



S.A.No.231 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.231 of 2017

Hubbalatchi Ammal

... Appellant

VS.

Basuvaraj (since deceased)

1.Devaki

2.Sivakumar

3.Bagyalakshmi

4.Neela

5.Eashwaran

... Respondents

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree dated 17.11.2016 in A.S.No.4 of 2015 on the file of District Judge and Appellate Authority of Nilgiris at Udthagamandalam confirming the Judgment and Decree dated 21.07.2015 in O.S.No.19 of 2009 on the file of Subordinate Judge, Udthagamandalam.



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For Appellant : Ms.S.Meenakshi
for M/s.AL.Ganthimathi
Senior Counsel

J U D G E M E N T

Aggrieved by the concurrent findings of the Courts below dismissing the suit filed by the appellant seeking damages against the respondents for alleged illegal demolition of house in the occupation of the appellant and the household articles belongs to the appellant, the appellant has filed the present second appeal.

2. According to the appellant/plaintiff, she was tenant of the residential premises bearing Door No.27/144 B, New No.12/247 situated at Kamarajar Square, Mount POSCO, Kotagiri Town, Nilgiris District. It is the case of the appellant that the said house belonged to one S.M.Raju and she became tenant under the said S.M.Raju. After death of S.M.Raju, she has been paying rent to Neeliammal, wife of said S.M.Raju. The respondent, who is not having any manner of right came to the house of the appellant on 12.01.2009 and demolished the entire house and damaged the household articles of the appellant. According to the appellant, the value of the household articles damaged by the respondent is about Rs.90,000/-. It was



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also stated that the appellant spent a sum of Rs.60,000/- towards reconstruction of the house demolished by the respondents. Since the appellant suffered damages due to act of waste committed by respondents, the above suit was filed by the appellant seeking recovery of Rs.1,50,000/- as damages from the respondents.

3. The suit was originally filed against one Basuvaraj, under whom respondents are claiming right. The deceased Basuvaraj filed a written statement denying the averment of the appellant as if, she was tenant under one S.M.Raju and his wife Neeliammal. The deceased Basuvaraj is none other than the brother of said S.M.Raju. It was averred by the deceased defendant that both S.M.Raju and his wife Neeliammal died long back and his son was residing at London. The averment of the appellant as if, she was tenant of the premises at the time of filing of the suit was specifically denied. The deceased defendant also denied the alleged demolition and act of waste committed by him. It was also averred in the written statement that the appellant also preferred a police complaint and the criminal case ended in acquittal. On these pleadings, the deceased defendant sought for dismissal of the suit.



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4. Before the Trial Court, the appellant was examined as PW.1 and 12 documents were marked on behalf of the appellant as Exs.A1 to A12. It appears sole defendant Basuvaraj died pending suit. Therefore, his legal representatives were brought on record as defendants 2 to 6. The 6th defendant was examined as DW.1. On behalf of the respondents, 3 documents were marked as Exs.B1 to B3.

5. The Trial Court on consideration of evidence available on record, disbelieved the case of the appellant that deceased sole defendant Basuvaraj committed act of waste against the appellant by demolition of house and damaged the household articles and consequently, dismissed the suit. Aggrieved by the same, the appellant preferred first appeal in A.S.No.4 of 2015 on the file of the District Court, Udthagamandalam. The First Appellate Court concurred with the findings of the Trial Court. Aggrieved by the concurrent findings, the appellant is before this Court.

6. The learned counsel appearing for the appellant submitted that the appellant produced sufficient documents before the Courts below to show that the appellant was tenant of the house property belonged to deceased



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S.M.Raju and the same had not been considered by the Courts below in proper perspective. The learned counsel further submitted that the appellant produced photographs of the demolished house to prove the act of waste committed by deceased Basuvaraj and same had not been taken into consideration by the Courts below.

7. In order to prove the alleged act of waste by the respondents, the appellant failed to examine any independent witnesses. The appellant alone was examined as PW.1. Therefore, except the interested testimony of appellant, there is no other evidence available on record to suggest that the deceased Basuvaraj committed act of waste against the appellant. Based on the documents produced by the appellant before the Courts below, both the Courts below found that appellant was tenant under S.M.Raju long back and both Raju and his wife died even in the year 2000. The Courts below further found that the appellant vacated the suit premises long back. Whether the appellant resided in the suit premises on the date of filing of the suit or not is a secondary question to be decided in this case. The main issue that has to be decided is whether respondent's predecessor, namely deceased Basuvaraj, by their illegal act demolished the house occupied by the appellant and



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caused damages to the household articles of the appellant. The photographs submitted by the appellant will not advance the case of the appellant.

8. Even assuming that the household articles of the appellant were damaged, unless it is shown that the deceased Basuvaraj was involved in causing damages to the household articles of the appellant, she is not entitled to maintain a suit for recovery of damages.

9. In view of the fact that the appellant miserably failed to lead any acceptable evidence to prove the factum of act of waste committed by deceased Basuvaraj, both the Courts below correctly came to the conclusion that the appellant is not entitled to recover any damages from the respondents and accordingly, dismissed the suit.

10. In view of the discussion made above, I do not find any perversity in the factual findings reached by both the Courts below, accordingly, the second appeal is devoid of any question of law much less substantial question of law and therefore, deserves dismissal.



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In Nutshell:-

(i) The second appeal is dismissed.

(ii) In the facts and circumstances of the case, there will be no order as to costs.

12.10.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
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To

1.The District Judge and Appellate Authority,
Nilgiris at Udhagamandalam.

2.The Subordinate Judge,
Udhagamandalam.



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S.SOUNTHAR, J.

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