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S.A.No.1422 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.11.2023

CORAM :

THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

S.A.No.1422 of 2008

Ramasami

...Appellant

Vs.

1.R.Subramanian
2.R.Sampathkumar
3.R.Jayaprakash
4.A.L.Chidambaram
5.Alagappa Chettiar
6.Valliammal
7.Thennammai

...Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree of the Learned Principal Subordinate Judge, Salem dated 06.12.2007 in A.S.No.137 of 2006 confirming the judgment and decree of the learned II Additional District Munsif, Salem dated 18.04.2006 in O.S.No.479 of 2004 and dismiss the said suit.

For Appellant	: Mr. Bala Ganesh for Mr.T.M.Hariharan
For Respondents	:
For R1 – R3	: Ms. Zeenath Begum for Mr.V.Rajesh
For R4 – R7	: No appearance



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J U D G M E N T

The appellant herein is the second defendant and the respondents herein are the plaintiffs and the defendants 3 - 6 before the Trial Court. The second defendant has filed this appeal against concurrent finding directing the second defendant as well as other defendants 3 - 6 to pay the decree amount.

2.For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

The brief facts which give rise to the instant Second Appeal as follows:

3.The defendants are the tenants under plaintiffs. Originally they were paying the monthly rent of Rs.1,760/-. The defendants had also paid an advance of Rs.45,000/-. In which the plaintiff has returned a sum of Rs.10,000/-, to the defendant. According to the plaintiffs, there was a rent arrears to the tune of Rs.19,360/- for a period from 01.10.1997 to 31.08.1998, at the rate of Rs.1,760/- p.m. And an arrears of another



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Rs.22,792/- for the subsequent period from 01.09.1998 to 31.05.2000.

Thus, in total a sum of Rs.42,152/- was due. According to the plaintiffs, apart from the rent, there is also due for the electricity consumption charges of Rs.2,950/- and repairing charges of Rs.800/-. As such, there is a total due of Rs.45,902/-. Hence, the plaintiffs filed a suit for recovery of a sum of Rs.45,902/-.

4.The said suit was resisted by the defendants by contending that they are not liable to pay any arrears of rent as they have handed over the possession of the property under the plaintiff.

Evidence, Documents and Finding of the Courts below:

5.Before the Trial Court, on the side of plaintiffs, three witnesses were examined as P.W.1 to P.W.3 and seven documents were marked as Exs.A1 to A7. On behalf of the defendants, one witness was examined as D.W.1 and three documents were marked as Exs.B1 to B3.

6.After hearing either side and upon considering the submissions



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made by both the parties, the Trial Court found that the defendants did not hand over the possession of the property, and hence, decreed the suit as prayed for. In the appeal, the said finding was confirmed by the First Appellate Court. Aggrieved by the same, the second defendant has filed the instant Second Appeal.

Substantial questions of law:

7.At the time of admission, this Court has formulated the following substantial questions of law:

“a)When the appellant has vacated the premises and have given intimation to the landlord to collect keys on return of advance and when the landlords have not responded, can the appellant be regarded as tenants holding over liable to pay rents?

b)Whether in any event the suit filed without adjusting the advance amount admittedly held by the respondents 1 to 3 is maintainable and is not the suit



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liable to be dismissed when the respondents 1 to 3 have not approached the Court with clean hands?

c)Whether the decree in the suit does not amount in allowing the respondents 1 to 3/landlords to take advantage of their own wrong?”

Submissions on either side:

8.The learned counsel for the appellant would contend that the Trial Court has failed to take into consideration of handing over of key to the plaintiff and that such handing over is nothing but handing over of the possession of the suit property. It is also the submission of the learned counsel for the appellant that they are entitled to retain the advance amount till the possession is handed over to them. It is the further submission of the learned counsel for the appellant that, though the Trial Court decreed the suit as prayed for has failed to adjust the advance amount which was retained by the plaintiffs. Hence, he prayed to allow this Second Appeal.



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9.Per contra, the learned counsel for the respondents 1 to 3 would submit that the defendants have not handed over the possession of the suit property, and that there is a finding of fact recorded by both the Courts below as to the absence of handing over of possession to the plaintiffs. Hence, she prayed to dismiss this Second Appeal.

10.I have given my anxious consideration on the submissions made by either side.

11.From the submissions made by the either side, now the main question arising for our consideration is, whether the appellant/defendant has handed over the possession of the property with the plaintiff. While considering the same admittedly, the plaintiffs have relied upon the evidence of the defendant that they were retaining the keys of the suit property. Based upon the admission regarding retention of keys, both the Courts below have recorded that the possession of the property has not been handed over. It was further found that in view of the above possession, it is the duty of the tenant to pay the rent. This Court is of the



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view that the finding of the both the Courts below directing the defendants to pay the arrears of rent, cannot be found faulted and the same is based on evidence.

12.At the same time, it is the admitted fact that still the plaintiffs are retaining a sum of Rs.35000/- being a part of the advance amount, therefore, the defendants are having a right to adjust the advance amount towards the arrears of rent. Therefore, this Court is of the view that the decree passed by the First Appellate Court is to be modified to the extent that the advance amount of Rs.35,000/- retained by the plaintiffs is to be adjusted against the arrears of rent. Therefore, after adjusting the advance amount the plaintiffs are entitled to a sum of Rs.7,150/- (Rs.42,150/- - Rs.35,000/-) with the interest at the rate of 6% p.a from the date of suit till the date of realisation of the cost.

13.In view of the above, the Second Appeal is partly allowed and the defendants are directed to pay a sum of Rs.7,150/- with the interest at the rate of 6% p.a. from the date of suit till the date of realisation.



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Consequently, connected miscellaneous petition is closed. There shall be no order as to costs for the second appeal.

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Internet : Yes/No

Index: Yes/No

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To

- 1.The II Additional District Munsif, Salem.
- 2.The Principal Subordinate Judge, Salem.
- 3.The Section Officer, V.R.Section, High Court, Madras.

C.KUMARAPPAN,J.



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