



S.A.No.76 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.76 of 2021

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C.M.P.No. 1682 of 2021

Hindustan Petroleum
36, Anna Salai,
Chennai - 600002

...Appellant

Vs

The South Arcot Diocesan Corporation
Rep. by its Secretary, Rev.Father
Robert M.Archbishop's House
Pondicherry.

... Respondent

Prayer: The appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 05.02.2020 in A.S.No.239 of 2017 on the file of the XVI Additional Judge, City Civil



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Court, Chennai, confirming the Judgement and Decree dated 31.07.2017 in O.S.No.7213 of 2001 on the file of the VI Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr. M.Vijayamehanath
for M/s. AAV Partners.

For Respondent : Mr. S.M.Edward Stanley

JUDGEMENT

This Second Appeal has been filed against the concurrent Judgement and Decree passed in O.S.No.7213 of 2001 instituted by the respondent herein on the file of the VI Assistant Judge, City Civil Court, Chennai seeking recovery of possession, originally in respect of the premises bearing Door No.36 Anna Salai, Chennai -2.

2. It is the case of the respondent that they are the owners of the suit property and that they had entered into a lease agreement with the



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appellant on 20.09.1968. The monthly rental was fixed at a sum of Rs.1,750/- and the period of lease was for 5 years with an option to renew it for a further period of 5 years on a monthly rental not exceeding a sum of Rs.2500/-.

3. The lease deed specifically provides that the rents have to be paid on or before 7th day of every succeeding English calender month. Though the lease period had come to an end and there was no option for second renewal, the appellant continued to squat on the property. A legal notice was issued on 09.07.1998 stating that the appellant herein was in illegal possession of the premises after 30.11.1975. Though the notice was received, no reply was sent by the appellant and therefore the respondent had come forward with the suit in question. Thereafter, the suit was amended to include the relief of future mesne profits.



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4. The appellant had filed a written statement inter alia denying the contents of the plaint and contending that what was leased out to the appellant was only the land and the super structure had been put up by them. The lease was renewed on 24.08.1968 and it expired on 30.11.1970. The appellant had exercised their option to renew the lease for a further period of 5 years commencing from 01.12.1970. Originally when the lease was taken, the appellant company was called the Esso Standard Eastern Inc., which was subsequently nationalised and after the nationalisation, the name was changed to the present name, namely, Hindustan Petroleum Corporation Limited.

5. The appellant would further submit that the suit is bad for want of notice under Section 11 of the Tamil Nadu City Tenants Protection Act, 1921. They would further submit that since the super structure was put up by them, they were out of the purview of the Rent Control Act.



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6. In the additional written statement filed after the amendment to the plaint including the relief of mesne profits, the appellant had taken out a defence that the Court fee has not been paid calculating the damages.

7. The parties had gone to Trial and one of the additional issues that was raised by the Trial Court was *whether the plaintiff is entitled for mesne profits without payment of Court fee?*

8. The reason why this Court is restricting the Second Appeal to this issue alone is on account of the fact that the defense which is now taken by the appellant is that though this Court directed the amendment of the plaint, the respondent had not carried out the amendment in the original plaint and had only filed the amended copy of the plaint. This issue, namely, the additional issue after contest has been held in favour



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in favour of the respondent.

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9. The learned VI Assistant Judge, City Civil Court, Chennai, had decreed the suit directing the appellant herein to vacate and deliver vacant possession of the suit property within a period of 3 months and had held that the respondent was entitled to mesne profits from the date of the plaint till date of delivery of possession and the respondent was directed to take steps for enquiry under Order XX Rule 12 CPC.

10. The appellant had challenged the said Judgement by filing an appeal in A.S.No.239 of 2017. In the said appeal, the respondent had taken out an application for extending time for carrying out the amendment in the original plaint. This application was dismissed by the learned XVI Additional Judge, City Civil Court, Chennai. The appeal filed by the appellant was also dismissed by the Judgement dated 05.02.2020.

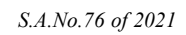


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11. The issue on mesne profits was also considered by the Lower Appellate Court, which had opined that though the amendment was not carried out in the original plaint however, the amended copy of the plaint had been filed and the appellant had also received a copy of this plaint. That apart, the appellant had also cross examined the respondent on the ground of mesne profits. The appeal was therefore dismissed, against which the present Second Appeal has been filed.

12. The learned counsel for the appellant would submit that they had vacated the premises on 31.10.2017 and the only issue which requires re-consideration by this Court is the issue of mesne profits. The learned counsel would submit that though the amendment was ordered and amended copy of the plaint had been filed, however, no steps were taken to carry out the amendment in the original plaint. The Court fees have also not been paid on time. Therefore, the Judgement



13. The learned counsel appearing for the respondent / plaintiff would submit that the appellant herein not only received the amended copy of the plaint but he has also filed an additional written statement. That apart, the Trial Court had framed an issue and parties have adduced evidence with reference to the said issue. Except for the ministerial act of carrying out the amendment in the original plaint, the parties have gone to Trial on presumption that the amendment has been effectively carried out. Therefore, the learned counsel would submit that the Courts below have rightly considered the issue in favour of the respondent.

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15. As rightly pointed out by the learned counsel for the respondent, the Trial Court has framed an additional issue which reads as follows:

(i) Whether the plaintiff is entitled for mesne profits without payment of Court fees?

16. Thereafter, the parties have examined their respective witnesses with regard to this issue. The Trial Court has observed that the respondent is entitled only to the future mesne profits from the date of the plaint till the date of delivery of possession. The Lower Appellate Court has also agreed with this finding of the Trial Court. The Trial Court has not only framed an issue but has also permitted the evidence to be taken by both the parties and rendered a finding, in which the Court has observed that in the case of mesne profits, there is no necessity to even file an application.



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17. That apart, the Trial Court has directed the respondent to file an application under Order XX Rule 12 CPC for claiming future mesne profits. There is nothing to show that such an application has been filed by the respondent.

18. Be that as it may, both the Courts below have considered the issues in detail and passed the Judgement and Decree. I see no reasons to interfere with the well considered Judgement and Decree of the Courts below. Further, no substantial question of law has been made out by the appellant. Accordingly, the Second Appeal is dismissed. Consequently, the connected miscellaneous petition is closed. However, there shall be no order as to costs.

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Index : Yes/No

Speaking order/non-speaking order

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To,

1.The XVI Additional Judge,
City Civil Court,
Chennai.

2.The VI Assistant Judge,
City Civil Court,
Chennai.



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P.T.ASHA, J.,

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