



S.A.No.805 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.805 of 2021
and
C.M.P.No.15495 of 2021

A.Manickam

... Appellant

Vs.

Dharmapuri Handloom Weavers

Co-operative Production and Sales Society Limited,

Represented by its Handloom Inspector/Liquidation Officer,

Dharmapuri Town,

Dharmapuri.

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 06.07.2021 in A.S.No.8 of 2020 passed by the learned Additional Subordinate Judge, Dharmapuri, confirming the judgment and decree dated 27.09.2019 in O.S.No.5 of 2000, passed by the learned District Munsif, Dharmapuri.

For appellant : Mr.P.Valliappan, Senior Counsel,
for Mr.T.Deeraj
for M/s P.V. Law Associates.

For respondent : Mr.V.Baranidharan



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JUDGMENT

The defendant who had unsuccessfully contested the suit in O.S.No.5 of 2000 on the file of the District Munsif Court, Dharmapuri, is the appellant before this court.

2. The facts which have led to the filing of the above second appeal are set out hereinbelow briefly and the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff co-operative society had filed the above referred suit for recovery of possession. It is their contention that the plaintiff is the absolute owner of the suit schedule property and that the defendant was a tenant under them on a monthly rental of Rs.31.50/- payable without default on 1st day of every following month a under lease deed dated 12.04.1988. Thereafter, it appears that the defendant has been claiming title over the suit property as he had put up construction over the property without the consent of the



plaintiff. The plaintiff, therefore, requested the defendant to hand over the vacant possession of the suit schedule property. However, the defendant refused to do so.

2.2. Meanwhile, the Deputy Registrar of the Co-operative Societies had passed an order in A.R.C.No.780/90-91 dated 30.10.1991, directing the defendant to hand over the possession to the plaintiff co-operative society. Despite the said order, the defendant continues to squat on the property. Therefore, the plaintiff filed this suit for recovery of possession.

2.3. The defendant had filed a written statement *inter alia* contending that the suit is a false and vexatious one. The defendant would submit that he admits that the plaintiff co-operative society is the owner of the suit property and he is the tenant under them on a monthly rental of Rs.31.50/- under the lease deed dated 12.04.1988.



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2.4. The defendant would submit that it is false to state that he should pay rent on the 1st day of every month. The defendant would contend that he had no knowledge about the alleged eviction order dated 31.09.1991, though he and his father are the members of the plaintiff co-operative society.

2.5. It is the contention of the defendant that the suit property was originally leased out to him on 12.04.1988 by the plaintiff for a period of 15 years. The plaintiff had permitted him to put up construction over the suit property and to pay taxes on the said building. Accordingly, the defendant who has put up the superstructure has been paying house tax and electricity charges. The defendant would submit that rent was paid till March 2000 for which receipts were issued to him. At no point of time, the plaintiff had requested the defendant to vacate and hand over the vacant possession.



2.6. After April 2000, the plaintiff started refusing to receive rent from the defendant. This appears to be a ploy for evicting the defendant from the suit property. However, the plaintiff received the rent from the defendant after institution of the suit. Therefore, the defendant's possession of the property was legal and valid. The defendant would submit that he were always ready to pay the rent and it was only that the plaintiff who had refused to receive the rent. The defendant had not committed any wrongful act and cannot be evicted.

2.7. The defendant had filed an additional written statement *inter alia* contending that the plaintiff co-operative society had leased out the suit property initially under a registered lease deed dated 04.05.1974 on a monthly rent of Rs.9/- per month for a period of 10 years. Subsequently, the plaintiff leased out the suit property for a period of 15 years. Thereafter, under the lease deed dated 12.04.1988, the lease amount was enhanced to Rs.31.50/- per month and lease was modified through a registered lease deed dated 05.08.1994.



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2.8. Subsequently, another lease deed dated 22.08.1997 was executed for a further period of 15 years on a rent of Rs.150/- per month and initial deposit of advance of Rs.1,000/- was received i.e. till the year 2012. The defendant would, therefore, submit that the plaintiff cannot seek to evict him, particularly, in the light of the subsequent lease deeds. Therefore, the defendant prayed for the dismissal of the suit.

TRIAL COURT:

3. The Trial Court had framed the following issues.

“1. வாதிக்஑ு இவ்வழக்கில் அவர் கோரும் பலன் கிடைக்கக் கூடியதா?

2. பிரதிவாதியின் கூற்றுப்படி வாதியிடமிருந்து ரூ.3000 இழப்பீடு தொகை பெற தகுதி உடையவரா?

3. இவ்வழக்கை விசாரிக்க இந்த்஑ிமன்றத்திற்கு அதிகார வரம்பு இல்லையா?

4. வாதிக்஑ு எத்தகு பரிகாரம் வழங்கப்பட வேண்டும்?”



4. The plaintiff had examined one Krishnaveni as P.W.1 and marked Exs.A1 to A13. The defendant had examined himself as D.W.1 and one Govindasamy and one Palaniyandi as D.W.2 and D.W.3 respectively, and marked Exs.B1 to B7.

5. Ultimately, the learned Judge, on considering the evidence on record, had decreed the suit.

LOWER APPELLATE COURT:

6. Challenging the same, the defendant had filed an appeal in A.S.No.8 of 2020 on the file of the Court of the Additional Sub Judge, Dharmapuri. The learned Judge has also confirmed the judgment and decree passed by the Trial Court. Aggrieved by the same, the defendant has preferred the above second appeal.

7. The second appeal was admitted on the following substantial questions of law.



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“1.When the respondent admitted the lease deeds dated 12.04.1988 and 22.08.1997 and when the appellant is in possession of the suit property in pursuance of these lease deeds, whether the suit filed during the subsistence of valid lease is tenable in law and decreeing the suit in favour of the respondent can be sustained?”

2.Whether the Civil Court has jurisdiction to entertain the suit under Section 146 of Tamil Nadu Cooperative Societies Act, 1983, which has the jurisdiction?”

8. Heard the learned counsel on either side and perused the materials available on record.

DISCUSSION:

9. The main argument which has been advanced by the learned Senior Counsel appearing on behalf of the learned counsel on record for the appellant is that the suit has been filed during the pendency of the extended period of lease and therefore, the suit was not maintainable. However, he would fail to consider that even as per



the subsequent lease deed in the year 1997, the period of lease had come to an end in the year 2012 itself.

10. It is brought to the notice of this Court by the learned counsel appearing for the respondent that with reference to another tenant *viz.*, S.Lakshmi under the plaintiff herein, similar proceedings were filed in O.S.No.22 of 2000 and the very same defence was even advanced. This suit was decreed, against which, a first appeal was filed in A.S.No.45 of 2004. The first Appellate Court had reversed the finding of the Trial Court, against which S.A.No.341 of 2006 was filed by the co-operative society. This Court, by judgment and decree dated 10.07.2012, had allowed the appeal.

11. The arguments that have been advanced therein appears to be more or less the same contention raised in the present suit and similar arguments have been made on the basis of the subsequent lease deed. Ultimately, this Court had allowed the second appeal and



the Trial Court judgment and decree was restored. The facts of that case which was reported in **2012-4-L.W.124 (Dharmapuri Handlooms Weavers Co-operative Production and Sales Society Ltd., Rep. By its Special Officer vs S.Lakshmi)** are also more or less similar to the facts of this case. The defendant in the instant case has also raised pleadings about the subsequent lease deed. This lease deed has also expired. The learned Judge, had taken into account the fact that the period granted in the subsequent lease deed has also come to an end and the defendant/tenant is none other than a trespasser and had proceeded to allow the second appeal.

12. In the light of the above facts, both the Courts below have rightly held that the plaintiff is entitled to the decree for possession. This suit O.S.No.5 of 2000 is not only filed on the ground that the defendant is in arrears of rent and has continued to be in possession even after the expiring of the lease deed but also on the ground that the defendant had put up the construction without the permission of



the plaintiff co-operative society which was against the terms of the lease. Since the defendant has acted against the interest and terms of the contract, the suit was filed for recovery of possession. Therefore, the substantial question of law point no.1 is answered against the defendant.

13. The second substantial question of law has been dealt with in the earlier connected suit and which is reported in **2012-4-L.W.124 (Dharmapuri Handlooms Weavers Co-operative Production and Sales Society Ltd., Rep. By its Special Officer vs S.Lakshmi)**, wherein, the power of the Civil Court has been discussed. Therefore, the substantial question of law point no.2 is also answered against the defendant, since the recovery of possession has been sought on the ground of violation of the terms of the lease deed.

Accordingly, this second appeal stands dismissed. Consequently, connected C.M.P. stands closed. No costs.



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Index : Yes/No

Speaking order/non-speaking order
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To

1. The Additional Subordinate Judge, Dharmapuri.
2. The District Munsif, Dharmapuri.
3. The Section Officer, V.R. Section, High Court, Madras.

P.T.ASHA, J.,

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