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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 23.03.2021	PRONOUNCED ON 31.03.2021
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CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.NO.380 OF 2010
AND
M.P.NO.1 OF 2010

1. Veerapandian
2. Pandiyarajan

... Appellants/Appellants/
Defendants 1 & 2

.Vs.

Ambayeeram

... Respondent/Respondent/
Plaintiff

PRAYER:-

This Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree passed in A.S.No.4/2005 dated 15.06.2009 on the file of the Principal District Court, Peramballur confirming the judgment and Decree passed in O.S.No.10 of 1995 dated 25.03.2003 on the file of the Sub Court, Ariyaloor.

For Appellants : M/s.A.Thiyagarajan

For Respondent : M/s.T.Dhanasekaran

JUDGMENT

This second appeal has been preferred against the judgement and decree passed in A.S.No.4/2005 dated 15.06.2009 on the file of the Principal District Court, Peramballur confirming the judgment and Decree passed in O.S.No.10 of 1995 dated 25.03.2003 on the file of the Sub Court, Ariyaloor.

2. The Appellants are the defendants in the suit.



3. The brief facts of the case are as follows:-

The suit 'A' schedule property is a cinema theatre belonging to the defendants. On 18.5.1991, the plaintiff, the defendants and another brother of defendants entered into an agreement of lease in respect of cinema theatre for a period of 3 years from 2.6.1991 for a monthly rent of Rs. 450/- and this agreement was reduced in writing on 18.5.1991. But the other brother of the defendants one Rajendran refused to sign the agreement. The plaintiff was running the theatre as a tenant of the defendants from 3.6.1991 to 23.10.1991. On 23.10.1991 the plaintiff and his son came to the theatre and made preparations for the next show at 10 O'clock. At 9.30 p.m. the defendants and her brother Rajendran and some other persons entered into the theatre premises and threatened the plaintiff and his son and asked them to go out. The plaintiff and his son refused to go out. The 1st defendant has taken away cash of Rs. 25,700/- kept by the plaintiff in the premises. They also took away the other equipments worth Rs.3273/-. The plaintiff and his son were unlawfully ejected from the theatre. Despite the plaintiff has got a lease hold right for 3 years they were not allowed to continue in the possession of the theatre. The plaintiff has suffered huge loss and hence the defendants are bound to compensate. Further the plaintiff is entitled to get back the advance amount of Rs. 50,000/- along with other dues and compensation with interest.

4. The short facts of the written statement filed by the defendant are as under:

The suit filed by the plaintiff is not maintainable. One of the owners of the cinema theatre has not signed in the alleged lease agreement. Hence it is an incomplete one. The plaintiff entered into lease to run the theatre from 2.6.1991 and agreed to pay Rs.450 as the daily rent. The plaintiff had paid the advance amount of Rs.50,000/- to the defendants. It is false to state that the defendants and others entered into the premises and unlawfully ejected the plaintiff and his son. The plaintiff committed default in paying rent. The plaintiff had not kept the machineries and the theatre building in a good condition. The plaintiff themselves deserted the theatre. Since the defendants are the owners of the theatre, they were compelled to discharge the liabilities of the plaintiff to various persons. The advance amount of Rs.50,000/- appropriated towards the damages caused by the plaintiff. The plaintiff is not entitled to get relief as prayed for. The defendants have listed out the dues to be paid by the plaintiff in his written statement/counter claim. According to that after adjusting the Rs.50,000/- advance amount, the plaintiff is liable to pay a sum of Rs.44,348.35/-. Hence the suit of the plaintiff should be dismissed and the



counter claim should be allowed.

5. During trial, on the side of the plaintiff one witness was examined as P.W.1 and Exs.A1 to A17 were marked. On the side of the defendants four witnesses were examined as D.W.1 to D.W.4 and Exs. B1 to B26 were marked.

6. After trial, the learned trial Judge had decreed the suit filed by the plaintiff for a sum of Rs.45,550 with interest @ 9% and the counter claim filed by the defendants was dismissed. Aggrieved over that the defendants have filed the first Appeal before the Principal District Court, Peramballur. The first Appellate Court confirmed the judgement of the trial Court. Now the defendants have filed this Second Appeal, challenging the judgements of the first appellate court. The Second Appeal has been admitted on the following substantial question of law:

"Whether the Courts below have committed an error in law in decreeing the suit relying upon Ex.A5, unregistered lease deed for a period of three years, much against the embargo provided under Section 17 and 41 of the Registration Act."

7. The simple point involved in this substantial question of law is whether on the basis of the lease agreement-Ex.A5, the monetary liability can be accepted. Ex.A5 is an unregistered lease agreement entered into between the appellants and the respondent. The defendants did not deny the execution of the lease agreement but they claimed that as lease agreement is itself is not admissible since it is not registered, the plaintiff cannot get a decree for recovery of money basing on that. The defendants accepted that Ex.A5 lease agreement was entered into with the plaintiff. One of the brothers of the defendant did not sign the lease agreement. However the defendants have received the advance amount from the plaintiff and allowed him to run the theatre on certain terms. However the plaintiff was not allowed to continue to enjoy the entire lease period. Even though the other brother of the defendants did not sign the lease agreement, the lease agreement was enforced by the act of parties. The brother of the defendants did not raise any objection for leaving the theatre on lease by his other two brothers.

8. It is true that an unregistered mortgage deed like Ex.A5 is not admissible in evidence. But that principle is applicable only when the plaintiff has filed the suit for recovery of possession or any other relief connected to the enforcement of lease. The plaintiff has claimed only the recovery of advance amount paid by him, as evidenced through Ex.A5.



In the result the Second Appeal is dismissed and the Judgment and the decree of the First Appellate Court is confirmed. No costs. The connected Miscellaneous Petitions if any are also closed.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Principal District Judge,
Peramballur.
2. The Sub Ordinate Judge,
Ariyaloor.
3. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.A.Thiyagarajan, Advocate, S.R.No.21144
+1cc to Mr.T.Dhanasekaran, Advocate, S.R.No.21341

S.A.NO.380 OF 2010

PM(CO)
PBS/01/10/2021