



WEB COPY



SA.No.502 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.502 of 2011

and

M.P.No.1 of 2011

G.S. Arumugam

... Appellant

- Vs -

1. Elizabeth Luke

2. The Regional Senior Manager
Sports Development Authority
of Tamil Nadu
Coimbatore Region, Nehru Stadium,
Coimbatore

... Respondent

Second Appeal filed under Section 100 of the Civil Procedure Code
against the Judgment and decree dated 10.11.2009 in A.S.No.12 of 2008 on
the file of the First Additional District Court, Coimbatore, reversing the
Judgment and decree dated 21.04.2005 in O.S.No.225 of 2005 on the file of
the Second Additional SubOrdinate Court, Coimbatore.

For Appellant : Mr. T. Sezhian
For Respondent-2 : MR.S. Chandrasekar
For Respondent-2 : No Appearance



SA.No.502 of 2011

WEB COPY

JUDGMENT

The instant second appeal has been filed at the instance of the first defendant.

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

3. **The brief facts, which give rise to the instance second appeal are as follows:**

(i) The plaintiff and her mother were allotted three shop portions quays 37,38 and 39 of the Nehru Stadium, Coimbatore under the lease agreement dated 15.06.1983. The plaintiff conducted various business in the said premises. Eventually on 12.07.2000, the plaintiff and her mother Mrs.Sosamma Samuel entered into a partnership with the defendant under the name and style of M/s.Vijay Agencies. The said firm started a Toy shop called Toy Kemp at shop Nos.37 and 38 of Nehru Stadium, which was under the lease to the plaintiff and her mother. As per the partnership agreement, the first defendant agreed to pay consultancy charges of Rs.20,000/- to the plaintiff and her mother, and for making available the premises for the



SA.No.502 of 2011

WEB COPY

purpose of business. The first defendant deposited a sum of Rs.2,00,000/- towards interest free deposit with the plaintiff which should be returned on the termination of the agreement.

(ii) In the meanwhile, the plaintiff's mother passed away on 26.12.2002. After the demise of the plaintiff's mother, the first defendant paid only one month consultancy charges i.e till February 2003. From February to July 2003, the first defendant paid only a sum of Rs.10,000/- to the plaintiff and thereafter, the first defendant did not care to renew or modify the lease agreement as such. The said agreement ceased to exist from 11.07.2003. The first defendant was liable to pay consultancy charges from February to July 2003 (Rs.10,000/-per month) and from July to October 2003 (Rs.20,000/-per month) thus, in total of Rs.1,10,000/-. The first defendant is liable to pay a total rent of Rs.1,43,372/- and for loss of opportunities to the plaintiff from October 2003 till March 2005, totalling a sum of Rs.1,97,200/-. Thus, in total, the plaintiff submits that the defendant was liable to pay a sum of Rs.4,50,572/-, in which, after adjusting Rs.2,00,000/- towards rent free deposit, the net amount liable to be payable by the first defendant was Rs.2,50,572/-. Hence, she filed the suit to recover the money. .

4. The first defendant filed a written statement wherein he admitted the



SA.No.502 of 2011

WEB COPY

partnership deed dated 12.07.2000. According to the defendant, he agreed to pay Rs.10,000/- per month each to the plaintiff and her mother. Though it was called as a consultancy fee, it was nothing but rent for the space provided. After the termination of the partnership on 01.10.2003, the business agreement stood terminated. Even going by the terms of the agreement, the plaintiff could only claim an additional sum of Rs.1,10,000/-. This defendant has also raised a counter claim of Rs. 2,05,585/- against the plaintiff. Hence prayed to dismiss the suit.

5. Before the Trial Court, the plaintiff have marked 30 documents as Ex.A1 to Ex.A30 and examined one witness and examined herself as P.W.1. On behalf of the defendants, the first defendant himself was examined as D.W.1 and five documents were marked as Ex.B1 to Ex.B5.

6. The Trial Court after gone into various aspects, partly decreed the suit directing the first defendant to pay a sum of Rs.63,372/- with subsequent interest at the rate of 6% p.a. from the date of the suit till the date of realization with costs

7. Aggrieved by that, the plaintiff preferred an appeal wherein the First



SA.No.502 of 2011

WEB COPY

Appellate Court modified the decree of the Trial Court and directed the defendants to pay a sum of Rs.1,50,000/- to the plaintiff with interest at the rate of 6% per annum from the date of the suit till the date of realization with costs. Challenging the same, the first defendant filed the second appeal before this Court.

8. The learned counsel for the appellant would contended that the First Appellate Court without there being any pleading, arrived at a conclusion with regard to the sub-lease and justified the payment of Rs.20,000/- to the plaintiff by way of rent which is erroneous. It was further contended that when the appellant became a direct tenant under the second respondent, no question of making payment to the first respondent would arise. Therefore, he contended that the Judgment of the First Appellate Court is liable to be interfered with. It was also contended that the Trial Court had not properly appreciated Ex.A3/agreement in a proper perspective. It was further contended that the First Appellate Court erred in overlooking the first defendant's admission regarding the liability of Rs.1,10,000/-. Thus, the appellant prayed to allow the second appeal.

9. The said contention was totally objected by the learned counsel for



SA.No.502 of 2011

the first respondent.

WEB COPY

10. The main contention put fourth by the learned counsel for the appellant is that once he became a tenant under the second respondent and when he paid the rent due to the second respondent the question of paying rent again to the plaintiff/first respondent did not arise. However, this Court would like to refer to the admission made by the Appellant-D.W.1 which was extracted by the Trial Court. Wherein, the First appellant had categorically admitted that he paid Rs.20,000/- only as a rent. Even while perusing the Ex.A2/ agreement, a sum of Rs.20,000/- was agreed to be paid by the first defendant as consultancy charges and also for making the premises available for the business.

11. Therefore, it is crystal clear clear that the first appellant agreed to pay Rs.20,000/- to the plaintiff, which aspect was rightly relied upon by the First Appellate Court and the First Appellate Court had also gone to the extent of deducing the intention of the parties from the recitals of Ex.A2/ Agreement. It was the finding of the First Appellate Court that the plaintiff subleased the premises to the first defendant. Therefore, when the first defendant having agreed to pay Rs.20,000/- per month to the plaintiff by way of rent till he became a direct tenant under the second defendant, it is the



SA.No.502 of 2011

duty of the first defendant to pay the rent to the plaintiff. Only in that context, the First Appellate Court has taken into consideration of the rent due for 17 months calculated the rent due as Rs.2,40,000/-.

12. At this juncture the learned counsel for the first respondent would contend that the calculation made by the First Appellate Court for 17 months rent at the rate of Rs.20,000/- per month is defective and prayed to set right the calculation.

13. This Court is not persuaded with the submission made by the learned counsel for the first respondent as he did not file any appeal for enhancement of the decree amount. Therefore, the finding recorded by the First Appellate Court in respect of the rent due for 17 months at Rs.2,40,000/- is confirmed. Further, as rightly observed by the First Appellate Court the first defendant in his written statement at Paragraph No.11, agreed to pay Rs.1,10,000/- for 11 months . Therefore, adding the rent arrears of Rs.2,40,000/- and Rs.1,10,000/- the total amount would come to around Rs.3,50,000/-.



SA.No.502 of 2011

WEB COPY

14. It is an admitted case of the plaintiff that she received a sum of Rs.2,00,000/- as a refundable deposit and if the same is adjusted, then as rightly found by the First Appellate Court, the first defendant is liable to pay a sum of Rs.1,50,000/-. Therefore, this Court is of the view that the finding of fact recorded based upon Ex.A2/ Agreement is perfectly in order and this Court does not find any perversity in the said finding. Besides that, no substantial question of law arises in the second appeal.

15. In the result, this second appeal is dismissed by confirming the Judgment of the First Appellate Court. No costs. Consequently the connected miscellaneous petition is closed.

28.11.2023

smn

To

- 1.First Additional District Court, Coimbatore
2. Sub Ordinate Court, Coimbatore.

C.KUMARAPPAN, J.



WEB COPY



SA.No.502 of 2011

smn

S.A.No.502 of 2011
and
M.P.No.1 of 2011

28.11.2023