

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.No.253/2022 and CMP.No.5131/2022

S.Jamunarani

.. Appellant/Appellant/
Defendant

Vs.

C.Chellakutty Gounder (Died)

1.Saraswathi

2.Manickam

3.Nagarajan

4.Jothimani

.. Respondents/Respondents/
Plaintiffs

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 26.11.2021 made in A.S.No.51 of 2020 on the file of the learned I Additional District Judge, Coimbatore, confirming the judgment and decree dated 27.08.2020 made in O.S.No.760 of 2015 on the file of the learned Principal Subordinate Judge, Coimbatore.

For Appellant : Mr.B.R.Shankaralingam

For Respondents : Mr.C.R.Prasanan
counsel for Caveator

JUDGMENT

- (1) The defendant in the suit in O.S.No.760 of 2015 on the file of the learned Principal Subordinate Judge, Coimbatore is the appellant in the above second appeal.
- (2) The husband of 1st respondent in this appeal filed the suit in O.S.No.760/2015 for eviction, recovery of arrears of monthly rent and damages as against the defendant. Since he died during the pendency of the suit, respondents 1 to 4 herein were impleaded as plaintiffs 2 to 5 to prosecute the suit.
- (3) The Trial Court decreed the suit and directed the defendant to handover the vacant possession to the plaintiffs and further directed the defendant to pay a sum of

Rs.1,12,000/- with interest at 9% per annum from the date of decree to date of realization. The defendant/appellant preferred an appeal, as against the judgment of the Trial Court decreeing the suit, in A.S.No.51 of 2020 before the learned I Additional District Judge, Coimbatore.

- (4) The Lower Appellate Court confirmed the judgment and decree of the Trial Court and dismissed the appeal. Aggrieved by the concurrent judgments and decrees of the Courts below, the above Second Appeal is preferred by the sole defendant/appellant in the suit.
- (5) The appellant has raised following substantial questions of law in the Memorandum of Grounds of Second Appeal.

1. Whether Ex.A1 Unregistered Lease Agreement is a legally admissible document that too when said document does not stand in the name of any of the signatory to the same?

2. Whether the Court's below were correct in placing reliance on an unregistered document Ex.A1 which requires compulsory registration under Section 17 of the Registration Act?

3. Whether the suit for ejectment itself is maintainable in the eye of Law when the appellant being a statutory tenant and only Rent Control Act is applicable?

4. Whether the alleged notice of termination Ex.A2 dated 23.03.2015 is valid in Law when Ex.A1 by itself is admissible in Law that too when the said stamp paper itself is not purchased in the name of either of the parties to the same.

- (6) The suit property is a house site measuring an extent of 16 cents of land and building in S.F.No.396/1H2 of Saravanampatti Village, Coimbatore Taluk, Coimbatore District. It is the case of the respondents/plaintiffs that the husband of the 1st respondent is the absolute owner of the suit property and that he leased out the suit property to the appellant/defendant by an unregistered lease agreement dated 12.04.2012. It is stated that the lease period was 11 months from 12.05.2012 to 11.04.2013 and that the monthly rent payable by the appellant was @ Rs.4,800/- per month. It is admitted that the appellant is carrying on business in the suit property by running a four wheeler automobile mechanic shop in the name and styles of "4

Wheel's Auto Care". Though the respondents admitted that the appellant paid a sum of Rs.80,000/- towards advance and paid the monthly rent for the period of 11 months from 12.05.2012 to 11.04.2013, the respondents contended further that the appellant and the 1st respondent's husband executed another unregistered lease agreement from 01.12.2013 to 31.10.2014 fixing monthly rent @ Rs.19,200/-. Stating that the subsequent lease agreement was accepted the respondents contend that the appellant failed to pay monthly rent from July 2014 and did not vacate the suit property as it was promised by her earlier. It is admitted that the appellant/defendant filed a suit in O.S.No.548 of 2015 against the respondents/plaintiffs for permanent injunction restraining the plaintiffs from interfering with the possession of the defendant except under due process of law.

- (7) The learned counsel appearing for the appellant admitted that the said suit was not prosecuted as the respondents filed the present suit for eviction and consequential reliefs. From the pleadings, it is evident that there is no dispute with regard to the relationship between the parties and the fact that the appellant has no right as a tenant to be in possession after the lease has been lawfully terminated. In the present case, the renewal for the last 11 months as pleaded by the respondents has been specifically denied and therefore the lessee is liable to pay damages for use and occupation. Though the appellant admitted tenancy, it is contended that the respondents started demanding more rent in spite of the fact that the appellant had invested a substantial amount for putting up of additional constructions in the suit property.
- (8) It is to be noted that the appellant had stated in her written statement that the plaintiffs forcibly obtained her signature in the lease agreement wherein the premium was fixed @ Rs.19,200/- per month. Therefore, except the quantum of rent, the defendant has not raised any defence to keep her possession in tact. The liability of the tenant to pay rent only at the previously agreed rate cannot be accepted on merely because the defendant is in possession of the property for a large number of years. Even on the admitted facts, the appellant has to pay the rent which was fixed in the year 2013 @ Rs.19,200/-.
- (9) Having regard to the nature of pleadings and evidences let in by both sides, this Court has no hesitation to dismiss the suit. However, the learned counsel appearing for the appellant persuaded this Court to grant at least 6 months time from today so that there will be substantial relief to

the tenant who is doing commercial activities in the suit property. Though a stand was taken by the appellant claiming right under the Madras City Tenants Protection Act, 1921, it is admitted that lease was commenced after 2012, and the Act will not be applicable. Hence, the appellant herself had withdrawn the application filed under Section 9 of the Act. Even though, the learned counsel appearing for the appellant vehemently argued on several grounds, this Court is unable to appreciate any of these contentions as having merit. Therefore, the learned counsel appearing for the appellant suggested a disposal by consent of parties so that the appellant will get at least 6 months time to vacate the premises. Accordingly, both learned counsels have mutually agreed to dispose of this appeal on the following lines.

- (10) The appellant shall handover vacant possession of the suit premises along with superstructure on or before 30th September, 2022. It is open to the appellant to remove fittings of furnitures or anything available inside the building that belongs to her. The appellant has handed over a Demand Draft drawn for a sum of Rs.1,83,544/- towards arrears of rent @ Rs.4,800/- for the period upto 31.03.2022. Learned counsel appearing for the respondents acknowledged the receipt of the said Demand Draft for the amount of Rs.1,83,544/-. The appellant shall pay rent @ Rs.4,800/- per month for the period from 01.04.2022 till the date she vacates the premises by the end of September, 2022 @ Rs.4,800/- or earlier without fail before the 10th of every succeeding month. In case, the appellant fails to comply with her undertaking before this Court, it is open to the respondents to proceed against the appellant for contempt of Court. The learned counsel also undertakes to file an affidavit of undertaking signed by the appellant on or before 28.04.2022, after marking a copy to the learned counsel appearing for the respondents.
- (11) In view of the above stated terms by consent by parties the second appeal is dismissed subject to the terms above agreed. Consequently connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The I Additional District Judge, Coimbatore.

2.The Principal Subordinate Judge, Coimbatore.

Copy to:- The Section Officer, VR Records,
High Court, Chennai.

+1cc to Mr.B.R.Sankaralingam, Advocate, S.R.No.26671

+1cc to Mr.C.R.Prasanan, Advocate, S.R.No.26678

SA.No.253/2022
and CMP.No.5131/2022

RSV(CO)
CT/12/07/2022