



WEB COPY

S.A.(MD).No.686 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **27.04.2022**

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A. (MD) .No.686 of 2020

and

C.M.P. (MD) .Nos.7177 of 2020 and 2877 of 2021

1.Ramasamy @ Gandhi Chettiar

2.Pitchammal : Appellants / Appellants / Defendants

Vs.

Chellammal : Respondent / Respondent / Plaintiff

PRAYER: Appeal filed under Section 100 of C.P.C. praying to set aside the judgment and decree dated 25.08.2020 passed in A.S.No.1 of 2017 on the file of the Sub Court, Tiruchendur, confirming the judgment and decree dated 09.08.2016 made in O.S.No.52 of 2014, on the file of the District Munsif Court, Tiruchendur.

For Appellants	: Mr.V.Meenakshisundaram for Mr.G.Mohan Kumar
For Respondent	: Mr.G.Prabhu Rajadurai

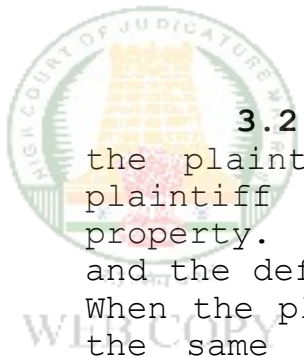
J U D G M E N T

The appellants herein are the defendants in the suit in O.S.No.52 of 2014. The said suit was filed by the respondent herein seeking for recovery of possession of the suit property against the appellants herein.

2. The parties are referred to as per their own ranking before the Courts below.

3. The brief facts leading to the filing of the present second appeal, are as follows:

3.1. The case of the plaintiff is that the suit property originally belonged to the plaintiff's husband and under oral rental agreement, he leased out the suit property to the defendants for commercial purposes and the defendants agreed to pay a monthly rent of Rs.250/- (Rupees Two Hundred and Fifty only) to the plaintiff. Thereafter, a written rental agreement was executed between the plaintiff and the defendants on 04.10.2009 for 11 months.



3.2. After the execution of the written rental agreement, the plaintiff's husband executed a gift deed in favour of the plaintiff and she was the absolute owner of the suit schedule property. Thereafter, a written rental agreement was again executed and the defendants had regularly paid the monthly rent without fail. When the plaintiff's husband demanded the rent from the defendants, the same was not paid by the defendants herein. Hence, the plaintiff filed the above said suit for recovery of possession.

4. Based on the above pleadings, the trial Court has framed the following issues:-

- (1). *Whether the plaintiff is having title over the suit property?*
- (2). *Whether the plaintiff is entitled for delivery of suit property?*
- (3). *To what other relief, if any?*

5. During trial, on the side of the plaintiff, P.W.1 was examined and Ex.A.1 to Ex.A.4 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and no evidence was adduced.

6. The learned trial Judge, after considering all the pleadings and evidence on record, decreed the suit as prayed for and directed the defendants to hand over the possession of the suit property to the plaintiff on 09.08.2016. Aggrieved over the same, the appellants herein has filed an appeal in A.S.No.1 of 2017 before the learned Sub Judge, Tiruchendur. The lower Appellate Court, after reconsideration of the evidence on record, dismissed the appeal and confirmed the judgment and decree of the trial Court on 25.08.2020.

7. Challenging the same, the appellants herein have filed the present Second Appeal raising the following substantial questions of law:

"(A) *Whether a suit for eviction is maintainable, in the absence of a valid notice terminating the tenancy?*

(B) *Whether Ex.A.2 pre suit notice dated 18.02.2014 giving 15 days' notice is valid when Ex.A.1 stipulation one months' notice for termination of tenancy and whether Ex.A.2 issued by the plaintiff satisfy the ingredients of Section 106 of Transfer of Property Act?*

(C) *When Ex.A.1 dated 04.10.2009 is an unregistered lease and the landlord / plaintiff failed to examine the witness in Ex.A.1, whether the Courts below are correct in granting decree for eviction?*

(D) *When the tenancy for superstructure as pleaded in the plaint is strongly disputed by the*



defendants and Ex.A.1 relied upon by the plaintiff itself have recitals for ground rent, whether the Courts below are correct in deciding the tenancy as one for land and building?

(E) Whether the approach of the Courts below in decreeing the suit merely on the ground that there is no evidence on the part of these appellants / defendants and also that the defendants failed to disprove the case of the plaintiff, is correct?

8. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent.

9. Today, when the matter was taken up for hearing, the learned counsel appearing for the appellants requested one year period to vacate the premises and the appellants filed an undertaking affidavit before this Court which reads as follows:

"I, Ramasamy @ Gandhi Chettiar, S/o. Narsingam Chettiar, Hindu, residing at Door No.7/17, Chettiar Street, Arumuganeri Post, Tiruchendur, Tuticorin District, now temporarily come down to Madurai, do hereby solemnly affirms and sincerely states as follows:

1. I state that, I am the first petitioner herein. I am filing this affidavit for myself and on behalf of the second petitioner also.

2. I state that the respondent herein had instituted a suit in O.S.No.52 of 2014 on the file of the learned District Munsif, Tiruchendur, for the relief of recovery of possession of the suit property. The trial Court came to the conclusion that appellants, who are tenants are in arrears of rent and the structure which exists on the scheduled land was also rented out to the appellants by relying on Ex.A.1 and hence allowed the suit on 09.08.2016.

3. I state that aggrieved by the same, I filed Appeal Suit in A.S.No.1 of 2017, on the file of the Sub Court, Tiruchendur, however the First Appellate Court also fell in line with the trial Court and dismissed the appeal on 25.08.2020. Aggrieved, the present Second Appeal is filed.

4. I state that this Hon'ble Court by its order dated 23.12.2020 was pleased to grant an order of status-quo in the stay petition. The said interim order was later periodically extended.

5. I state that I am doing steel fabrication work in the leased out premises and earning my livelihood. It will be very difficult to immediately shift to a new location. The business has also suffered due to Covid-19 pandemic.



6. I state that we hereby given an undertaking that myself and the second petitioner herein will vacate the suit schedule mentioned premises in one year time. During the said one year period, the petitioners would pay the agreed rent of Rs.250/- every month to the respondent herein or deposit it to the credit of the suit without fail .

It is therefore prayed that this Hon'ble Court may be pleased to grant one year time for vacating the suit schedule mentioned property and thus render justice."

10. The learned counsel appearing for the respondent would submit that the respondent is not agreed to the said one year period and further, he requests this Court to direct the appellants to vacate the premises within a period of six months or the end of this year.

11. Considering the fact that the appellants are running a welding shop in the said premises and also considering the fact that the appellants require considerable period of time to vacate the premises, this Court grants time upto **31.12.2022** to vacate the premises. In the event of any failure on the part of the appellants to vacate the premises on or before 31.12.2022, they will have to pay **Rs.10,000/- (Rupees Ten Thousand only)** per month as rent to the respondent until the time of vacating the premises. The appellants shall pay the agreed rent to the credit of O.S.No.52 of 2014 on the file of the District Munsif Court, Tiruchendur and the respondent is directed to withdraw the same from the Court below by filing an appropriate application. However, liberty is granted to the respondent to file an Execution Petition before the Court below, in the event, if the appellant failed to vacate the premises on or before 31.12.2022.

12. With the above observation, this Second Appeal stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

tsg



To

1. The Sub Court, Tiruchendur.
2. The District Munsif Court, Tiruchendur.
3. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G. MOHAN KUMAR, Advocate (SR-21807[F] dated 27/04/2022

S.A.(MD).No.686 of 2020
Dated:27.04.2022

SS(CO)
KB(13.06.2022) 5P 6C