



S.A. No.472 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : .06.2023

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.472 of 2016

R.Rajeswari

... Appellant

Vs

1.B.Padmanabhan

2.P.Narasimhan

... Respondents

PRAYER : Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 23.07.2015 made in A.S.No.466 of 2012 passed by the learned II Additional City Civil Judge, Chennai against the Judgment and Decree dated 21.08.2012 made in O.S.No.8364 of 2010 by the learned XIII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.C.V.Vijayakumar

For Respondents : M/s.E.Swetha for
Mr.T.K.S.Gandhi



S.A. No.472 of 2016

JUDGMENT

WEB COPY

The appellant has preferred this Second Appeal against the Judgment and decree dated 23.07.2015 made in A.S.No.466 of 2012 passed by the learned II Additional City Civil Judge, Chennai, against the Judgment and Decree dated 21.08.2012 made in O.S.No.8364 of 2010 by the learned XIII Assistant Judge, City Civil Court, Chennai.

2. The appellant herein is the defendant. Originally, O.S.No.8364 of 2010 was filed by the respondents herein / plaintiffs to quit and deliver the vacant possession of the property and also to direct the appellant / defendant herein to pay Rs.34,000/- for use and occupation of the premises and Rs.10,000/- towards maintenance for the period from 01.01.2010 to 30.05.2010 and also to direct her to pay Rs.8,000/- towards use and occupation and maintenance charge for future periods from 01.08.2010.

3. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.



S.A. No.472 of 2016

4. The defendant also filed a counter claim to direct the plaintiffs to return the lease amount of Rs.5 lakhs paid by her on 15.02.2007 and also prayed to create charge over the plaint schedule property for the said amount.

5. The brief facts of the case are as follows:

Originally, the husband of the defendant, namely Ramamoorthy was tenant under the premises bearing Door No.19, Veerabhadran Street, Pudupet, Chennai, from the year 2000. As the plaintiffs needed the said premises, the defendant vacated said house during 2009 and rental arrears were settled by them. At the time, the plaintiff constructed a house Door No.22 /56 Syful Mulk Street, Pudupet, Chennai, and in that house, from the month of April 2009 onwards, the defendant became a tenant under the plaintiffs in the 2nd floor portion of the property, for one year monthly rent of Rs.6,000/- with maintenance charges of Rs.2,000/- per month and the appellant also agreed to pay Rs.50,000/- as security deposit. But from February 2010 onwards the defendant failed to pay the rent and agreed to vacate the premises, initially, but she refused to vacate subsequently. Hence



S.A. No.472 of 2016

the plaintiff issued notice, demanding her to vacate and hand over the vacant possession and also to terminate the tenancy, through a lawyer's notice dated 09.07.2010, for which, she gave a reply with false allegations, hence she filed a suit for eviction and delivery of possession as well as for payment of past and future damages for use and occupation.

5. By filing written statement, the defendant admitted the earlier tenancy with the plaintiffs in respect of residential portion in Door No.19, Veerabhadran Street, Pudupet, Chennai, contending that Rs.40,000/- was paid as advance, and monthly rent was Rs.4,000/-. But subsequently, the plaintiffs converted the tenancy into lease for a total sum of Rs.5 lakhs on 15.02.2007. Her husband passed away in the year 2010, for which the plaintiffs did not allow to conduct the rituals, and due to the said misunderstanding, she was forcibly evicted. But she took lease of the other property for a lease amount of Rs.5 lakhs, thereby she denied the tenancy with the plaintiffs, but contended that it is a lease, and so she prayed to dismiss the suit.



S.A. No.472 of 2016

WEB COPY

6. By way of reply statement, the plaintiffs denied the alleged lease and contended that, as per the request made by the appellant / defendant, residential portion in the new house was given on rental basis and not on lease basis and the lease amount was only Rs.50,000/- and not Rs.5 lakhs and she received the earlier lease amount of Rs.5 lakhs while she vacated the earlier lease premises in January 2009, itself. thereby raised the strong objection against the counter claim made by the defendant.

7. By way of additional written statement, the defendant submits that the 1st plaintiff has settled the property in favour of the 2nd plaintiff, thereby she may alienate the property and so she prayed to claim charge over the security and for her counter claim, another additional written statement was filed by contending that, the plaintiffs have no right to claim charge over the suit property, because her counter claim itself is baseless.

8. Considering the submissions of both sides, the trial Court, framed only seven issues. On the side of the plaintiffs P.W.1 was examined and



S.A. No.472 of 2016

Ex.A1 to A6 were marked and on the side of the defendant D.W.1 was examined and Ex.B1 was marked. Considering the evidence as well as the documents, the trial Court finally held that the plaintiffs had failed to prove that they have paid Rs.5 lakhs being the alleged lease amount to the defendant at the time of vacating the property by the defendant from Door No.19, Veerabhadran Street, Pudupet, Chennai, and the plaintiffs also failed to prove that they are bound to pay only Rs.50,000/- with deduction for the suit premises, thereby, the counter claim was allowed and the suit filed by the plaintiffs, was dismissed.

9. By challenging the said findings, the plaintiffs have preferred First Appeal (Appeal Suit) in A.S.No.466 of 2012 on the file of II Additional City Civil Court, Chennai. The learned first appellate Judge independently analysed the facts and evidence and finally concluded that Ex.B1 receipt is not related to the present property and it relates to Door No.22/56, Syful Mulk Street, Pudupet, Chennai and the said receipt is pertaining to the house bearing Door No.19, Veerabhadran Street, Pudupet, Chennai, and the same was vacated by the defendant, and only with regard to that property



S.A. No.472 of 2016

the said receipt was executed and thereby, it is not related to the present suit property. Accordingly, the findings of the learned trial Judge were set aside and the suit was decreed by the first appellate Court. Consequently, the counter claim made by the defendant was dismissed as not proved. By challenging the said findings, the present second appeal is preferred by the appellant / defendant.

10. The learned counsel for the appellant submits that the learned lower appellate Judge failed to take into account Ex.B1 as well as Ex.A1 and A2 along with sequence of events as well as the admission of the plaintiffs in respect of the genuineness and contents of the exhibits, which were rightly considered by the learned trial Judge, but the same was not properly appreciated by the learned First Appellate Judge. Furthermore, he also argued that Ex.B1 is stamped receipt issued by the plaintiffs for receipt of Rs.5 lakhs from the defendant as lease amount, but there is no proof on the side of the plaintiffs that the amount was returned back to her, instead of that, suit was decreed in favour of the plaintiffs by the lower appellate Judge which is totally unfair and liable to be set aside. Considering the same, the



S.A. No.472 of 2016

second appeal was admitted by this Court on 18.11.2016. on the following
Substantial Questions of Law.

(a) Whether the Appellate Court is right in granting Judgment and Decree dated 23.07.2015 in A.S.No.466 of 2012 by setting aside the Judgment and Decree dated 21.08.2012 passed in O.S.No.8364 of 2010 by the learned XIII Assistant Judge, City Civil Court, Chennai, without even framing any issues for consideration?

(b) Whether the Appellate Court is right in granting Judgment and Decree without taking into consideration of the admitted facts and circumstances, based on the admission of the plaintiffs / Appellants / Respondents in respect of Ex.B1, Ex.A1, Ex.A2 and the contents therein?

(c) Whether the Appellate Court is right in granting Judgment and Decree in favour of Respondent herein as it is clearly established in the pleadings as well as through Exhibits marked that the plaintiffs / Appellants/ Respondents has approached the Court with unclean hands?

11. The entire facts reveal that originally, the appellant / defendant was a tenant under the respondents / plaintiffs in the year 2000. Thereafter, the said rental basis was converted into lease and in the year 2009, the



S.A. No.472 of 2016

appellant vacated the premises and the advance and rental arrears were settled, thereafter the defendant became a tenant under the plaintiffs in the newly constructed residential portion in Door No.22/56, Syful Mulk Street, Pudupet, Chennai. According to the plaintiffs, from the year 2009, she had entered a tenancy for monthly rent of Rs.6,000/- but only from 2010 February onwards, the defendant failed to pay the rent and hence he issued notice to vacate and handed over the property, and also claimed damages for use and occupation.

12. The defendant admitted the tenancy with the plaintiffs, but contended that, at the time of lease she had earlier paid Rs.5 lakhs to the plaintiffs and the same was treated as lease amount for the newly rented house, but the plaintiffs failed to return the said amount. Apart from that, the plaintiffs had borrowed some other amount, and the defendant claimed the said lease amount of Rs.5 lakhs through the counter claim.

13. The documents produced on the side of the plaintiffs i.e, Ex.A1, Police complaint shows that there was some misunderstanding between the



S.A. No.472 of 2016

plaintiffs and the defendant, and subsequently, she vacated the earlier premises and became a tenant in the newly constructed house i.e., Door No.22/56, Syful Mulk Street, Pudupet. Now the subject in issue is with regard to the eviction of the defendant from the portion of the 2nd floor at bearing Door No.22/56, Syful Mulk Street, Pudupet, Chennai. The defendant relied on Ex.B1 stamped receipts, contending that she has already paid Rs.5 lakhs as lease amount and the same was retained by the plaintiffs for the subsequent lease of the newly constructed house and suppressing the said fact, the plaintiffs falsely claim the rental arrears from the defendant, and as such, it is not maintainable.

14. On considering both sides submissions, and on a perusal of Ex.B1 stamped receipts, through which the plaintiffs have received a lease amount of Rs.5 lakhs towards the lease in respect of Door No.19, Veerabhadran Street, Pudupet, Chennai, consisting of three bed room portion in 3rd floor and the recitals in Ex.B1 show that the plaintiffs agreed to hand over the amount when the defendant vacates the said house. Admittedly, the defendant vacated the said house, but she claimed that Rs.5 lakhs amount



S.A. No.472 of 2016

was not repaid by the plaintiffs. Thereby contend that she is entitled to proceed with the counter claim, further submits that before filing the suit, the plaintiffs have not issued any specific notice. In fact, already there was misunderstanding between them while vacating the earlier premises at Door No.19, Veerabhadran Street, Pudupet, Chennai. Furthermore, there is no proof on the side of the defendant that from the year 2010, she paid rent to the house, nor she issued any notice to adjust the lease amount for rental arrears. Therefore, the learned lower appellate Judge rightly concluded that the recitals in Ex.B1, do not support the case of the counter claim of the defendant, since it relates to the right of the defendant. Even as per the undertaking letter given by the plaintiffs, marked as Ex.A2, they ready to pay the amount on 28.02.2010, provided she should hand over the possession of the suit property, failing which, she is entitled for the monthly rent and also she even failed to pay the amount, thus he is entitled to deduct the rental arrears from the advance amount. As discussed above, there is no proof that the defendant paid the rent all these years.



S.A. No.472 of 2016

15. Furthermore, the learned Appellate Judge rightly concluded that, there is no proof on the side of the defendant that has she already given permission to retain only Rs.2 lakhs as advance and demanded the balance Rs.3 lakhs, but there is no proof that she issued notice to that effect and the same was rightly pointed out by the learned Lower Appellate Judge. Therefore, Ex.B1 does not support the case of the defendant, on the other hand the plaintiffs have proved that the defendant is in occupation of the suit property without paying rent. But the learned trial Judge failed to appreciate the legal aspects. On the other hand, the Lower Appellate Judge rightly appreciated, which needs no interference.

16. When the matter was taken up for arguments, both the appellant and the respondents appeared and also through their learned counsel before this Court. The respondents / landlords submitted that nearly about 10 years, the house is under lock and the appellant left the suit property by locking the door, holding the key with her, without paying any rent. All these years she has retained the property without paying the rent.



S.A. No.472 of 2016

17. Being afraid of the conduct of the appellant, the respondents / land lords are residing somewhere in a rental house and, when the same was questioned by this Court the appellant / defendant admits that she is not residing in the property in dispute, now she is residing with her daughter. So, the house is under lock for more than 10 years, without any rent being paid on her side. It is also admitted fact that the plaintiffs are landlords of the suit property and they are also residing in some other place for rent, being afraid of the conduct of the appellant/defendant, also noted by this Court. Therefore, the findings of the Lower Appellate Judge are confirmed.

18. Accordingly the suit is decreed and the appellant / defendant is directed to vacate the premises in question and hand over the same within a period of two months from the date of receipt of a copy of this judgment, without fail. With regard to the prayer 'C' in the plaint that with regard to Rs.8,000/- towards use and occupation and maintenance charges for future period from 01.08.2010 till the suit property is vacated, plaintiffs are entitled for the said claim as prayed for. With regard to 'B' prayer, in the plaint there was no proof about the said claim on the side of the plaintiff, so it is not



S.A. No.472 of 2016

granted. A and C prayer of the plaint alone are granted. Consequently suit is partly decreed with regard to A and C prayer only.

19. The appellant / defendant is directed to vacate and hand over the premises in question within a period of two months from the date of receipt of a copy of this judgment and the prayer B of the plaint is not granted in favour of the plaintiffs. With regard to prayer A & C of the plaint, the suit is decreed in part.

20. The counter claim made by the appellant in the written statement is dismissed as devoid of merits.

21. The suit is partly decreed in the above terms.

22. With regard to prayer B made in the plaint, the plaintiffs are directed to work out their remedy by way of separate proceedings.



S.A. No.472 of 2016

23. The Second Appeal is dismissed. The substantial questions of law framed herein are answered in the above terms.

24. The Judgment and Decree of the First Appellate Court is modified accordingly, the appellant / defendant is directed to vacate and hand over the premises in question within a period of two months from the date of receipt of a copy of this judgment and the prayer B of the plaint is not granted in favour of the plaintiffs. With regard to prayer A and C of the plaint, the suit is decreed in part. There shall be no order as to costs.

.06.2023

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

rri

To

1. The II, Additional City Civil Judge, Chennai.
- 2.The XIII, Assistant Judge, City Civil Court, Chennai.
- 3.The Section Officer, VR Section, High Court of Madras.

15\16



WEB COPY



S.A. No.472 of 2016

T.V.THAMILSELVI, J.

rri

S.A.No.472 of 2016

.06.2023