



SA(MD)No.47 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 13.09.2022

CORAM:

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

SA(MD)No.47 of 2017

and

CMP(MD)No.1076 of 2017

1. Ramalakshmi
2. Venkadasamy
3. Sridhar

... Appellants

versus

1. Balarengarajulu
Andal (died)
2. Balathayadevi
3. Karthikeyaperumal Rajulu

... Respondents

Second Appeal filed under Section 100 of Civil Procedure Code, against the Judgment and Decree, dated 11.11.2016, made in A.S.No.24 of 2011 on the file of the Sub Court, Srivilliputhur, by modifying the Judgment and Decree dated 21.12.2010 passed in O.S.No.91 of 2005 on the file of the Additional District Munsif, Srivilliputhur.

For Appellants : Mr.M.Ashok Kumar

For R1 to R3 : Mr.K.Vamanan

JUDGMENT

This Second Appeal is filed against the Judgment and Decree, dated 11.11.2016, made in A.S.No.24 of 2011 on the file of the Sub



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Court, Srivilliputhur, by modifying the Judgment and Decree dated 21.12.2010 passed in O.S.No.91 of 2005 on the file of the Additional District Munsif, Srivilliputhur.

2. The defendants in O.S.No.91 of 2005 are appellants herein.

The first respondent herein and his wife, one Andal (now deceased), filed a suit in O.S.No.91 of 2005 before the Additional District Munsif, Srivilliputhur, for recovery of possession from the defendants in respect of item Nos.1 and 2 of the suit properties.

3. Before the trial Court, it is the case of the plaintiffs that they are husband and wife. The defendants are husband, wife and son. The 1st item of the property belongs to the first plaintiff and 2nd item of the property belongs to the second plaintiff. They also decided to lease out their properties to the defendants on Otthi. On 03.03.1999, the first plaintiff had entered into an Otthi agreement with the first defendant and he had also received Rs.35,000/- as Otthi amount from the first defendant. On the same day, the second plaintiff had also entered into an Otthi agreement with the first defendant in respect of the second item of the property and she had also received Rs.35,000/- as Otthi amount from the



first defendant. The period of Otthi was fixed as three years and it was subsequently extended. On 13.10.2004, the defendants received a sum of Rs.50,000/- paid by the plaintiffs and agreed to hand over the possession on 31.10.2004. But, they have failed to do so. Therefore, the plaintiffs filed the above suit for recovery of possession against the defendants.

4. It is the case of the defendants that at the time of taking possession, there was no latrine and bathroom in the suit schedule properties. Therefore, they have constructed the same and spent a sum of Rs.35,000/-. Further, it is the case of the defendants that at the time of entering into an agreement, both the plaintiffs have received a sum of Rs.70,000/-. But, they have repaid the amount only Rs.50,000/-. Therefore, they have to repay the balance amount of Rs.20,000/- and also the amount of Rs.35,000/- spent by the defendants at the time of constructing the latrine and bathroom. It is the further case of the defendants that apart from the otthi amount, they have also paid a sum of Rs.500/- per moth towards rent. On payment of Rs.55,000/-, they will vacate the property.



5. The trial Court, by Judgment and Decree dated 21.12.2010, allowed the suit directing the appellants/defendants to hand over the possession of 1st schedule property to the first plaintiff and 2nd schedule property to the second plaintiff. The trial Court has also permitted the plaintiffs to withdraw a sum of Rs.20,000/-, which was in the Court deposit. Aggrieved over the same, the appellants/defendants filed an Appeal Suit in A.S.No.24 of 2011 before the learned Subordinate Judge, Srivilliputtur. The First Appellate Court, by Judgment and Decree dated 11.11.2016, partly allowed the appeal by modifying the decree and Judgment dated 21.12.2010, passed in O.S.No.91 of 2005, by directing the defendants to receive the amount of Rs.20,000/- deposited by the plaintiffs. Aggrieved over the same, the appellants/defendants filed the present Second Appeal on the following substantial questions of law:

“(i) Whether the suit is maintainable in the eye of law when there is landlord-tenant relationship exists between the parties?

(ii) Whether the Trial Court has not committed an error in decreeing the suit after rendering a finding that the defendants are tenants under plaintiffs?

(iii) Whether the plaintiffs can seek the relief of recovery of possession without fulfilling their obligation of paying the amount due to the defendants?



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(iv) Whether the Courts below have not committed error in decreeing the suit for recovery of possession without the prayer for declaration?

(v) Whether the Courts below have not committed an error in not framing an issue as regards the relationship of plaintiff and defendants in respect of suit property?”

6. The learned counsel appearing for the appellants submits that on 03.03.1999, the plaintiffs leased out 1st and 2nd items of the property to the defendants on Otthi and also received Rs.35,000/- each. At the time of taking possession, since there was no toilet and bathroom in the said premises, the defendants constructed the same and also spent a sum of Rs.35,000/-. The lease period was fixed as three years and subsequently, it was extended upto 31.10.2004. Thereafter, the plaintiffs repaid only a sum of Rs.50,000/- to the defendants and directed them to vacate the premises. At that time, when the defendants demanded to pay the amount of Rs.35,000/-, which has been spent by them towards construction of toilet and bathroom, they said that they will repay the amount within two months. However, they have failed to pay the said amount and also to pay the balance lease (otthi) amount of Rs.20,000/-. But, the First Appellate Court, without considering the admission made by the plaintiffs

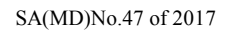


to repay the said amount, failed to direct the plaintiffs to pay the amount of Rs.35,000/- which has been sent by the defendants.

7. The learned counsel appearing for the respondents/plaintiffs submits that on 13.10.2004, the defendants have received a sum of Rs.50,000/- and given an undertaking affidavit that they will hand over the possession on 31.10.2004, which were marked as Exs.P6 and P10. But, in Exs.P6 and P10, there was no reference about the construction of toilet and bathroom and the amount of Rs.35000/- spent by the defendants. Therefore, the Judgment of the First Appellate Court does not warrant any interference.

8. This Court considered the rival submissions made and also perused the materials available on record.

9. It is an admitted fact that the plaintiffs are owners of the properties and on 03.03.1999, the defendants have leased out the property on Otthi and received a sum of Rs.35,000/- each in respect of first and second item of suit schedule property. It is also an admitted fact that the period of lease was fixed as three years and subsequently, it was extended



10. In view of the above, this Court is not inclined to interfere with the Decree and Judgment passed by the First Appellate Court. Hence, the substantial questions of law are answered against the appellants.



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11. In the result, the Second Appeal is dismissed, by confirming the Judgment and Decree, dated 11.11.2016, made in A.S.No.24 of 2011 on the file of the Sub Court, Srivilliputhur.

12. It is always open to the appellants to receive the amount of Rs.20,000/-, which is lying in the court deposit. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No.

Internet: Yes / No.

To

1. The Sub Court,
Srivilliputhur.
2. The Additional District Munsif,
Srivilliputhur.



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