



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.No.1019 of 2021
and
C.M.P.No.19265 of 2021

S.Ashokan, M/63,
S/o.T.R.Sengoda Gounder,
Door No.9/59B, Square Market,
Mettur Dam-1, Mettur Taluk,
Salem District.

... Appellant/Appellant/Plaintiff

.Vs.

The Mettur Municipality,
Rep. by its Commissioner,
Mettur Dam-1, Mettur Taluk,
Salem District.

.. Respondent/Respondent/Defendant

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree dated 03.08.2020 made in A.S.No.24 of 2017 on the file of the learned Subordinate Court, Mettur, confirming the Judgment and Decree dated 20.08.2016 made in O.S.No.323 of 2009 on the file of the learned District Munsif Court, Mettur by allowing this Second Appeal.

For Appellant : Mr.E.Duraiyaiyapuri

J U D G M E N T

This Second Appeal is directed against the judgment and decree of the learned Subordinate Judge in A.S.No.24 of 2017 dated 03.08.2020 , confirming the judgment of the learned District Munsiff, dated 20.08.2016 made in O.S.No.323 of 2009.



2.The Appellant filed a Suit in O.S.No.323 of 2009, seeking declaration that the demand notice of the Defendant dated 23.01.2008 and 13.02.2008 in Na.Ka.No.854/2004/A3 as arbitrary, illegal, unenforceable and against natural justice, null and void and for costs.

3.The basis for filing the Suit is that Appellant is the lessee of Cinema Theatre called "Annai Kaveri" belonged to Respondent/Defendant from February, 1982. The lease was for a period of three years. Subsequently, the lease was extended by enhancing lease amount at 15% in G.O.Ms.No.285. The Plaintiff filed a Suit in O.S.No.85 of 1985 to extend the lease period for a period of three years by enhancing the rent at 15%. The suit was decreed on 07.10.1994, extending the lease till 31.03.1997. The Plaintiff again filed O.S.No.100 of 1987 for extension of lease. The lease was extended on condition of depositing Rs.1,64,570/-. The Defendant took a sum of Rs.2,00,000/- as deposit. The lease was extended periodically and last date of extension is 13.03.2002. Meanwhile, the Suit in O.S.No.100 of 1997 was dismissed on 09.06.2004. Appellant filed an Appeal in A.S.No.59 of 2003 before the Sub Court and that was dismissed on 10.08.2004. Respondent/Defendant filed O.S.No.558 of 1999 before the Sub Court, Mettur, claiming arrears of Rs.1,91,912/- from the year 1982. That suit was dismissed for the reason that the account was not proper. It was also observed that if the Defendant has any proper account, it may file a suit within a period of two months from the date of that Judgment.

4.Respondent has not filed any suit. On 16.09.2004 Respondent issued notice stating that Plaintiff was in arrears of Rs.1,72,601/- and demanded payment within a period of 7 days. Appellant sent a reply stating that advance amount of Rs.1,01,530/- was paid and requested the Respondent to adjust the advance amount. On 01.10.2004, the Respondent directed the Appellant to vacate the premises. On 10.11.2004, the Revenue Inspector of Mettur Municipality took the possession of the Theatre. Appellant filed Writ Petition in W.P.M.P.No.32395 of 2004 to quash the proceedings and an interim order of stay was granted on condition of paying the arrears of rent amounts to Rs.1,72,601/- within a period of four weeks and increased the rent by Rs.5,000/-, and from October 2004. Appellant paid arrears of rent of Rs.1,72,601/- on 03.12.2004. Respondent refused to renew the lease by an order dated 01.02.2005. Therefore, Appellant filed W.P.No.3997 of 2005 against this order, in which this Court set aside the order of the Respondent and directed the Respondent to pass orders on merit.



Accordingly, lease was renewed for a further period of three years from 01.04.2005. Subsequently, W.P.No.32395 of 2004 and W.M.P.Nos.39240 & 39241 of 2004 came to be disposed with direction. Then Respondent issued impugned notice claiming arrears of rent, without any proper accounts. Therefore, the Suit.

5.Respondent/Defendant filed written statement, challenging the allegations made in the Plaint. The legal proceedings between the Appellant and Respondent are admitted. However, it is claimed that the Appellant, without properly paying the rent, repeatedly approached the Court and obtained interim orders and continued to be in possession of the suit property. As per the notice, the Appellant is liable to pay a sum of Rs.8,19,772/- towards arrears of rent for the period from 1992-93 to 2007-08. The suit is filed only to avoid payment of rent and only to protract the proceedings.

6.On the basis of the above pleadings, trial Court framed the following issues:

- (i)Whether the demand notice issued by the Defendant is true and valid?
- (ii)Whether the Plaintiff is entitled for declaration as prayed for?
- (iii)To what other relief, the Plaintiff is entitled for?

7.During the trial PW1 was examined and Ex.A.1 to A24 were marked on the side of the Plaintiff. DW1 was examined and Ex.B1 to B.10 were marked on the side of the Defendant.

8.On going through the evidence, the trial Court found that Appellant/Plaintiff has initiated several legal proceedings just to squat on the property, without regularly paying the rent. When the Respondent claimed that there is arrears of rent, it is for Appellant to prove that there was no arrears by producing receipts. However, the Appellant has not produced any receipt to show the payment of rental arrears claimed by the Respondent. Therefore, the prayer of the Appellant cannot be entertained and accepted. In this view of the matter dismissed the suit. The first Appellate Court also found there is no ground to interfere with the judgment of the trial Court and dismissed the Appeal by confirming the judgment of the trial Court. Therefore, the Appellant is before this Court by way of the Second Appeal.



9. Learned counsel for the Appellant submitted that Appellant has been regularly paying the rent and produced the documents to show the payment of rents. It is brought to my notice that in the written statement filed by the Respondent, a statement is given claiming that there is an arrears of Rs.8,19,772/-. Learned counsel for the Appellant specifically drew my attention to the entries made in Serial Nos.3 and 4, wherein it is said in Serial No.3 the balance amount liable to be paid for the year 1994-95 is mentioned as Rs.4,427/- and in the next row (i.e.,) serial No.4, it is again claimed that during 1994-95, the balance amount to be paid is shown as Rs.3,27,799/-. Thus, learned counsel for the Appellant submitted that it shows that the claim of the Respondent with regard to arrears of rent is not correct. Of course, this is a point to be considered. There is some discrepancy with regard to the balance amount claimed for the year 1994-95. Two amounts viz., Rs.4,427 and 3,27,799/- are claimed as balance amount to be paid for the year 1994-95. This issue has to be addressed by the Respondent, while claiming the arrears of amount.

10. Be that as it may, primarily it is the duty of the Appellant, who is the tenant in the suit property, to show that he has regularly paid the rent. Both the Courts below have concurrently found that Appellant has not produced any material to show that he has been regularly paying the rent. As referred above, the Appellant has initiated several legal proceedings in the form of Original Suit and Writ Petition, from time to time, to continue in possession of the suit property. The lease was extended only at his insistent by filing Suit or Writ Petition. When he is interested in continuing in possession and running the cinema theater, he is expected to pay the rent due to the Respondent. Apparently, there is arrears of rent, the only question is the quantum.

11. Therefore, this Court finds that there is arrears of rent and that arrear is claimed by the Respondent by way of notice. Only thing is that there is some discrepancy in the quantum claimed for the year 1994-95 and this Court directs the Respondent to work out the correct arrears amount for the year 1994-95. In view of the findings of the Court below that there is arrears of rent and there is no reason to take a different view, this Court finds that there is no merit in the Second Appeal. There is no substantial question(s) of law involved in the Second Appeal. Therefore, the judgment of the first Appellate Court, dated 03.08.2020 made in A.S.No.24 of 2017 on the file of the learned Subordinate Court, Mettur, is confirmed, of course, subject to the direction that the Respondent has to



ensure the correct arrears for the year 1994-95.

12. Accordingly, the Second Appeal is dismissed. However, no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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To

1. The Subordinate Judge,
Sub Court,
Mettur.

2. The District Munsif,
District Munsif Court,
Mettur.

3. The Commissioner,
Mettur Municipality,
Mettur Dam-1, Mettur Taluk,
Salem District.

+1cc to Mr. V. Elangovan, Advocate SR.No.62743

S.A.No.1019 of 2021

and

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CP(CO)

CB(05/01/2022)