



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A.(MD)No.133 of 2011 and

M.P.(MD)No.1 of 2011

WEB COPY

S.Senthil Kumar ... Appellant/Appellant/1st Defendant

Vs.

1. N.Subramanian(Died) ... 1st Respondent/1st Respondent/
Plaintiff

2. N.Kannan

3. Mahadevan

4. Jeyam ... Respondents 2 to 4/Respondents 2 to 4/
Defendants 2 to 4

5. S.Chandra

6. S.Rajesh Kumar

7. S.Ramani ... 5th to 7th Respondents

(R-5 to R-7 are brought on record as LR's of the deceased
1st respondent vide Order dated 27.09.2019
made in C.M.P.(MD)No.12 to 14 of 2019)

Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the Decree and Judgment dated 07.09.2010 rendered in A.S.No.60 of 2008 on the file of the I Additional District Judge, Madurai, confirming the Decree and Judgment dated 22.01.2008 passed in O.S.No.311 of 1998 on the file of the II Additional Subordinate Judge, Madurai, by allowing this second appeal.

For Appellant : Ms.P.Jessi Jeeva Priya,
for Mr.A.P.Athithan

For R-2 : Mr.G.Prabhu Rajadurai for Mr.K.Sekar
For R-4 : Mr.J.Ramamoorthy
For R-5 to R-7 : Mr.D.Shanmugaraja Sethupathy
For R-3 : No appearance.

J U D G M E N T

The first defendant in O.S.No.311 of 1998 on the file of the II Additional Sub Court, Madurai, is the appellant in this second appeal.

2. The suit was filed by one Subramanian for ejecting the appellant and three others. Even according to the appellant, he was only a tenant under the original plaintiff. The plaintiff issued Ex.A.2 termination of lease notice dated 22.07.1997. The same was also received by the father of the appellant herein. The plaintiff



examined himself as P.W.1 and Ex.A.1 to Ex.A.8 were marked. The appellant examined himself as D.W.1. No document was marked on his side. The learned trial Judge by judgment and decree dated 22.01.2008 decreed the suit as prayed for.

3. Aggrieved by the same, the appellant filed A.S. No.60 of 2008 before the I Additional District Court, Madurai. By judgment and decree dated 07.09.2010, the appeal was dismissed. Challenging the same, this second appeal came to be filed.

4. Though this appeal is of the year 2011, only notice was ordered and it had not been admitted. The original plaintiff has passed away and his legal heirs have come on record. It appears that among the legal heirs of the plaintiff and the other defendants partition proceedings are pending at the second appeal stage. However, while partition proceedings will have to be separately worked out, there appears to be consensus among them that this second appeal has to be dismissed.

5. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to frame substantial questions of law and thereafter take up the appeal for final disposal.

6. This is a suit for ejectment. There is no dispute that the suit property originally belonged to Narayana Iyer. The plaintiff was the elder son, while defendants 2 and 3 are the younger sons. The fourth defendant Jeyam was the daughter of Narayana Iyer. Subramanian had passed away and his legal heirs are shown as respondents 5 to 7. Even though the original plaintiff was one of the co-owners of the suit property, his competence to institute the suit for ejectment cannot be disputed. In fact, the other defendants have sailed with the original plaintiff in the matter of seeking ejectment against the appellant herein. The suit was preceded by termination notice. The Courts below have correctly held that the appellant has to hand over the possession of the property in question. I do not find any substantial question of law arising for consideration.

7. This second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

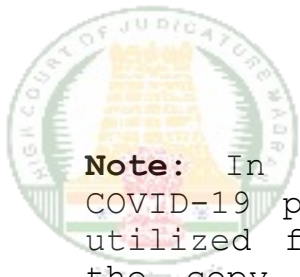
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/ /2021

Sub Assistant Registrar(CS)

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To:

1. The I Additional District Judge,
Madurai.
2. The II Additional Subordinate Judge,
Madurai.

Copy to

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai(2 copies)

+1 CC to M/s.P.JESSI JEEVA PRIYA, Advocate (SR-19458[F] dated 17/06/2021)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-19459[F] dated 17/06/2021)

+1 CC to M/s.D.SHANMUGA RAJA SETHUPATHY, Advocate (SR-19593[F] dated 18/06/2021)

S.A. (MD) No.133 of 2011
16.06.2021

smv (CO)

TR(07.07.2021) 3P 8C