



S.A.No.668 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.08.2022**

CORAM

THE HONOURABLE Ms. JUSTICE **P.T. ASHA**

S.A.No.668 of 2022

and

C.M.P.No.13348 of 2022

Noor Basha

... Appellant

Vs

Mahaboob Jan @ Mahaboob Bee

... Respondent

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code 1908, against the Judgment and decree dated 01.11.2021 made in A.S.No.75 of 2018 on the file of II Additional Sub-Ordinate Judge, Coimbatore confirming the judgment and decree dated 04.06.2018 passed in O.S.No.1320 of 2015 on the file of III Additional District Munsif, Coimbatore.

For Appellant : Mr.P.R.Balasubramanian

For Respondent : No appearance

JUDGEMENT

The defendant is the appellant before this Court. The appeal arises against the judgment in A.S.No.75 of 2018 on the file of II Additional Sub-Ordinate



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Judge, Coimbatore, in and by which, the judgment and decree of the learned III Additional District Munsif, Coimbatore in O.S.No.1320 of 2015 had been confirmed.

2.The facts in brief, which has given rise to the above Second Appeal are herein below narrated and the parties are referred to the same ranking as before the Trial Court.

3.The plaintiff had filed the above suit for recovery of possession of the schedule mentioned property. The schedule mentioned property is an extent of 360 sq.ft. of RCC building bearing Door No.(Old).16/32-C, New Door No.17/124-C in Muslim Colony comprised in S.F.No.1068, Madukkarai Village.

4.It is the case of the plaintiff that she is the owner of the suit schedule property and 45 years prior to the filing of the suit, the suit property had been leased out to the brother of the defendant by the plaintiff's mother. The plaintiff thereafter became the owner of the property by virtue of a settlement deed executed by her parents in the year 1977. The plaintiff had orally leased out the



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property to the defendant in the month of September, 1977 on a monthly rental of Rs.550/- as in the year 2007. The plaintiff would submit that she is in the habit of issuing receipts for the rents received. The term of the lease was that the defendant would pay the rents on the first of every succeeding English Calender month. Further, she would state that her parents had settled the property comprised in Old Door No.16/32B in favour of her sister Rahmadunnisha and Door No.16/32C was allotted to her.

5.It is the further case of the plaintiff that the defendant had filed two suits in O.S.Nos.257 and 1767 of 2008, both of which are alleged to be dismissed for default by the defendant. She would submit that till 20.03.2014, the defendant was remitting the rent through postal money order. Thereafter, he started to commit default in the payment of rents. Despite several demands being made, the defendant deliberately and wilfully committed a default. The plaintiff had issued a legal notice demanding the payment on 22.04.2015, the defendant there upon undertook to vacate the property, but had however, failed to do so. The plaintiff would also submit that the defendant continued to squat on the property on the old rent. In the year 2010, the defendant had sought an enhancement of the rent to



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the tune of Rs.2,500/- per month. Thereafter, the first defendant not only failed to pay the rent, but also failed to vacate the premises and to add insult to injury he had put up temporary shed behind the premises let out to him without the permission of the plaintiff.

6.The plaintiff would submit that apart from the ground of default she required the property for her additional accommodation as she and her son and two daughters were residing in a rented house. The plaintiff wanted to get her younger son married and therefore, she required the suit property. It is for these reasons that she had sought the defendant to vacate the premises. Since the defendant did not do so, the plaintiff was constrained to issue a legal notice dated 09.04.2015 terminating the tenancy and demanding delivery of possession of the property. The defendant who received the same had sent a untenable reply dated 22.04.2015. Therefore, the plaintiff was constrained to file the suit in question.

7.The defendant had filed a brief written statement contending that he had taken the property on lease from the plaintiff's mother Bibi Jan on a monthly rental of Rs.15/- and an advance of Rs.70/- had been paid. He would state that he



has put up a temporary shed made up of coconut leaves 20 years ago. He would also state that this building was used for bathing and washing utensils. He would state that he never agreed to vacate the premises. That apart, he would submit that the requirement for own occupation lacks bonafide, since the plaintiff has five houses at Muslim Colony, a house at Edyarpalayam and a house at Sukarvarpet. Therefore, the defendant sought for dismissal of the suit.

8.The learned III Additional District Munsif, Coimbatore had framed the following issues :-

- 1.Whether the plaintiff is entitled for the relief of deliver the vacant possession as prayed for?*
- 2.For what other relief, the plaintiff is entitled to?*

9.The learned III Additional District Munsif, Coimbatore by her judgment and decree dated 04.08.2018 had decreed the suit as prayed for. Challenging the same, the defendant had filed an appeal in A.S.No.75 of 2018 on the file of the II Additional Sub Court, Coimbatore. The Appellate Court had also dismissed the appeal and confirmed the judgment and decree of the Trial Court. Aggrieved by the aforesaid judgment and decree, the appellant/defendant is before this Court.



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10.The learned counsel for the appellant would contend that the entire dispute is with reference to the extent of 360 sq.ft. and that the plaintiff is having several properties and the plaintiff did not require the suit property. He would submit that the parties could negotiate for a settlement, if this Court was inclined to refer the matter for mediation. However, this would only allow the defendant to squat further in the suit property particularly considering the very weak defense to the plaintiff's claim.

11.It is needless to state that the parties are before the Court since 2015 and there appears to be no sign of a settlement in the horizon. The learned counsel would further argue that there was no default with the outstanding as the amounts were paid before the first hearing of the case. Therefore, the appeal ought to be allowed.

12.Heard the learned counsel for the appellant and perused the materials available on record.



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13.The Courts below have clearly found that there has been a default in the payment of the rents to the tune of Rs.7,150/- as on the date of the issue of the legal notice, Ex.A1 by the plaintiff. The property is also in a fairly dilapidated condition as it was over 50 years old. The Court have considered the requirement of the property by the plaintiff for her own occupation, i.e., for her son, who is to get married and also the default has continued pending the suit. The plaintiff in Ex.A1 has terminated the tenancy. The defendant neither in his written statement nor during the evidence has made out any cases for dismissing the suit.

14.Both the Courts below have rightly considered the evidence on record to decree the suit in favour of the plaintiff. Therefore, I see no reason to interfere with this concurrent judgment and decree particularly when no substantial question of law has been made out by the appellant.

15.Accordingly, the Second Appeal is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

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Index : Yes/No
Speaking order/non-speaking order
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P.T.ASHA, J.,

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To

- 1.The II Additional Sub-Ordinate Judge, Coimbatore.
- 2.The III Additional District Munsif, Coimbatore.
- 3.The Section Officer, V.R.Section, High Court, Madras.

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