMORANDUM OF CASES

Respondent () Costs.	Rs. P.
Stamp for Vakalatnama ...	10.00
Advocate's Fee(FC Not filed) ...	--
Translation Printing/Typing Charges	--
	10.00

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

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To

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

2.The I Assistant Judge,
I Assistant City Civil Court,
Chennai.

Copy to

The Section Officer,
VR Section,
High Court.

S.A.No.1272 of 2008
and
M.P.No.1 of 2008

SSV(C0)
SB(03/09/2021)