



S.A(MD)No.464 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2022

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C O R A M

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

S.A(MD)No.464 of 2022
and
CMP(MD)No.5831 of 2022

1.Kaliyammal

2.A.Dharmalingam

3.A.Rajendran ...Appellants / Appellants
/ Defendants

Vs.

1.Nagarathinam

2.Karunambal ... Respondents / Respondents
/ Plaintiffs

PRAYER: Second Appeal is filed under Order 41 Rule 7 of CPC r/w Section 96 of the Code of Civil Procedure, 1908, to set aside the judgment and decree made in A.S.No.17 of 2018 on the file of the Principal Sub Judge, Karur dated 01.02.2022 confirming the judgment and decree made in O.S.No.87 of 2012 on the file of the Principal District Munsif Karur, dated 11.04.2017 and allow this second appeal.

For Appellants : Mr.S.Gokulraj

For Respondents : Mr.T.Antony Arul Raj



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JUDGMENT

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This second appeal is filed as against the concurrent findings of the learned Principal District Munsif, Karur in O.S.No.87 of 2012, dated 11.04.2017 and the learned Principal Sub Judge, Karur in A.S.No.17 of 2018 dated 01.02.2022.

2.The appellants herein are the wife and sons of one Angamuthu Pandaram. Angamuthu Pandaram entered into a lease agreement with one Sambandha Mudaliyar, father of the first respondent herein in the year 1960. Both Angamuthu Pandaram and Sambandha Mudaliyer are no more.

3.The appellants/ legal heirs of Angamuthu Pandaram claim that the above tenancy still continues. However a suit was filed by them in O.S.No.469 of 2009 for the relief of permanent injunction restraining the respondents from interfering with their peaceful possession without following the due process of law. The suit was decreed on 11.10.2011. Thereafter the respondents/plaintiffs issued notice for eviction on 27.12.2011 and subsequently filed a suit in O.S.No.87 of



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2012 for recovery of possession. The legal notice was marked as Ex.P3 and the acknowledgment of the same by the appellants were marked as Ex.P4 to Ex.P7. The suit was decreed in favour of the respondents/ plaintiffs on 11.04.2017. As against the judgment and decree passed in O.S.No.87 of 2012, the appellants filed an appeal in A.S.No.17 of 2018 before the learned Principal Sub Judge, Karur and the same was dismissed. Challenging the same, this second appeal is filed.

4.This appeal was listed for admission on 12.07.2022. This appeal is filed on the following substantial questions of law:

" 1.Have the Courts below erred in directing the suit in favour of the appellant seeking the relief of recovery of possession in the absence of the prayer of declaration of title?

2.Whether the Courts below are right in holding that without specific grounds for recovery of possession, the respondents / plaintiffs are entitled for the relief in the suit?



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3. Whether the Courts below are right in

holding that the notice sent by the respondents is perfect within purview under Section 106 of Transfer of Property Act?"

5. The ownership of the respondents is not in dispute and even in the earlier suit filed by the appellants in O.S.No.469 of 2009, they have admitted the same. However, they sought for the relief not to evict them without following due process of law. The legal notice was issued in Ex.P3 dated 27.12.2011 and therefore, this Court did not accept substantial questions of law 1 and 2 and was not inclined to entertain the second appeal. However, the learned Counsel for the appellants requested for a short accommodation and requested some time to vacate the premises, to pay the arrears of rent and to file an undertaking affidavit in this regard. Therefore, this second appeal was adjourned enabling the appellants to file an affidavit as above.

6. When the second appeal was taken up for hearing on 14.07.2022, the appellants have filed an affidavit of undertaking dated 13.07.2022 that they would vacate the



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suit schedule property on or before 13.08.2022 and also undertook to pay the rent for the previous months, the relevant portion of which reads as follows:

"3. I further state that on 12.07.2022 the above second appeal came up for hearing. I beg before this Hon'ble Court to provide one month to vacate the suit property and suit scheduled properties seem to be in dilapidated we are sole responsible in any untoward incident happens. We hereby undertake to vacate the suit schedule property on or before 13.08.2022 and ready to pay the rent for upcoming months, i.e., for one month. Unless this Hon'ble Court record the undertaking affidavit filed by us in the above said terms, we will be put to irreparable loss and much hardship and it is therefore prayed that this Hon'ble Court may be pleased to record the undertaking affidavit and grant one month time to vacate the suit scheduled properties."

7. Based on the above undertaking affidavit, the second appeal was adjourned to 18.08.2022 'for reporting compliance.'



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miscellaneous petition also stands dismissed.

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11.The undertaking affidavit filed by the appellants dated 13.07.2022 shall form part of this judgment.

23.08.2022

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Note: Issue copy on 24.08.2022

To

- 1.The Principal Sub Judge,
Karur.
- 2.The Principal District Munsif,
Karur.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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JUDGMENT MADE IN

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