



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.04.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

SA(MD)No.220 of 2012

Kandasamy

... Appellant/defendant/appellant

Vs.

Arumugam

... Respondent/Plaintiff/Respondent

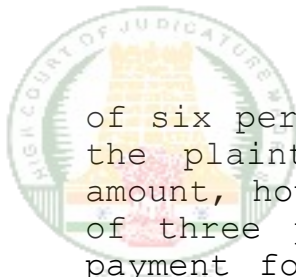
Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S No.27 of 2007 dated 03.09.2010 on the file of the Sub Judge,, Valliyoor confirming the judgment and decree passed in O.S No.179 of 2004 dated 16.09.2005 on the file of the Additional District Munsif, Nanguneri.

For Appellant	: Mr.S.J.Chakkaravarthy
	for M/s.Eddy & Embboss
For Respondent	: Mr.H.Arumugam

JUDGEMENT

The defendant in O.S No.179 of 2004 on the file of the Sub Court, Tirunelveli is the appellant in this Second Appeal. The respondent herein is admittedly the tile holder in respect of the suit schedule property. The suit schedule property is comprised in Survey No.1136/3 in Thalapalathipalayam Village in Nanguneri Taluk and measures 1 acre and 2 cents. The respondent had purchased the property from one Seetharama Aiyar on 13.07.1983. Even during the relevant time, the appellant herein was in possession of the property. The case of the appellant was that he is the cultivating tenant. The said suit was contested by the respondent initially. But the appellant moved the competent authority under Tamil Nadu Recording of Tenancy Rights and obtained declaration in his favour and the same was also confirmed by the Division Bench of the Madras High Court vide order dated 30.08.1995 in WA No.834 of 1995. The appellant had also filed petitions before the competent authority for depositing the lease amount. Since the appellant committed default on payment of lease amount, the respondent had filed the said suit for recovery of a sum of Rs.58,600/- with interest. The appellant herein filed written statement denying the claim of lease amount payable by him and also the period for which he was liable.

2.According to the respondent, the appellant was liable to pay lease amount computed at the rate of four kotaahs for per Kar and eight kottahs for per Pisanam. According to the appellant, it was 2 Kottahs for per Kar and four kotaahs for Pisanam. The plaintiff examined himself as PW.1 and marked Exs.A1 to A7. The defendant himself examined as DW.1 and one Sudalai as DW.2. Exs.B1 to B10 to were marked. The learned Trial Munsif vide judgment dated 16.09.2005, decreed the suit partly and directed the defendant to pay a sum of Rs.22,200/- to the plaintiff with interest at the rate



of six percent. The court below while sustaining the contention of the plaintiff as regards the rate of computation of the lease amount, however, held that the plaintiff can claim only for a period of three years prior to the date of filing of the suit and the payment for the period beyond hit by limitation. Challenging the decision of the trial court, the tenant filed A.S No.27 of 2007 before the Sub Court, Valliyoor. The first appellate court by the impugned judgment dated 03.10.2010 dismissed the appeal. Questioning the same, this Second Appeal has been filed.

3.The second appeal was admitted on the following substantial questions of law :

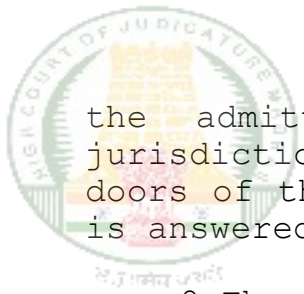
"Whether the courts below are correct in law in deciding and decreeing the suit for agricultural tenancy arrears in the absence of any agreement without being a fair rent fixed under Section 4 of the Tamil Nadu Cultivating Tenant (Payment of Rent) Act, 1956."

4.Heard the learned counsel on either side.

5.The learned counsel for the appellant reiterated the contentions set out in the memo of grounds and submitted that the substantial question of law ought to be answered in favour of the appellant. Per contra, the learned counsel for the respondent submitted that the impugned judgment do not call for any interference. He pressed for dismissal of this appeal.

6.I carefully considered the rival contentions and went through the evidence on record. There is no dispute regarding the relationship between the parties. The respondent is the landlord while the appellant is the cultivating tenant. The courts below have fixed the lease amount based on the earlier pleadings of the appellant. Ex.a5 is the plaint filed in O.S No.103 of 1988 on the file of the District Munsif Court, Valliyur. It was filed by the appellant restraining the respondent herein from interfering with his possession or enjoyment of the property except in the manner known to law. In the said plaint, in Paragraph No.3, the appellant herein had specifically stated that he took lease of the scheduled lands for a pattom of four kottahs of paddy for Kar and eight kottahs of paddy for Pisanam and further claimed that he was paying the rent regularly. When according to the appellant himself, this was the lease rent payable by him, he now cannot plead anything to the contrary.

7.The courts below have accepted the case earlier projected by the appellant. It is not open to the appellant to now turn around and project a contra case. As rightly pointed out by the learned counsel for the respondent, it is open to the parties to move the competent authority for fixing a fair rent under Section 4 of the Tamil Nadu Cultivating Tenant (Payment of Rent) Act, 1956 to recover



the admitted arrears rent. The land lord can very well move the jurisdictional civil court and there is no need for knocking the doors of the competent authority. The substantial question of law is answered against the appellant.

8. The judgments and decrees of the courts below are confirmed. I do not find any merit in this second appeal. It stands dismissed. No costs.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Subordinate Court, Valliyoor.

2. The Additional District munsif, Nanguneri.

Copy to :

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

+1 CC to M/s. H. ARUMUGAM, Advocate (SR-16584[F] dated 20/04/2021)

+1 CC to M/s. EDDY & EMBBOSS, Advocate (SR-16572[F] dated 20/04/2021)

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VR (CO)

KB (08.06.2021) 3P 7C