



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.04.2021

CORAM:

WEB COPY

THE HONOURABLE Mr.JUSTICE S.S.SUNDAR

S.A. No.277 of 2017
and C.M.P. No.6582 of 2017

Sree Gokulam Chits & Finance Co., (P) Limited,
Rep. by its Executive Director,
G.Baiju,
No.66, Arcot Road,
Kodambakkam,
Chennai - 600 024.

.. Appellant/Plaintiff

Vs

1.N.Pathu Muthu
2.S.P.Noor Mohamed

.. Respondents/Defendants

Second Appeal filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree passed in A.S. No.224 of 2015 and Cross Objection No.322 of 2015 dated 20.10.2016 passed by the XV Additional City Civil Court, Chennai, dismissing the appeal suit in A.S. No.224 of 2015 with modification of the judgment and decree in O.S. No.6892 of 2012 dated 13.03.2015 passed by the Hon'ble XV Assistant City Civil Court, Chennai.

For Appellant : Mr. L.Rajasekar

For Respondents : Mr. V.Balasubramaniam

JUDGMENT

The plaintiff in the suit in O.S. No.6892 of 2012 on the file of XV Assistant City Civil Court, Chennai, is the appellant in the second appeal. The plaintiff filed a suit in O.S. No.6892 of 2012 for recovery of a sum of Rs.1,93,768/- under three heads. A sum of Rs.1,60,000/- is towards rental advance and a sum of Rs.22,800/- is towards security deposit stated to have been paid by the plaintiff to the Tamil Nadu Electricity Board on behalf of the defendants. A further sum of Rs.10,968/- towards interest for a period of four months.

2. The case of the plaintiff as per the plaint is that the plaintiff had taken on lease the first floor portion of a premises from the defendants for a non-residential purpose. At the time of taking the property on lease, it is stated that the plaintiff had paid rental advance of Rs.1,60,000/- by way



of a Cheque and that the said amount was paid at the time of execution of lease deed dated 11.07.2007. The lease deed was extended and subsequently renewed for a period of eleven months with effect from 05.01.2009. It is the case of the plaintiff that the monthly rent agreed by the parties was Rs.22,000/- per month. It is the case of the plaintiff that the plaintiff was paying monthly rent regularly. The plaintiff also contended that a sum of Rs.22,800/- was paid by the plaintiff towards security deposit to the Tamil Nadu Electricity Board in the name of both the defendants. It is contended by the plaintiff that he is entitled to get back rental advance and the amount paid to the Electricity Department upon vacating and handing over the possession of the property to the defendants on 31.05.2011. It is also stated by the plaintiff that he handed over a letter to the second defendant informing about vacation of building on 31.05.2011. It is the case of the plaintiff that the plaintiff vacated the premises and handed over the possession of the property to the defendants on 31.04.2011. Hence the suit was laid by the appellant plaintiff to recover the amount alleged to have been paid by the plaintiff earlier as a lessee which should be paid to plaintiff upon termination of lease and vacating the property.

3. The suit was contested by the defendants. A counter claim was also laid by the defendant claiming a sum of Rs.3,30,000/- from the plaintiff and the defendants respondents wanted the decree in their favour for a sum of Rs.3,38,000/- being the arrears of rent alleging that the plaintiff had not surrendered possession and that the plaintiff is liable to pay rent as agreed. The suit as well as the counter claim was independently dealt with by the trial Court after framing necessary issues. Though the plaintiff appellant relied upon Ex.A5, a letter dated 15.12.2007 addressed to the second defendant, it is seen that the said letter only indicate the promise from the plaintiff to vacate the property on 31.01.2011. The trial Court specifically found that the plaintiff had not vacated the property as it was promised under Ex.A5. The trial Court after holding that the plaintiff had not vacated the property as indicated by him in Ex.A5, went further to hold that the plaintiff was continued to be in possession of the property and that therefore the plaintiff is liable to pay the lease amount as agreed till the plaintiff actually vacated the premises. In the process, the trial Court determined the amount that is due from the plaintiff to the defendants by way of arrears of rent. Since the trial Court found that the plaintiff is liable to pay rent till the property was handed over to the defendant, the trial Court arrived at a finding that the plaintiff have to pay rental arrears for a period of twenty two months. The trial Court also accepted the case of the plaintiff that a sum of Rs.22,800/- was paid to the defendants towards deposit charges on behalf of the defendants. After calculating the rental arrears and the admitted amount payable by the defendants to



the plaintiff upon vacating the property, as on the date, the trial Court found that the plaintiff is liable to pay a sum of Rs.2,85,423/-. Therefore, the trial Court after dismissing the suit filed by the plaintiff appellant, allowed the counter claim by directing the plaintiff to pay a sum of Rs.2,85,423/- to the defendants with interest at the rate of 6% per annum from the date of counter claim.

4. Aggrieved by the judgment and the decree of the trial court, the appellant plaintiff filed an appeal in A.S. No.224 of 2015 before the Additional City Civil Court, Chennai and cross objection in Cross Objection No.322 of 2015 before the XV Additional Judge, City Civil Court, Madras.

5. The lower appellate Court also concurred with the findings of the trial Court and dismissed the appeal filed by the plaintiff. However, there was a small modification with regard to the quantum of amount payable by the plaintiff to the defendants. Instead of Rs.3,30,000/- by way of counter claim, the lower appellate Court directed the plaintiff to pay a sum of Rs.3,01,200/- to the defendants in A.S. No.322 of 2015 within a period of two months. Aggrieved by the judgment and decree of the Courts below, the above second appeal is preferred by the plaintiff.

6. Learned counsel appearing for the appellant plaintiff submitted that the Courts below failed to consider the documents Exs.A5 and A7 in a proper perspective. Ex.A5 letter clearly indicate that the possession was to be handed over on 31.05.2011. Learned counsel for the appellant relying upon Ex.A1 submitted further that a reply to Ex.A5 has come after a long time and that the Court cannot lean in favour of defendants in the absence of any concrete evidence to show that possession was not handed over to the defendant as it was promised under Ex.A5 letter. Learned counsel further submitted that the appellate Court ought to have seen that the respondents have claimed a sum of Rs.2,70,000/- after issuance of Ex.A6 notice by the appellant. In other words, learned counsel appearing for the appellant pointed out that the defendants have not come forward with a suit to recover the amount towards arrears of rent or under any other head till the plaintiff filed a suit for recovery of amount due by way of rental arrears.

7. This Court is unable to agree with any of the submission made by the learned counsel appearing for the appellant. First of all this Court is of the view that the trial Court and the lower appellate Court have concurrently held that the appellant did not hand over the possession as it was promised by him under Ex.A5 letter. Though Ex.A5 is admitted and that the appellant promised that he would hand over vacant possession on 31.05.2011, there is no evidence to show that the appellant handed over the keys of the premises on 31.05.2011. When the respondents issued a letter



specifically stating that keys have not been handed over to them as it was promised by the plaintiff, the plaintiff took up a stand that the plaintiff's dues were not settled. Though there is a passing reference that possession was handed over, the Court can decide the factual issue only on the basis of the available evidence. The trial Court as well as the appellate Court after analysing the entire evidence came to the specific conclusion that possession was not handed by the appellant to the defendants and that the appellant is liable to pay rent till possession was handed over to the defendants.

8. The fact that the appellant had paid rental advance of Rs.1,60,000/- is not in dispute. Similarly the fact that the appellant had deposited a sum of Rs.22,000/- to Electricity department is also not in dispute. However, the respondents have let in evidence to show that the appellant did not hand over possession and kept the key of the premises thereby causing loss to the respondents. It is in the said circumstances, accepting the case of the respondent that possession was handed over to the respondents long after, the trial Court as well as the appellate Court held that the plaintiff is liable to pay the lease amount till possession was handed over. After considering the entire evidence of record, the trial Court found that the appellant is liable to pay the contractual rent and a sum of Rs.3,30,000/- is still due from the plaintiff towards arrears of rent. After adjusting the amount payable by the defendants to the plaintiff towards rental arrears, the plaintiff is still in arrears on account of delay in handing over possession to the defendants.

9. The findings of the Courts below are on the basis of documents and oral evidence adduced on behalf of the parties. The issue being factual, this Court is unable to find any question of law arises for consideration in this Second Appeal. Learned counsel appearing for the appellant referred to Ex.A7 dated 02.04.2012 and submitted that the defendants have not demanded the rent from 01.06.2011 to 31.03.2012 till Ex.A7 reply notice was issued. Ex.A7 does not contain any admission to the effect that the plaintiff had handed over possession to the defendants. The burden lies on the plaintiff to prove that possession was handed over to the defendants. When the plaintiff was put in possession as a tenant, it is for him to hand over possession by handing over the key of the premises to the defendants. Physical handing over would be the date on which the defendants, as land owners, gets control over the property. Even if the plaintiff does not carry on any business but did not hand over the keys to the defendant, it cannot be taken that the plaintiff had vacated the property. So long as the defendant gets physical possession and control over the property, the property cannot be presumed to have come under the custody of defendants. As a statutory tenant every tenant is liable to pay rent till the termination of lease. Termination of lease can also be by handing over



physical possession. However, the issue depends upon several facts and circumstances which have been properly considered and appreciated by the Courts below.

10. The findings of the Courts below are well founded and based on evidence available on record. This Court sitting in second appeal cannot interfere with the findings of the Courts below. This Court therefore has no reason to interfere with findings of the trial Court and appellate Court. Accordingly, this second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy// Sub Assistant Registrar
bkn

To

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

2.The XV Additional Judge,
City Civil Court, Chennai.

Copy to:
The Section Officer,
VR Section,
High Court, Madras.

+1 cc to Mr.L.Rajasekar, Advocate Sr.NO.25178

+1 cc to Mr.V.Balasubramaniam, Advocate Sr.NO. 24864

S.A. No. 277 of 2017

BP(CO)
A.SK(13/06/2022)