



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **06.01.2022**

CORAM

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.77 of 2021

T.Rafael

... Appellant/Appellant/Plaintiff

Vs.

Anbu Vazhvu Ashram
through its father Justin Thiraviam

... Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 03.11.2020 passed in A.S.No.114 of 2018, on the file of the Subordinate Court, Palani, confirming the judgment and decree, dated 09.08.2018 passed in O.S.No.205 of 2015, on the file of the District Munsif Court, Palani.

For Appellant : Mr.R.Sevugaraaj

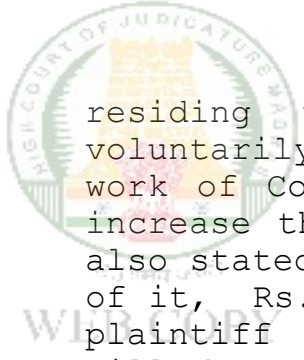
For Respondent : Mr.S.Louis

JUDGMENT

The concurrent Judgments and decrees passed in O.S.No.205 of 2015, by the District Munsif Court, Palani and in A.S.No.114 of 2018, by the Subordinate Court, Palani, are being challenged in the present Second Appeal.

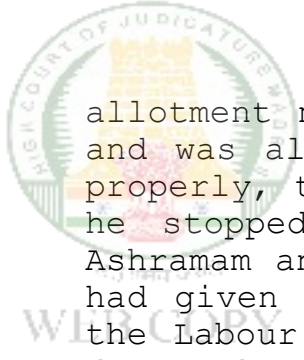
2. The appellant/plaintiff has instituted a suit in O.S.No.205 of 2015, on the file of the trial Court for the relief of permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. wherein, the present respondent has been shown as defendant.

3. The case of the plaintiff is that he was working as a Cook in Anbu Valvu Ashramam from 09.08.2006 onwards and has been appointed by the Manager, namely, Ratchaganathan, for a monthly salary of Rs.5,000/- and he was working there. Even though, he was appointed as a Cook, he used to do all the other lenient works like gardening, cleaning, taking care of the cattles and also doing all the other miscellaneous works, as directed by the Fathers, who are



residing there. The defendant-Justin Thiraviyam, himself had voluntarily stated that as he was doing more jobs, other than the work of Cook and he will talk to the Managing Committee and will increase the salary from Rs.5,000/- to Rs.7,000/- and later on, he also stated that the salary has been increased to Rs.7,000/- and out of it, Rs.2,000/- will be kept as savings and after five years, the plaintiff is entitled for seeking return of the said amount, but till date, he has not been paid the same. In the month of October, 2014, the defendant claimed that there was a long hair in the food, which was cooked by the plaintiff and hence, he has scolded him. Due to the said incident, he was under mental depression and mental agony and he sought for 10 days leave, which was granted. After 10 days of leave, he went to the said Ashramam for joining the said employment, but the Father did not allow him to cook and he also did other works, but no Father was talking to the plaintiff and the plaintiff informed the same to his wife and his wife immediately went and spoke to the Father Paulraj why he did not allow the plaintiff to cook food for him. The said Paulraj has stated that he was going for a meeting and he will come back and decide the same. The plaintiff was under the impression that after talking to the Committee members, he will be reinstated in the employment. But the defendant did not call the plaintiff for any work and inspite of he working for 10 long years by putting his full physical efforts and without even taking rest, was working 24 hours for Father Philip and due to the same, his health condition was physically deteriorated and also he has no other house to live in. The defendant has sent a letter, dated 21.01.2015 to the plaintiff to vacate from the house, which has been occupied by him. The plaintiff also sent a reply letter notice, dated 23.02.2015. Again, on 07.03.2015, the defendant had sent another letter to the plaintiff to vacate the house. The plaintiff submits that he is ready and willing to pay the rent to the defendant without any default for his stay, as he has already been staying in the house as a tenant. He has been treated as a lawful tenant and he found that only in order to employ some other person, on 21.01.2015, illegally was tried to be evicted by the defendant. The plaintiff also submitted that he has also filed an Industrial Dispute. The plaintiff wanted to continue to stay in the same house, he has filed the suit for the relief stated supra.

4. The defendant had filed the written statement, denying all the averments made in the plaint and submitted that the plaintiff was never residing there as a tenant and he was working as a labourer there and he has been removed from service for a valid reason and would also prove that the trial Court has got no jurisdiction to try the issue and if at all he has to claim any benefit, he has to go before the Labour Court. Further, the Labour Court also proceeded on the petition filed by him and the same is also pending for final adjudication. The said fact has been totally suppressed by the plaintiff and filed the suit, which has to be dismissed on the ground that there was no tenant and landlord relationship between them. There was no such alleged



allotment made in favour of the plaintiff as he was working there and was allowed to stay there. As he was not able to do his work properly, there was a misunderstanding arose between the parties and he stopped coming to the job and after some time came to the Ashramam and created problems with the defendant. As the defendant had given a police complaint, the plaintiff immediately approached the Labour Court and the Labour Court proceedings are pending till date. The defendant being a Charitable Institution, they are only doing lots of social and religious activities. The plaintiff has got no material to prove that he was having any right over the said house to stay further and prayed for dismissal of the suit.

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

6. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit.

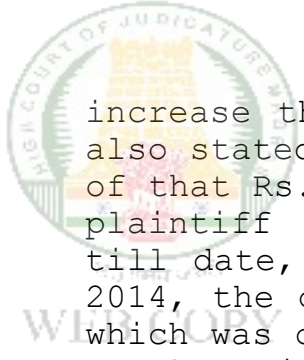
7. Aggrieved by the Judgment and decree passed by the trial Court, the plaintiff, as appellant, has filed an Appeal Suit in A.S.No.114 of 2018. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment 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 plaintiff, as appellant.

9. The learned counsel appearing for the appellant/plaintiff would submit that both the Courts below have not considered the fact that the defendant admitted the possession in his evidence and also the Courts below have decided that there was no tenant and landlord relationship between the parties, even after showing the documents produced by the plaintiff as well as the defendant and prayed for allowing the Second Appeal.

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

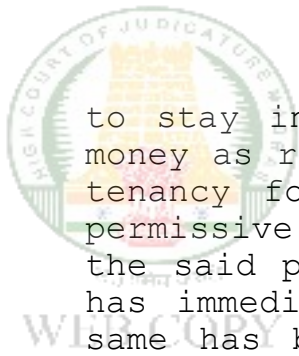
11. The case of the plaintiff is that even though, he was appointed as a Cook in Anbu Valvu Ashramam from 09.08.2006, for a monthly salary of Rs.5,000/-, he used to do all the other menial works like gardening, cleaning, taking care of the cattles and also doing all the other miscellaneous works, as directed by the Fathers, who are residing there. The defendant-Justin Thiraviyam, himself had voluntarily stated that as he was doing more jobs, other than the



increase the salary from Rs.5,000/- to Rs.7,000/- and later on, he also stated that the salary has been increased to Rs.7,000/- and out of that Rs.2,000/- will be kept as savings and after five years, the plaintiff is entitled for seeking return of the said amount, but till date, he has not been paid the same. In the month of October, 2014, the defendant claimed that there was a long hair in the food, which was cooked by the plaintiff and hence, he has scolded him. Due to the said incident, he was under the mental depression and mental agony and he has sought for 10 days leave, which was granted. After 10 days of leave, he went to the said Ashramam for joining the said re-employment, but the Father did not allow him to cook. The plaintiff was under the impression that after talking to the Committee members, he will be given employment, but the defendant did not call the plaintiff for any work, inspite of he working for 10 long years by putting his full physical efforts. The defendant has sent a letter, dated 21.01.2015 to the plaintiff to vacate from the house. The plaintiff also sent a reply letter notice, dated 23.02.2015. The defendant sent another letter, dated 07.03.2015, to the plaintiff to vacate the house and the plaintiff is ready and willing to pay the rent to the defendant without any default, as he has already been staying in the house, as a tenant. He has been treated as a lawful tenant and he found that in order to employ some other person for rent, on 21.01.2015, illegally he was tried to be evicted by the defendant. The plaintiff also submitted that he has also filed Industrial Dispute. Hence, the plaintiff wanted to stay in the same house, he has filed the suit.

12. It is the case of the defendant that the plaintiff was never residing there as a tenant and he was working as a labour there and he has been removed from service would also prove that the trial Court has got no jurisdiction to try the issue and if at all, he has to claim any benefit, he has to go before the Labour Court and the Labour Court also proceeded further and the same is also pending for adjudication. The same has been totally suppressed by the plaintiff and filed the present suit and the same has to be dismissed on the ground that there was no tenant and landlord relationship between them and there was no such allotment of house, has been made on behalf of the plaintiff and he was working there and he was staying there. As he was not able to perform his job as Cook properly, there was a misunderstanding arose between the parties and he himself stopped coming to the Ashramam and later on, he tried to enter and had created problem with the defendant. As the defendant had given a police complaint against him, he immediately approached the Labour Court and the Labour Court proceedings are pending till date and the defendant is a Charitable Institution and doing lots of social and religious activities and no such relationship.

13. On a perusal of the materials available on record, it is seen that the plaintiff himself had admitted that he was staying



to stay in the said Ashramam and till date, he has not paid any money as rent for his stay. Further, there was no such agreement of tenancy for staying in the said premises. Hence, he was only a permissive occupant as he was working there and allowed to stay in the said premises. When the plaintiff was removed from service, he has immediately approached the Labour Court, Madurai and when the same has been taken on file by the authority, who is proceeding further, there cannot be any claim of relationship as landlord and tenant. That being the case, the plaintiff cannot seek for a prayer that the authorities should vacate him only as per the procedures established under law. When the plaintiff was allowed to stay there in the said premises gratuitously, he cannot acquire any right over the property, as he is only a permissive occupant. As he claimed that he was acting as a Cook and caretaker can never acquire interest or right over the property and has to vacate the same on demand as he was rented. The Court can only grant reasonable time for him to vacate the house. Hence, when the plaintiff is not in a position to produce any document to prove that there was any tenant and landlord relationship, he cannot claim such prayer in the suit. The same has been analysed and denied by both the Courts below and also regarding the claim on the increase of pay, no such evidence has been produced and not before this Court for a decision. Further, the plaintiff cannot seek for such prayer for injunction as against the lawful owner. As the plaintiff has not paid any rent to the authorities, which has been admitted by himself, the plaintiff cannot now come and claim that he is in lawful possession as tenant and entitled for granting permanent injunction. As the plaintiff has failed to establish his case, this Court is not inclined to accept the claim made by the plaintiff.

14. For the reasons aforesaid, this Court is of the considered view that no questions of law much less substantial questions of law that has been made out by the appellant/plaintiff to interfere with the well considered judgments and decrees rendered by the Courts below and accordingly, the Second Appeal fails and the same stands dismissed. If the appellant/plaintiff is still in possession of the house, he has to vacate the same on or before 31.03.2022. No costs.

Sd/-

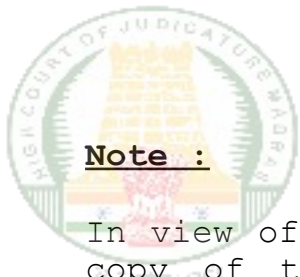
Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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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 Judge,
Palani,

2.The District Munsif,
Palani.

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

+1 CC to M/s.S.LOUIS, Advocate (SR-839[F] dated 07/01/2022)

**S.A(MD)No.77 of 2021
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