



S.A.No.957 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.957 of 2022

and

C.M.P.No.18754 of 2022

M/s.Cool Tec.,
Rep.by its Proprietor,
N.G.Subramanian,
Old No.77, New No.16,
Perumal Koil Street,
Saidapet,
Chennai-600 015.

... Appellant

Vs

M/s.Sri Vijayaraghavalu Chetty and Narasammal Trust,
Rep.by its Managing Trustee,
No.64, Perumal Koil Street,
Saidapet,
Chennai-600 015.

... Respondent

Prayer: Second Appeal is filed under Section 100 of C.P.C against the Judgment and Decree dated 27.09.2021 made in A.S.No.98 of



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2020 passed by XV Additional Judge, City Civil Court, Chennai, reversing the Judgment and Decree dated 27.02.2020 made in O.S.No.373 of 2018 passed by IV Assistant Judge (FAC) II Assistant City Civil Court, Chennai.

For Appellant : Mr.S.Senthilnathan

JUDGEMENT

The plaintiff in a suit for injunction is the appellant before this Court challenging the judgment and decree passed by the XVI Assistant City Civil Court, Chennai in A.S.No.98 of 2022 in and by which the learned Judge had reversed the judgment and decree passed by the IV Assistant Judge, (FAC) II Assistant City Civil Court, Chennai in O.S.No.373 of 2018.

2. The brief facts which are necessary for disposing of the above second appeal is herein below narrated with the parties being referred to in the same ranking as before the Trial Court.

3. The case of the plaintiff is that the plaintiff was a tenant



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under the defendant's Trust since 17.04.2007 in respect of the suit schedule property and he would contend that an advance of Rs.7,00,000/-was paid to the defendant and the monthly rent was fixed at Rs.500/-. At the time of executing the agreement, one R.Balakrishnan was the Managing Trustee. It is the case of the plaintiff, that the plaintiff has been very regular in payment of the monthly rent to the defendant and the rent was being deposited into the Bank Account of the Trust. The plaintiff who is the retired Assistant Executive Engineer, from the Rajiv Gandhi Government General Hospital, Chennai was carrying on the business of refrigeration and servicing Air Conditioner in the rented premises belonging to the defendant's Trust. More than 30 persons are working as service engineers in the plaintiff concern. The plaintiff would contend that he has a reputed clientele and has been engaged in the field of A.C.service for the past 30 years. The plaintiff would submit that on 19.04.2013 he was constrained to file a complaint against the



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then Managing Trustee of the defendant on the ground that he had swindled the advance amount of Rs.7,00,000/- from the plaintiff and threatened him to evict him from the suit premises. Since the police had refused to register the complaint, the plaintiff had filed Crl.O.P.No.20750 of 2013 seeking a direction to the police to register the case. By order dated 02.09.2013 this Court pleased to issue a direction to the police to register the complaint and file a final report. Accordingly, the complaint was registered against the said R.Balakrishnan, the Managing Trustee, of the defendant Trust. He had thereafter filed Crl.O.P.No.29794 of 2013 before this Court seeking Anticipatory Bail and while granting conditional bail, the said R.Balakrishnan was directed to deposit Rs.7,00,000/- into the Court. However, the police has filed a negative charge sheet and the plaintiff has filed a protest petition under Section 173(8) of Cr.P.C., which is now pending before the XI Metropolitan Magistrate Court, Saidapet.



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4. The plaintiff would further submit that the defendant did not pay the property tax as a result of which he has been issued a notice from the Revenue Officer, Corporation of Chennai demanding payment of the property tax. The plaintiff has paid the property tax, and also paid the water and sewerage tax for the suit property. The plaintiff would further submit that the suit property was very old and in a state of disrepair which required immediate repair. He had written a letter dated 11.03.2008 to the defendant asking the defendant to carry out the repairs and provide basic amenities in the suit property. The defendant who received the same had failed to do the repair works and further the defendant is not allowing the plaintiff to carry out the repair works.

5. The plaintiff would further submit that the balcony area consisted of four pillars of which three have been pulled down by the defendant to which also the plaintiff had lodged a police complaint. It



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is his further case that on account of the rain and leakage of rain water from the roof, the Air Conditioner spare parts which are stored in the suit property got damaged. Since the defendant was not come forward to carry out the repair works, the plaintiff sent a letter dated 06.11.2017 to the defendant Trust, they had neither responded to the request nor carried out the repairs. Therefore, the plaintiff commenced the repair works on the tiled roof portion on 14.12.2017 however this was wantonly damaged by the defendant. Thereafter, on 15.12.2017, the Managing Trustee of the defendant had rushed to the Police Station complaining against the act of the plaintiff. The plaintiff would submit that he is willing to bear the costs of the repair works on his own without asking for reimbursement either in present or in future. Therefore, he come forward with the suit for bare injunction restraining the defendant from interfering with the repair works done by him.



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6. The defendant had filed written statement *inter-alia* denying various allegations in the plaint. The defendant would submit that the plaintiff had intimated many times that he had plans to vacate the premises on account of its dilapidated condition. In a letter dated 27.12.2011, the plaintiff's advocate had expressed their willingness to receive back the advance amount of Rs.7,00,000/- and vacate and hand over the premises to the Trust. On 09.05.2015, in the legal notice to the plaintiff, the defendant had stated the need for vacating the premises immediately as there as an urgent need to demolish and construct the premises. The defendant would further submit that the advance amount of Rs.7,00,000/- was deposited before the Court and in the notice the defendant had informed the plaintiff that on his handing over the keys to the premises he was at liberty to withdraw the amount so deposited. The tenancy was also terminated with effect from 31.05.2015. However, the plaintiff without handing over the keys to the defendant started to demolish the building without the



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permission of the defendant. Therefore, the complaint was lodged before the police station on 15.12.2017. After the police complaint, the plaintiff has come forward with the present suit suppressing the material facts. The defendant further submitted that the sum of Rs.7,00,000/- was originally paid to the Managing Trustee of the defendant as a hand loan subsequently, it was converted as advance amount. This fact is very well known to the plaintiff who has deliberately suppressed the same. The defendant would submit that the building is in a dilapidated condition, the suit is filed only to squat on the proceedings.

7. The learned trial Court had framed the following issues:

"1) Whether the plaintiff is running a Air Conditioner and refrigeration Service Centre in the Suit Property without obtaining necessary permission from the concerned authority?"



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*2) Whether the plaintiff is entitled to get the relief
of permanent injunction as prayed for?*

3) To what relief?"

8. The plaintiff examined himself as PW1 and marked Exs.A1 to A12 and on the side of the defendant, Mr.S.Manohar Chettiar was examined as DW1 and Exs.B1 to B5 were marked.

9. The trial Court on considering the evidence held that the defendant can be evicted only by due process of law and therefore, he could not be prevented from carrying out the basic repair and maintenance works. Though the trial Court has held that the lease which was originally for residential purpose has been subsequently converted into a commercial one, the learned Judge still decreed the suit stating that the plaintiff can be evicted only by due process of law and that he has right to get the property which is in a dilapidated condition repaired. Challenging the same, the defendant had filed

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A.S.No.98 of 2020 on the file of the learned XV Additional Judge, City Civil Court, Chennai. The learned Additional Judge, by judgment dated 27.09.2021 was pleased to allow the appeal. The learned Judge, on perusal of the records had found that the respondent had been granted the lease for a residential purpose which later has been converted into a commercial unit. The plaintiff was deposited the amount into Court in the account of the defendant Trust. The plaintiff is in possession of 1500 sq.ft., of residential property was converted into commercial purpose. The plaintiff had paid Rs.7,00,000/- as advance on various dates. However, the lease deed does not contain any recitals regarding the advance. The learned Judge observed that the advance of Rs.7,00,000/- has been deposited as a condition precedent for the Managing Trustee of the defendant Trust for obtaining anticipatory bail, but, the tenant continued to pay only Rs.500/- towards rent.



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10. The learned Judge has also taken note of the admission of the plaintiff in his cross examination, wherein, he has stated as follows:

"E.A.12இல்2வது தரப்பினர் எந்தவித ரிப்போர் செய்யவில்லை என ஒப்புக்கொள்கிறார் என்றும் வீட்டை இடிக்கும் பொழுது காலி செய்துவிட ஒப்புக்கொள்கிறார் என குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான்...."

11. Challenging the said judgment and decree, the plaintiff has filed the above second appeal.

12. Mr.Senthilnathan, learned counsel appearing on behalf of the appellant would contend that the Managing Trustee of the defendant had swindled the advance amount which is due to the Trust to his personal account and has been taking steps to unlawfully evict the plaintiff from the premises. He would further submit that this Court had directed the Managing Trustee to deposit the sum of Rs.7,00,000/- as condition precedent for the grant of an anticipatory bail which

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would clearly go to show that this Court recognised the overt act committed by the Managing Trustee. He would submit that the Appellate Court has held that the plaintiff is liable to be evicted and this would cause grave prejudice to the defendant. Therefore, the judgment and decree to this extent is to be set aside.

13. The suit has been filed by the plaintiff to carry out the repair works. His request for carrying out the repair works has not been accepted by the defendant Trust since they have already initiated proceedings to evict the plaintiff on the ground of demolition and reconstruction and this suit is an attempt to overcome the ground raised in the rent control proceedings. The contention of the learned counsel for the defendant Trust that the discretion of the Appellate Court that the plaintiff is liable to vacate and hand over the premises is only an orbiter and observed by the learned Judge on the basis of the admission made by the plaintiff as PW1 that he has filed the suit

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only to get back the sum of Rs.7,00,000/-.

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14. The learned Judge had observed that the said amount has been deposited by the defendant and therefore, the plaintiff's contention that he would vacate the premises only after he receives the money is wrong. I see no reason to differ with the above observation of the Appellate Court and further there is no substantial questions of law made out for interfering with the well considered judgment of the Appellate Court.

15. In the result, the Second Appeal is dismissed and Judgment and Decree dated 27.09.2021 made in A.S.No.98 of 2020 passed by XV Additional Judge, City Civil Court, Chennai, reversing the Judgment and Decree dated 27.02.2020 made in O.S.No.373 of 2018 passed by IV Assistant Judge (FAC) II Assistant City Civil Court, Chennai, is confirmed. No costs. Consequently, connected civil

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miscellaneous petition is closed.

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Index : Yes/No

Speaking order/non-speaking order
ssn

P.T.ASHA, J.,

ssn

To

1. The XV Additional Judge,
City Civil Court,
Chennai.
2. The IV Assistant Judge (FAC),
II Assistant City Civil Court, Chennai.
3. The Section Officer,
V.R.Section,
High Court, Madras.

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