



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2021

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.226 of 2021

T.Chandrakanthan ... Appellant/Appellant/Defendant

Vs.

Vallithai ... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 17.03.2020 passed in A.S.No.170 of 2017 on the file of the Sub Court, Tiruchendur, confirming the judgment and decree, dated 27.06.2014 passed in O.S.No.153 of 2012 on the file of the District Munsif Court, Srivaigundam.

For Appellant : Mr.S.Muthumalai Raja

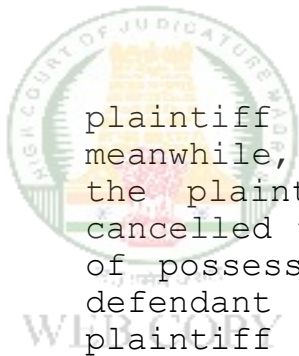
For Respondent : Mr.T.A.Ebenezer

JUDGMENT

The concurrent Judgments and decrees passed in O.S.No.153 of 2012 by the District Munsif Court, Srivaigundam and in A.S.No.170 of 2017 on the file of the Sub Court, Tiruchendur, are being challenged in the present Second Appeal.

2. The respondent / plaintiff has instituted a suit in O.S.No.153 of 2012, on the file of the trial Court for the relief of eviction, arrears of rent for a sum of Rs.12,600/- and past benefits of Rs.2,000/- mesne profits and costs, wherein, the present appellant has been shown as defendant.

3. In the plaint, it is averred that originally the plaintiff and the defendant entered into an agreement for 11 months. On 04.09.2008, the defendant had deposited a sum of Rs.25,000/- to the plaintiff and sought for the lease of building for a period of three months and agreement was written among the parties. The defendant had paid rent upto 2009 and also received receipts for the amount paid. Later on, the defendant failed to pay the rent and he requested the plaintiff to deduct it from the advance amount. The defendant had violated the condition, as agreed between the parties and he was using the building for unwarranted purpose. Hence, the

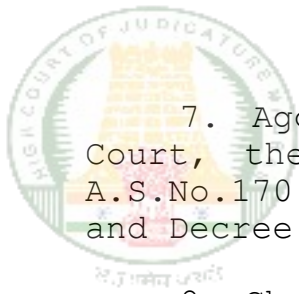


plaintiff requested the defendant to vacate the building. In the meanwhile, the defendant filed a suit in O.S.No.124 of 2011 against the plaintiff with false allegations. Therefore, the plaintiff cancelled the agreement between the parties and sought for recovery of possession from the defendant and issued a legal notice. The defendant sent a reply notice with false averments. Hence, the plaintiff has sought for recovery of possession, rent of Rs.12,600/- past benefits, mesne profits from the defendant.

4. In the written statement filed on the side of the defendant, it is averred that the defendant had deposited a sum of Rs.25,000/- on 04.09.2008 to the plaintiff and the agreement entered into between the plaintiff and the defendant was only for 11 months. When the rent was enhanced to Rs.500/- per month, from the year 2011 onwards, the defendant had not paid the rent. The defendant had paid the rent only upto May 2011 and the plaintiff has also received the rent on June, 2011. When the plaintiff interfered with the enjoyment of the suit property by the defendant as a tenant, the defendant filed a suit in O.S.No.124 of 2011 against the plaintiff not to evict him unlawfully from the suit building. The defendant was ready and willing to pay the rent amount, but the plaintiff refused to receive it and the defendant had deposited the rent in O.S.No.124 of 2011 and till today, the same has been deposited. The defendant never acted against the condition stipulated in the agreement. The defendant is running the shop under the name and style of "Kali Murugan Cool Bar" and the plaintiff has no reason to cancel the oral lease agreement entered between the parties. The suit property is not required by the plaintiff for his own purpose and the plaintiff is a co-owner in respect of the suit property. Hence, the suit is bad for non-joinder of necessary parties. The arrears of rent amount of Rs.12,600/- is not correct and the suit is liable to be dismissed.

5. Before the trial Court, on the side of the plaintiff, the plaintiff herself was examined as P.W.1 and one Bhavani was examined as P.W.2 and Exs.A1 to A3 were marked. On the side of the defendant, the defendant himself was examined as D.W.1 and Exs.B.1 to B.5 were marked.

6. On the basis of the rival pleadings on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit in favour of the respondent / plaintiff and directed the defendant to handover the possession of the suit building to the plaintiff within a period of three months and further stated that the plaintiff is also entitled for a sum of Rs.12,600/- towards arrears of rent Rs.2,000/- past benefits together with costs of the suit and further stated that the plaintiff is directed to initiate separate proceedings under Order 20 Rule 12 C.P.C, regarding mesne profits.



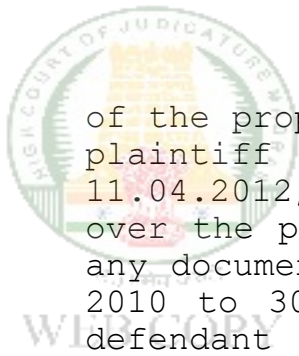
7. Aggrieved by the Judgment and decree passed by the trial Court, the defendant as appellant, had filed an Appeal Suit in A.S.No.170 of 2017 and dismissed the appeal confirming the Judgment and Decree passed by the trial Court.

8. Challenging the said concurrent Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the defendant as appellant.

9. Heard the learned counsel for the appellant and the learned counsel for the respondent and also perused the records carefully.

10. The contention of the plaintiff is that the shop was originally leased to the defendant for 11 months and subsequently, as the defendant demanded the shop for further 3 years, the plaintiff leased the shop from 04.09.2008 to 04.09.2011 for 3 years and in the lease agreement, it was mentioned as both the parties would act as per the agreement for 3 years. The contention of the defendant is that the agreement entered into between the plaintiff and the defendant on 04.09.2008 was only for 11 months and after expiry of the lease period of 11 months, out of trust and orally agreed by the parties, the defendant is in occupation of the suit building as a tenant. As the defendant failed to pay the rent, the plaintiff issued the legal notice on 11.04.2012 by terminating the tenancy on 30.04.2012 and demanded the defendant to vacate the shop on 01.05.2012.

11. The defendant had denied the lease agreement entered into between him and the plaintiff for a period of 3 years, but he had admitted that the original lease agreement between the plaintiff and the defendant was only for a period of 11 months. The plaintiff has not produced the original lease agreement as it was handed over by him to the defendant for the purpose of obtaining license for running the shop. The defendant during his cross-examination had admitted that he had obtained license for running the shop. The defendant has also admitted that Arumugam and Sundar Raj had signed in the original lease agreement. The plaintiff produced the xerox copy of the lease agreement. The defendant has admitted that he had obtained license for running the shop, it could be presumed that the original agreement was in possession of the defendant. Originally, the suit in O.S.No.124 of 2011 was filed by the defendant against the plaintiff, as if he is the absolute landlord of the suit property. Now, in the present suit, he had pleaded that the plaintiff is a co-owner in respect of the suit property and denied the absolute right of the plaintiff. The plaintiff is the owner of the suit property is established by the evidence of P.W.2, who had deposed that all the children have released their right to their mother fully and she is taking care of them. It is also further proved by the defendant's case in O.S.No.124 of 2011 wherein he has obtained a decree not to evict him except due process of law. This



of the property. Only after the termination of the lease period, the plaintiff has issued the legal notice. Legal notice was issued on 11.04.2012, by terminating the tenancy on 30.04.2012 seeking to hand over the property within 01.05.2012. The defendant has not produced any document to prove that he had paid the rent regularly from June 2010 to 30.04.2012 and it has been received by the landlord. The defendant has committed wilful default towards payment of rent. Accordingly, the trial Court has correctly held that the defendant has defaulted wilfully and the plaintiff has taken lawful steps for evicting the defendant from the property and he is entitled for recovery of the suit building from the defendant. The first Appellate Court has also rightly confirmed the judgment and decree passed by the trial Court.

12. All the factual aspects have been proved by the plaintiff beyond doubt and this Court is not inclined to interfere with the factual finding which has been accepted by both the parties. The learned counsel appearing for the appellant/defendant also agreed that he is running a shop in the premises owned by the plaintiff as a absolute owner and the claim made by the defendant that the plaintiff was a co-owner was also negatived by appropriate evidence by the sisters and mother of the plaintiff and the plaintiff was able to prove her case that the defendant was in arrears of rent and hence, the plaintiff seeks for dismissing the Appeal. When there is no question of showing any leniency on the defendant as he has been in occupation of the said property inspite of the tenancy, which coming to an end when the plaintiff has issued a notice on 11.04.2012 and on the ground of wilful default.

13. In the above circumstances, this Court is of the view that the defendant is not entitled for any relief and no substantial questions of law has been made out by the appellant/defendant to interfere with the well considered judgment and decree rendered by the Courts below and accordingly, the Second Appeal stands dismissed. The defendant is directed to vacate the premises and surrender the same on or before 28.02.2022, failing which, the plaintiff is entitled for seeking the help of the local police to evict him. No costs.

Sd/-

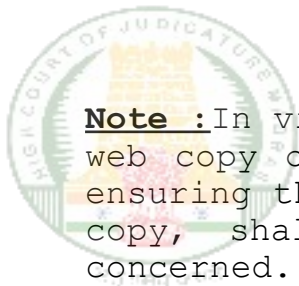
Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps



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.

WEB COPY

To

- 1.The Sub Court,
Tiruchendur.
- 2.The District Munsif Court,
Srivaigundam.

COPY TO:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

S.A(MD)No.226 of 2021
08.12.2021

RD(16.12.2021) 5P 5C