



S.A.No.152 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.No.152 of 2023
and C.M.P.No.4470 of 2023

P.Murugaraju

... Appellant

Vs.

1. Arulmighu Tharakeswara Swamy Temple
Rep. by its Executive officer of
HR & CE Department,
Tharakeshwara Swamy Temple,
Thottapalayam, Vellore.

2. Babu

... Respondents

Prayer :- Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 27.10.2022 on the file of the learned Principal Subordinate Judge, Vellore in A.S.No.22 of 2020 confirming the judgment and decree dated 27.09.2019, passed in O.S.No.178 of 2010 on the file of the learned Additional District Munsif, Vellore.

For Appellant : Mr.S.Thiruvengadam



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JUDGMENT

This Second Appeal has been filed as against the judgment and decree dated 27.10.2022, passed by the learned Principal Subordinate Judge, Vellore, in A.S.No.22 of 2020, confirming the judgment and decree dated 27.09.2019, passed by the learned Additional District Munsif, Vellore, in O.S.No.178 of 2010, thereby ordered recovery of possession.

2. The appellant is the second defendant in the suit filed by the first respondent herein. The second respondent is the first defendant. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiff is that the suit property belongs to the plaintiff temple and the first defendant is in occupation of the suit property for the monthly rent of Rs.3,968/- and the said tenancy is oral one. During the last week of January, 2010, the plaintiff came to know that the first defendant sub-let the suit property to one Senthil and who was running



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medical shop in the suit property for higher rent. Thereafter, the said Senthil vacated the suit property and he had sub-let the suit property to third person.

The first defendant had no right to sub-let the suit property and the plaintiff never gave any permission or consent to sub-let the suit property.

3.1. Further, the first defendant illegally caused damages to the super structure and altered the structure of the suit property without the consent and knowledge of the plaintiff. Thus, on 03.02.2010, caused notice thereby terminating the tenancy of the first defendant. However, the first defendant refused to receive the same. Thereafter, the plaintiff also caused notice on 24.02.2010. On receipt of the same, the first defendant replied by the reply notice dated 06.03.2010. Hence the suit.

4. The first defendant resisted the suit by way of filing written statement and stated that he has not sub-let the suit property to any third party. He is being a statutory tenant, he has got every right to remain in the suit property. He is regular in payment of rent to the suit property and he has not committed any default in payment of rent. The rent also duly



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received by the plaintiff. In fact on seeing the advertisement in daily newspaper on 24.09.2013, thereby calling upon the persons to effect name transfer who are in possession and enjoyment of the temple properties under the original tenants. Based on the advertisement, the first defendant had given letter and requested the plaintiff to effect the name transfer in respect of the suit property in the name of the second defendants. In fact, the second defendant also submitted letter to the plaintiff to that effect.

5. The second defendant also filed written statement and stated that as per the advertisement dated 24.09.2013, he also applied for name transfer of the suit property in his name. However, it has not been regularized so far by the plaintiff and it is pending. The plaintiff also continue to receive rent from the second defendant and accepted him as lawful tenant.

6. Based on the avernments made in the plaint as well as in the written statement, the trial Court framed the following issues :-



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“(i) Whether the plaintiff is entitled delivery of possession relief from the defendants as prayed for?”

“(ii) To what other relief?”

On the side of the plaintiff, they had examined P.W.1 and marked documents in Ex.A.1 to Ex.A.12. On the side of the defendants, they were examined D.W.1 to D.W.3 and no documents were marked.

7. On a perusal of oral and documentary evidences and after hearing the arguments of the both sides, the trial Court decreed the suit as prayed for. Aggrieved by the same, both the defendants preferred appeal suits and same were dismissed by the the appellate Court by confirming the judgment passed by the trial Court. Aggrieved by the same, the second defendant filed the present Second Appeal.

8. In the present Second Appeal, the appellant raised the following substantially question of law:-

“(i) Whether the respondents are estopped



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from denying the tenancy of the appellant after inviting him to accept the tenancy by their own advertisement?

(ii) Whether the respondents who were collecting the rent after acceptance of the letter can invoke action for eviction?

(iii) Whether under the Indian Evidence Act the appellant is presumed to be the tenant in view of the advertisement and the subsequent letter for making tenancy is given?"

9. The learned counsel appearing for the appellant/second defendant submitted that the plaintiff duly receiving the rent even till now and accepted the tenancy of the appellant herein. Therefore, the suit itself is nothing but clear abuse of process of law. In fact, after seeing the advertisement, the appellant also applied to regularization of his tenancy and it has not been considered so far and the request is pending with the plaintiff/first respondent. Therefore, the eviction is not required, since the



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first respondent accepted the tenancy of the appellant and also till receiving monthly rent. He further submitted that the appellant herein invested huge sum of money and carrying out his livelihood for the past several years and therefore, non consideration of the above said facts has resulted in miscarriage of justice. Hence, he prayed to allow this Second Appeal.

10. Heard Mr.S.Thiruvengadam, learned counsel appearing for the appellant and perused the documents available on records.

11. On a perusal of records revealed that admittedly the suit property owned by the plaintiff temple. Originally it was leased out in favour of the first defendant. Thereafter it was sub-let to one Senthil and again the suit property sub-let to the second defendant viz., the appellant herein. Though the defendants denied the sub-let, they had admitted in the written statement that after seeing the newspaper advertisement, requested the plaintiff to regularize their tenancy with the plaintiff. It shows that the first defendant was given lease in respect of the suit property and thereafter the suit property was let out to the second defendant by the first defendant.



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12. The first defendant was examined as D.W.1 and he categorically admitted that he did not obtain any permission from the plaintiff while renovating the super structure. He also admitted that the suit property was let out to one Senthil to run a medical shop. Thereafter, it has been let out to the second defendant. The plaintiff also marked Ex.A.10 & Ex.A.11 ie., the applications submitted by the defendants.

13. On a perusal of the Ex.A.10 & Ex.A.11, it revealed that both were submitted by the defendants, thereby requesting the plaintiff to effect name transfer in the name of the second defendant, as tenant of the suit property. Thus, it is clear that the second defendant was never inducted as tenant by the plaintiff. However, the defendants failed to disprove the case of the plaintiff by adducing oral and documentary evidence. Therefore, the Courts below rightly allowed the suit and directed the defendants to vacate the suit property and hand over the same to the plaintiff.

14. Hence, this Court finds no substantial question of law involved



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in the present appeal and this Second Appeal is dismissed without being admitted. The appellant and the second respondent are directed to hand over the vacant possession of the suit property within a period of three months from the date of receipt of a copy of this Order. However, the appellant is at liberty to approach the plaintiff/HR&CE Department to regularize his sub-let. Consequently, connected Civil Miscellaneous Petition is closed.

02.03.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

To

1. The Principal Subordinate Judge,
Vellore.
2. The Additional District Munsif,
Vellore.
3. The Executive officer,
HR & CE Department,
Arulmighu Tharakeswara Swamy Temple
Tharakeshwara Swamy Temple,
Thottapalayam, Vellore.



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G.K.ILANTHIRAIYAN, J.

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