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S.A.Nos.1444 & 1445 of 2011



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.Nos.1444 & 1445 of 2011

and

M.P.Nos.1, 1 of 2011 & 2012

S.A.No.1444 of 2011:

K.Rajamani

.. Appellant

Vs.

Valarmathi

.. Respondent

Prayer: Second Appeal is filed under Section 100 of C.P.C. against the judgment and decree dated 19.07.2011 made in A.S.No.88 of 2010 on the file of the Additional Sub Court, Mayiladuthurai in confirming the judgment and decree dated 17.09.2009 made in O.S.No.371 of 2008 on the file of the Principal District Munsif Court, Mayiladuthurai.

S.A.No.1445 of 2011:

B.Rajalakshmi

.. Appellant

Vs.

Valarmathi

.. Respondent



Prayer: Second Appeal is filed under Section 100 of C.P.C. against the judgment and decree dated 11.08.2011 made in A.S.No.89 of 2010 on the file of the Principal Sub Court, Mayiladuthurai in confirming the judgment and decree dated 17.09.2009 made in O.S.No.369 of 2008 on the file of the Principal District Munsif Court, Mayiladuthurai.

(In all the cases):

For Appellant(s) : Mr.G.Ethirajulu
for Mr.K.Balu

For Respondent : No appearance

COMMON JUDGMENT

These are the two Second Appeals arising out of suits in O.S.Nos.371 of 2008 and 369 of 2008 on the file of the Principal District Munsif Court, Mayiladuthurai.

2.The appellant in both the appeals are the tenants. The respondent is the landlord. The land on which the superstructure has been raised belongs to the Thiruvavaduthurai Adheenam. The building belongs to the respondent Valarmathi, who was recognised as Paguthidar. The defendants are admittedly



tenants. They had previously filed O.S.Nos.258 and 273 of 2008 on the file of the Principal District Munsif Court, Mayiladuthurai, for a permanent injunction not to be evicted, except otherwise in accordance with law. Soon after the service of the notice in the suit, the landlord issued notices for eviction under Section 106 of the Transfer of Property Act, 1882, on 12.09.2008. The notice was received and a reply was sent stating that the rent that is demanded is not of correct figure and that there are no arrears of rent. Being left with no other alternative, the landlord presented the suit for ejectment and for a direction to pay the arrears of rent.

3.The learned Principal District Munsif decreed the suit as prayed for with costs. On appeal, the learned Additional Subordinate Judge, Mayiladuthurai and the learned Principal Subordinate Judge, Mayiladuthurai, confirmed the same in A.S.Nos.88 and 89 of 2010 respectively. Aggrieved by the concurrent finding, the present Second Appeals are presented.

4.Mr.G.Ethirajulu, learned counsel representing Mr.K.Balu, learned counsel for the appellants would vehemently contend that the notice has not been properly issued by the landlord under the terms of Section 106 of the



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Transfer of Property Act, 1882. According to him, there is a difference between the amount demanded as rent as set forth in the notice and the actual amounts payable. He would further argue that the suit is not maintainable, as the land belongs to Hindu Religious Public Trust, namely Thiruvavaduthurai Adheenam and therefore, it is not exempted under Section 29 of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960. He would also state that the judgment of the Lower Appellate Court is not in conformity with Order XLI Rule 31 of Civil Procedure Code and therefore, the appeal has to be accepted and suit has to be dismissed. Finally, he would argue that question of wilful default will not arise because, the tenants have paid the rents that was agreed upon and the figure quoted in the plaint and reply notice did not reflect the actual rents. He would request that the appeal be admitted on the following substantial questions of law:

SUBSTANTIAL QUESTION OF LAW

A. Whether the suit for Eviction is maintainable in absence of any pleadings to the effect that the landlord is a Hindu Religious Public Trust attracting exemption granted under Section 29 of Tamilnadu Buildings (Lease and Rent control) Act, 1960?



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B. Whether the notice of termination issued by an alleged landlord is in conformity with Section 106 of Transfer of Property Act?

C. Whether the Lower appellate Court's judgment is in conformity with Order 41 Rule 31 CPC since no relevant issues were framed to determine the dispute between the parties?

D. Whether the Court below justified in holding that the appellant has committed an act of willful default and ordered eviction despite admittedly the title and the monthly rent are disputed and found to be incorrect?

5.The respondent, though served, has not entered appearance.

6.I have carefully considered the arguments of the appellants.

7.Taking the point of jurisdiction first. Admittedly, the property belongs to Thiruvavaduthurai Adheenam. This is a Hindu Public Religious Charitable Institution. By virtue of Section 29 of Tamilnadu Buildings (Lease and Rent Control) Act, 1960, any property that belongs to such institutions are exempted from the rigours of the Rent Control Act. The remedy for the



landlord is only to file a suit for ejectment. Therefore, I am not in agreement with the learned Counsel for appellant on this point. As far as the second issue that the procedure under Order XLI Rule 31 of Civil Procedure Code has not been followed is concerned, I have gone through the Lower Appellate Court judgments in detail. Order XLI Rule 31 of Civil Procedure Code is not a straight jacket formula. The learned Appellate Judge had considered all the issues in an effective manner. Hence, there is no necessity for the Court to insist on a procedural compliance with Order XLI Rule 31 of Civil Procedure Code. I am satisfied from the reading of the judgments of the Lower Appellate Courts that it conforms with Order XLI Rule 31 of Civil Procedure Code. In the light of the same, the said substantial question of law also does not arise for consideration.

8.As far as the next substantial question of law in difference in amount demanded than the actual rent payable is concerned, this is a simple suit for ejectment based on a notice under Section 106 of the Transfer of Property Act, 1882. For such a suit, there is no necessity to give any reasons. The landlord should only demand that tenant has to quit and deliver possession. In this case, the landlord had issued notices on 12.09.2008 calling upon the



tenants to quit and hand over possession and that was replied on 20.09.2008.

Therefore, the reply notice shows that the notice has been properly served to the respondent and responded to. As per Section 106(3) of the Transfer of Property Act, 1882, a notice cannot be deemed to be invalid merely because the period mentioned in the notice falls short of the period mentioned in Sub Section (1). In this case, the suit has been presented after the period mentioned in the notice. Therefore, the landlord will be entitled to the benefit of Section 106(3) of the Transfer of Property Act, 1882. None of the questions of law framed had arisen for consideration. I am not inclined to admit the appeal.

9.The Second Appeals are dismissed. As the respondent has not entered appearance, I am not imposing any cost on the parties. Consequently, the connected Miscellaneous Petitions are closed.

18.04.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



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To

- 1.The Additional Subordinate Judge,
Additional Sub Court,
Mayiladuthurai.
- 2.The Principal Subordinate Judge,
Principal Sub Court,
Mayiladuthurai.
- 3.The Principal District Munsif,
District Munsif Court,
Mayiladuthurai.
- 4.The Record Keeper,
VR Section, High Court of Madras,
Chennai.

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V.LAKSHMINARAYANAN, J.

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