



S.A.No.804 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.804 of 2023

and

C.M.P.No.25096 of 2023

Noor Johnny

Appellant

Vs.

...

1. Mehjameen

2. Roobina Banu

3. Arshiya Farheen

4. Mustaq Ahammath

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 13.04.2023 passed in A.S.No.32 of 2017 on the file of the Subordinate Judgem Arni, Tiruvannamali District confirming the judgement and decree dated 04.09.2017, passed in O.S.No.72 of 2011 on the file of District Munsif, Arni, Tiruvannamali District and allow the plaint and pass such other order or orders as this court deem fit and proper in the circumstances of the case and thus render justice.

For appellant

: Mr.E.P.Senniayangiri

For respondent

: No appearance



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JUDGMENT

The defendant/tenant is the appellant before this court challenging the concurrent judgment and decree passed against him.

2. The facts are briefly set out hereinbelow and the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The respondents before this Court who are the plaintiffs before the District Munsif, had filed a suit in O.S.No.72 of 2011, seeking eviction of the defendant from the suit schedule property which is a non-residential shop.

2.2. It is the case of the plaintiffs that they had purchased all the three shops on 12.08.2007 from one Kamrunnisa Beebe. The 4th plaintiff, who is the father of the plaintiffs 1 to 3, has been managing the affairs of the plaintiffs regarding these shops. The plaintiffs would



submit that the defendant is running a mutton shop in the demised premises and he was a tenant under the plaintiffs, after the purchase by the plaintiffs. The defendant had attorned tenancy to the 4th plaintiff. The rent is Rs.250/- per month and the defendant had paid a sum of Rs.2,000/- as advance and this has been given credit to in the sale price.

2.3. The plaintiffs would further submit that the building had become old and since the three shops constitute a single building and the same is demolished and a new building is put up, not only will its aesthetic value be increased but it would also fetch a higher rent. With this in mind, the plaintiffs approached the defendant and requested him to vacate and deliver the possession of the shop. Since the oral demands had no effect, the plaintiffs had issued a legal notice on 26.07.2010 terminating the tenancy and calling upon the defendant to vacate and deliver the possession of the shop. The defendant had sent the reply dated 01.09.2010.



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2.4. The plaintiffs would further submit that suit property is situate in Kannamangalam Village in Arni which does not come under the purview of the Rent Control Court and therefore, this suit is filed.

2.5. The defendant had filed a written statement *inter alia* admitting attornment of the tenancy in favour of the plaintiffs. The defendant would submit that the building is not in such a dilapidated condition that it has to be demolished. He would further submit that the plaintiffs are permanently residing at Bangalore and have no *locus standi* to file this suit. The suit in question is filed with *mala fide* intention and further, apart from the suit property, the plaintiffs have property in Bangalore and Kannamangalam, where they can start the construction work. Therefore, the defendant sought for a dismissal of the suit.

TRIAL COURT:



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3. The Trial Court has framed the following issue as to whether the plaintiffs have right to vacate and evict the defendant from the suit schedule property.

4. The 4th plaintiff had examined himself as P.W.1 and the 1st plaintiff had examined herself as P.W.2 and marked Exs.A1 to A3. On the side of the defendant, the defendant had examined himself as D.W.1 and no documentary evidence were marked.

5. Ultimately, the Trial Court has decreed the suit.

LOWER APPELLATE COURT:

6. Challenging the said judgment and decree, the defendant had filed an appeal in A.S.No. 32 of 2017 on the file of the Subordinate Court, Arni. The learned Judge confirmed the judgment and decree of the Trial Court, aggrieved by which, the defendant is before this court.



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7. Heard the learned counsel for the appellant.

DISCUSSION:

8. The plaintiffs seek to evict the defendant from the suit schedule property on the ground that the building has become old and that they want to put up the new construction which would, not only blend with the adjoining structures but would also earn a better and higher rent than what they are now getting.

9. The only defense that has been pleaded is that the plaintiffs are not residents of the place where the property is situate and that they have other property in Bangalore.

10. It has been time and again held by the Courts that it is not for the tenant to issue direction as to what the landlord has to do with his building or directing the landlord to choose another premises. The



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plaintiffs have come to the Court not on the ground that the building is in a dilapidated state and therefore, it has to be demolished. On the contrary, they want to demolish the building and construct a new one for fetching more income. This cannot be said to be a *mala fide* intention.

11. The defendant has been in possession for over 3-4 decades and he cannot seek to permanently squat on the property. On the contrary, being a tenant, he has to vacate and hand over the vacant possession of the land as and when requested by the landlord.

12. Both the Courts below have concurrently held against the defendant and I see no reason to hold otherwise.

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

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Index : Yes/No
Speaking order/non-speaking order
ssa

To

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

P.T.ASHA, J.,

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