

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2021

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

S.A. (MD)No.311 of 2007

Rajapalayam Chatram Trust  
(1<sup>st</sup> Schedule) Rajapalayam  
through its Hereditary Huqdar ... Appellant/ Appellant/ Defendant

-Vs-

1.G.Sankar  
2.G.Radhakrishnan  
3.S.S.P.Ganesh Nadar Firm ... Respondents/Respondents/Plaintiffs

**PRAYER:** Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 24.07.2006 made in A.S.No.14 of 2005 on the file of the Sub Court, Srivilliputtur, confirming the judgment and decree dated 15.06.2004 made in O.S.No.77 of 2001 on the file of the Principal District Munsif Court, Srivilliputtur.

For Appellant : Mr.P.T.S.Narendravasan  
For Respondents : Mr.M.Ashok Kumar

**JUDGMENT**

The defendant in O.S.No.77 of 2001 on the file of the Principal District Munsif, Srivilliputtur is the appellant in this second appeal.

2.The respondents herein filed the said suit for mandatory injunction directing the appellant herein to accept the vacant site rent from them and for issuing receipt. In the alternative, the plaintiffs sought permission to remit the vacant site rent in the court. The case of the plaintiffs was that the suit property belongs to the appellant Trust and that the vacant site was leased out in favour of their grandfather some 75 years ago. He put up construction with the leave of the then trustees and was running a business. Since the present Huqdar declined to receive the rent, they were constrained to file the aforesaid suit. The appellant Trust filed the written statement controverting the plaint averments. Based on the divergent pleadings, the trial court framed as many as five issues. The first plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A20. On the side of the defendant Trust, no evidence was adduced. After a consideration of the evidence on record, the trial court by judgment and decree dated 15.06.2004 granted alternative relief and permitted the plaintiffs to deposit the vacant site rent in the court. Aggrieved by the same, the defendant Trust filed A.S.No.14 of 2005 before the Sub Court, Srivilliputtur. The first appellate court by the judgment and decree dated 24.07.2006 confirmed the decision of the trial

court and dismissed the appeal. Challenging the same, this second appeal came to be filed. The second appeal was admitted on 03.04.2007 on the following substantial questions of law:-

"1. Whether the courts below are right in granting the alternative prayer directing the plaintiffs to deposit the rent for land into court, particularly when the court rejected the relief for mandatory injunction directing the defendant to issue rent receipt for vacant site was already rejected in an earlier suit O.S.No.559 of 1999 and hence the present suit is barred by resjudicata

2. Whether the suit for mandatory injunction directing the defendant to issue a rent receipt for vacant site is maintainable without a relief for declaration that the plaintiffs are entitled to the superstructure."

3. The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this court to answer the substantial questions of law in favour of the appellant and set aside the impugned judgment and decree and dismiss the suit.

4. Per contra, the learned counsel appearing for the plaintiffs/respondents submitted that the impugned judgment and decree do not warrant any interference.

5. I carefully considered the rival contentions and went through the evidence on record. There is no dispute that the suit site belongs to the appellant Trust. The present plaintiffs have earlier filed O.S.No.559 of 1999 on the file of the Additional District Munsif Court, Srivilliputtur seeking the relief of permanent injunction that the appellant Trust should not interfere with their possession and enjoyment and also for mandatory injunction for directing the appellant Trust to accept the vacant site rent and issue receipt therefor. The suit was tried and disposed of on merits vide judgment and decree dated 26.03.1992. The learned trial munsif while granting permanent injunction denied the relief of mandatory injunction. However, an observation was made that if the defendant Trust declined to receive the rent, the plaintiffs can file a petition before the Court for depositing the same. There is considerable merit in the contention of the learned counsel for the appellant that in the present suit, they once again sought the very same relief of mandatory injunction. Since such a relief was already declined in O.S.No.559 of 1999, the present plaintiffs could not have sought the relief of mandatory injunction. But the courts below were fully conscious of the said fact and rightly denied the said prayer. What was granted by the courts below was only the alternative relief of permission to deposit the rent. In-fact, on the earlier occasion, such a prayer

for deposit of rent was expressly permitted. Therefore, it cannot be stated that the alternative relief was barred by *res-judicata*. The only contention that remains to be considered is whether such an alternative prayer is maintainable? Since what was let out in favour of the plaintiffs was only a vacant site, the plaintiffs could not have invoked Section 8 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 which was then in force. The learned counsel appearing for the appellant would state that in a civil suit, the prayer analogous to Section 8 of Tamil Nadu Buildings (Lease and Rent Control) Act is not maintainable.

6. I am not persuaded by the aforesaid submission of the learned counsel appearing for the appellant. Section 9 of C.P.C., states that the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. There is no express bar against the maintainability of such a suit. As per Section 108(B)(1) of the Transfer of Property Act, a lessee is bound to pay or tender at the proper time and place the premium or rent to the lessor or his agent in this behalf. Lessee is thus under an obligation to pay the rent promptly. In this case, the specific stand of the lessee is that the landlord is declining to receive the rent. Therefore, the lessee cannot be left remediless. Therefore, I hold that the suit seeking permission of the Court to deposit the rent is certainly maintainable. Of-course, the lessee will have to establish that the relationship of landlord-tenant subsists. In the case on hand, the lessee had already filed O.S.No.559 of 1999 on the file of the District Munsif Court, Srivilliputtur and even while granting permanent injunction and declining mandatory injunction, the trial court had specifically permitted the plaintiff to file such a petition. Of-course, the use of expression 'petition' may not be appropriate. It is too well settled that for filing a civil suit, one needs to invoke only a statutory provision or common law. So long as there is no express or implied bar against the maintainability of the suit, the suit is otherwise maintainable.

7. The courts below rightly granted the alternative prayer sought for by the plaintiffs. The substantial questions of law are answered against the appellant. The second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Sub Court, Srivilliputtur.

2.The Principal District Munsif Court, Srivilliputtur.

Copy To

The Section Officer,  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai.(2COPIES)

+1 CC to M/s.M. ASHOKKUMAR, Advocate ( SR-32731[F] dated  
26/10/2021 )

+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate ( SR-32423[F] dated  
25/10/2021 )

Judgment made in  
S.A.(MD)No.311 of 2007

25.10.2021

SS/01.02.2022 : 4P/7C