



A.S.(MD)No.49 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 16.11.2022

PRONOUNCED ON:03.03.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)No.49 of 2014

Pandithurai : Appellant / Plaintiff

Vs.

1.The Commissioner,
Usilampatti Municipality,
Usilampatti,
Madurai District.

2.The Assistant Engineer(Urban),
Tamil Nadu Electricity Board,
Usilampatti,
Madurai District.

3.The District Collector,
District Collector Office,
Madurai.

: Respondents / Defendants

PRAYER:- Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree made in O.S.No.119 of 2006, dated 29.12.2009, on the file of the Additional District Court/Fast Track Court No.I, Madurai.



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For Appellant : Mr.T.Lajapathi Roy

For Respondents : Mr.K.Mahendran
for R.1
: Mr.M.Mohan Babu
for R.2
: Mr.N.Muthu Vijayan
Special Government Pleader
for R.3

JUDGMENT

The Appeal Suit is directed against the judgment and decree passed in O.S.No.119 of 2006, dated 29.12.2009, on the file of the Additional District Judge (Fast Track Court No.I), Madurai.

2. The appellant is the plaintiff and he has filed the suit as an indigent person for recovery of Rs.6,55,000/- towards loss of income, value of the articles illegally seized and for mental agony and for mandatory injunction directing the Electricity Board officials to give reconnection in electricity connection No.H-364 through the first respondent/first defendant and for a direction to the first respondent/first defendant to issue the receipts on receiving the monthly rent from the appellant/plaintiff.



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3. The case of the plaintiff is that since the plaintiff was a jobless graduate, he was allotted a shop on the northern side of Usilampatti bus stand by the first defendant Municipality as per the resolution passed on 05.05.1992, that the ground rent was fixed at Rs.90/- per month and subsequently, at the time of filing of the suit, the rent was at Rs.200/- per month, that the plaintiff had been paying the rent and the electricity consumption charges to the second defendant regularly without any default. It is the further case of the plaintiff that during 1995, the first defendant unlawfully and unilaterally ordered for eviction of the shop run by the plaintiff; that the plaintiff has immediately filed a suit in O.S.No.440 of 1995 claiming permanent injunction on the file of the District Munsif Court, Usilampatti, that the suit, after trial, was dismissed, that the plaintiff has preferred an appeal in A.S.No.47 of 1997, that the Principal Subordinate Court, Madurai has allowed the appeal and thereby setting aside the judgment and decree passed by the District Munsif Court, Usilampatti, that the appellate Court has granted permanent injunction restraining the first defendant and his men from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the property, that the first defendant has not preferred any Second Appeal challenging the judgment and decree passed in A.S.No.47



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of 1997, that though the permanent injunction was in force on 09.05.2000, the first defendant with ulterior motive, unilaterally and unlawfully had interfered with the plaintiff's possession of the suit shop and removed the articles worth of Rs.50,000/- from the shop and dismantled the shop, that the plaintiff has immediately filed a contempt petition in I.A.No.149 of 2000 in A.S.No.47 of 1997, that the appellate Court, after enquiry, has found the first defendant guilty and directed the first defendant to pay a sum of Rs.1,000/- as damages, that the first defendant has not preferred any appeal challenging the order passed in contempt petition, that due to the dispossession and removal of the shop articles, the plaintiff was put to mental agony, that even thereafter, the first defendant had been disturbing the plaintiff from running the shop and at the instance of the first defendant, the electricity service connection was disconnected, that though the plaintiff has requested the second defendant for reconnection, the second defendant has sent a reply stating that only on the application given by the first defendant, the service connection was temporarily disconnected on 06.05.2000 and that any application for reconnection will be considered only if the first defendant had applied for the same.



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4. It is the further case of the plaintiff that the plaintiff used to earn Rs.200/- per day during non-seasonal period and Rs.350/- per day during seasonal period from the shop, that the plaintiff has suffered income loss from 09.05.2000 to 06.06.2005 due to the acts of the defendants and the same is quantified at Rs.5,05,000/- and that the first defendant had taken away the refrigerator, phone, table fan, tube lights, shelves, tables, wood stall, chairs and other articles meant for sale worth of Rs.50,000/-. Hence, the plaintiff is constrained to file the above suit claiming compensation at Rs.6,55,000/-. The plaintiff's further case is that though the plaintiff has sent a legal notice to the first defendant to take necessary steps for getting electricity connection to the suit shop, there was no response and that therefore, the plaintiff is forced to claim the relief of mandatory injunction directing the first defendant to give consent letter to the second defendant so as to enable the second defendant to give service connection and also for direction to the first defendant to issue receipts on receiving the monthly rents.

5. The defence of the first defendant is of total denial. The first defendant has taken a stand that they have already filed Second Appeal challenging the judgment and decree passed in A.S.NO.47 of 1997 before



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this Court, that the first defendant has also preferred an appeal challenging the orders passed in contempt petition in I.A.No.149 of 2000 in A.S.No.47 of 1997, that the plaintiff has no cause of action and the one alleged in the plaint is false, that the first defendant is not liable to pay any damages to the plaintiff and that since the suit is vexatious and frivolous in nature, the same is liable to be dismissed with exemplary costs.

6. The second defendant has taken a stand that the electricity connection bearing service connectin No.H-364 stands in the name of the first defendant, that the same was given to the suit shop as per the request of the first defendant, that the first defendant has then requested the second defendant to disconnect the service connection for the purpose of cement plastering of the floor of the shops belonging to them and accordingly, the second defendant had disconnected the service connection on 06.05.2006 on temporary basis for the plaintiff's shop, that from the date of temporary disconnection on 06.05.2006 till the date of written statement, they have not claimed to reconnect the dismantled electricity supply to the plaintiff's shop, and as per the Tamil Nadu Electricity Board rules, if the temporary dismantling of service



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connection is not reconnected within one year, automatically will become under the provisions of permanent dismantling, that already two years have been lapsed and there was no request from the first defendant for reconnection and that the second defendant has always been ready and come forward to co-operate with the first defendant without violating the Tamil Nadu Electricity Board Rules, that the first defendant alone can taken steps to apply for new electricity service connection to the suit shop, and that since the suit as against the second defendant is not maintainable, the same is liable to be dismissed.

7. Upon the above pleadings, the trial Court has framed the following issues:

- (1) Whether the plaintiff is entitled to get a relief for declaration as prayed in the plaint?
- (2) Whether the plaintiff is entitled to get mandatory injunction as prayed for?
- (3) To what relief the plaintiff is entitled to?

8. During trial, the plaintiff has examined himself as P.W.1 and exhibited 88 documents as Exs.A.1 to A.88. The first defendant has



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examined one witness viz., Thiru.Chellapandi as D.W.1 and the second defendant has examined its official viz., Ravichandran as D.W.2 and the defendants have not adduced any documentary evidence.

9. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned judgment dated 29.12.2009, directing the first defendant to pay a sum of Rs.95,000/- as compensation to the plaintiff with interest at 6% per annum and also granted mandatory injunction directing the first defendant to take necessary steps to get the electricity service connection from the second defendant and also directed the first defendant to issue the receipts on receiving the monthly rent from the plaintiff. Aggrieved by the quantum of compensation awarded, the plaintiff has come forward with the present appeal suit.

10. The appellant has raised a stand in the appeal memorandum that the trial Court had failed to consider the previous exparte decree and judgment passed in the very same suit in O.S.No.119 of 2006, dated 18.09.2008 in the same Court and that the subsequent suit is barred by res judicata and that in the previous decree granted on 18.09.2008, the



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first defendant was directed to pay compensation of Rs.6,55,000/- to the plaintiff by correctly calculating the compensatin and that the trial Court has failed to take note of the same in the present judgment.

11. The learned Counsel for the appellant would contend that the trial Court without considering the accounts and valid document relating to the suit shop, has mechanically awarded compensatin of Rs.95,000/-, that the trial judge has failed to consider that the appellant is a small shop owner and it is his only source of livelihood of his family and the plaintiff was also declared as indigent person by the trial Court in Pauper O.P.No.5 of 2005 and that the trial Court has miserably failed to consider the documents and accounts filed under Exs.A.1 to A.88 with regard to the income derived from the suit shop. The learned Counsel would further contend that the first defendant did not come to the Court with clean hands and they have not taken any specific defence with regard to the plaintiff's case and that therefore, the judgment and decree of the trial Court are liable to be set aside.



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12. The points that arise for consideration are

(1) Whether the trial Court erred in granting meagre compensation amount of Rs.95,000/- despite producing ample evidence under Exs.A.1 to A.88 to prove the loss caused to the plaintiff by unlawful acts of the first defendant?

(2) Whether the judgment and decree passed in O.S.No.119 of 2006, dated 29.12.2009, on the file of the Additional District Court (Fast Tract Court No.I), Madurai is liable to be interfered with?

13. For the sake of convenience and brevity, the parties will be referred as per their status/ ranking in the trial Court.

Points 1 and 2:

14. The case of the plaintiff is that he was allotted a shop on the northern side of Usilampatti bus stand on ground rent, that during 1995, the first defendant with ulterior motive, unilaterally and unlawfully passed an order directing the eviction of the plaintiff from suit shop and that therefore, the plaintiff was constrained to file a suit in O.S.No.440 of 1995 claiming permanent injunction on the file of the District Munsif Court, Usilampatti. It is not in dispute that the suit in O.S.No.440 of



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1995, after trial, was ordered to be dismissed and that the plaintiff, aggrieved by the said dismissal, has preferred an appeal in A.S.No.47 of 1997 and that the Principal Sub Court, Madurai, on considering the evidence available on record and on hearing the arguments of both parties, has allowed the appeal and granted permanent injunction restraining the first defendant from evicting or interfering with the plaintiff's peaceful possession and enjoyment of the property, except on due process of law, vide judgment and decree dated 07.08.1998. Though the first defendant had been alleging that they have preferred the Second Appeal before this Court, they have not furnished any particulars about the same. Even now, it is not the case of the plaintiff that the first defendant has preferred the Second Appeal challenging the judgment and decree passed in A.S.No.47 of 1997 and that the same was / is pending on the file of this Court.

15. The plaintiff's further case is that when the permanent injunction granted in A.S.No.47 of 1997 was in force, the first defendant unilaterally and illegally and with ulterior motive, has interfered with the plaintiff's possession of the suit shop on 09.05.2000 and removed the articles worth of Rs.50,000/- placed in the suit shop and dismantled the



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suit shop. According to the plaintiff, since the first defendant has dispossessed the plaintiff in violation of permanent injunction granted in his favour, he was constrained to file a contempt petition in I.A.No.149 of 2000 in A.S.No.47 of 1997 for punishing the first defendant. The first appellate Court, after conducting enquiry, has passed the order dated 29.04.2004 holding that the first defendant has evicted the plaintiff without any prior notice and in violation of the permanent injunction granted in his favour. It is necessary to refer the following passages in the order passed in the contempt petition:

“11. மஹக்ஷறிய காரணங்களினால் மஹதாரர் கடை ரூக்கும் டேம் உசிலம்பட்டி நகராட்சிக்குப் பாத்தியப்பட்டது என்பதுவும்இ மஹதாரரை சட்டத்திற்குப் புறம்பாக காலி செய்யக்கூடாதென உத்தரவு நீதிமன்றம் அவர் பெற்றுள்ளார் என்பதுவும்இ அவ்வாறு உத்தரவு பெறப்பட்டுள்ளது தேரிந்த பிறகும் முறையாக அறிவிப்பு கொடுக்காமல் மஹதாரரை கடையில் ரூந்து எதிர்மஹதாரர் காலி செய்துள்ளார் என்பதுவும் நீத வழக்கில் மிக தேளிவாக நீருபிக்கப்பட்டுள்ளது.

12. நீத வழக்கில் எதிர்மஹதாரர் தரப்பில் நீதிமன்ற அவமதிப்பு செய்யப்பட்டுள்ளது என்பதுவும்இ அவ்வாறு



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செய்யப்பட்டுள்ள அவமதிப்பு செயல் ஁வண்டுமென்ற செய்யப்பட்டுள்ளது
என்பதுவும்இ அந்த செயல் தற்செயலாக செய்யப்படவில்லை
என்பதுவும் நிரூபிக்கப்பட்டுள்ளதால் மனுதாரரின் மனு
அனுமதிக்கத்தக்கது என்ற பிரசினைக்கு விடை காண்குறன்.”

16. Though the first defendant has been alleging that they have preferred an appeal challenging the orders passed in the contempt petition in I.A.No.149 of 2000, he has not elaborated anything further. The first defendant has nowhere whispered that the appeal has already been filed and the same is pending. In the absence of any appeal, as rightly contended by the learned Counsel for the plaintiff, the order passed in contempt petition has attained finality. In the present suit, the plaintiff, alleging the unlawful acts of the first defendant, claimed compensation for the loss of income suffered between the period 09.05.2000 and 06.06.2005, the compensation for mental agony and compensation for value of the articles seized. As already pointed out, the appellate Court has specifically observed that the first defendant has committed contempt of Court and that the same was not accidental, but done intentionally.



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17. The main contention of the plaintiff is that the trial Court has earlier passed exparte judgment and decree in O.S.No.119 of 2006 on 18.09.2008, whereunder the first defendant was directed to pay compensation amount of Rs.6,55,000/- to the plaintiff, but the trial Court, without considering the same, has again passed another judgment and decree dated 29.12.2009 granting compensation of Rs.95,000/- and that since the earlier judgment and decree was in force earlier, the second one is clearly hit by the doctrine of res-judicata.

18. At the outset, this Court is constrained to observe that the above contention is totally absurd. No doubt, it is evident from the record that since the defendants have remained ex-parte, ex-parte decree and judgment was passed on 18.09.2008 and that subsequently, ex-parte decree was set aside and the suit was restored to file and that after full trial, the impugned judgment and decree came to be passed on 29.12.2009. Since the earlier ex-parte judgment and decree were already set aside, the question of invoking the doctrine of res-judicata does not arise at all. Hence, the objection of the plaintiff in this regard is totally devoid of merits and the same is liable to be rejected.



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19. As already pointed out, the plaintiff has claimed loss of income for the period between 09.05.2000 and 06.06.2005 at Rs.5,05,000/-.

The second defendant – Electricity department has specifically admitted in the written statement as well as in the evidence that at the request made by the first defendant, the electricity service connection given to the plaintiff was disconnected on 06.05.2000 and that the first defendant has not taken any steps for reconnection or for new connection. As already pointed out, as of now, there is no electricity supply to the suit shop from 06.05.2000 and that thereby, the plaintiff could have suffered loss of income. Considering the above, the plaintiff could not have run the suit shop for want of electricity supply during night hours. As rightly observed by the learned trial Judge, the plaintiff has nowhere whispered as to when he commenced his business in the suit shop.

20. According to the plaintiff, he was earning Rs.200/- per day during non-seasonal period and used to earn Rs.350/- during seasonal period. Considering the nature of the shop run by the plaintiff and the disconnection of electricity supply, the learned trial Judge by referring to



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the evidence on record, has rightly quantified the loss of income at Rs. 1,000/-p.m. As already pointed out, the plaintiff has claimed loss of income for five years and the trial Court has also granted the same. But the learned Counsel for the first defendant would submit that the plaintiff is not entitled to claim loss of income for a period of exceeding three years and as such, the very claim made by the plaintiff is untenable. As rightly contended by the learned Counsel for the first defendant, the plaintiff has not chosen to produce the accounts maintained in the ordinary course of business. Though the plaintiff has alleged that he has produced Exs.A.84 to A.86 to prove the accounts of the suit shop, admittedly the same was not properly maintained and as such, no weightage can be attached to the said documents.

21. Admittedly, as already pointed out, the first defendant has not preferred any appeal challenging the judgment and decree passed in O.S.No.119 of 2006. In the absence of any appeal, as rightly contended by the learned Counsel for the plaintiff, the judgment including the findings have already attained the finality. Moreover, taking note of the fact that the trial Court has only awarded Rs.1,000/-per month, the objection now raised has lost its importance.



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22. Now turning to the mental agony, the plaintiff has claimed Rs.1,00,000/- as compensation. But the learned trial Judge, taking note of the facts and circumstances and the mental agony allegedly suffered, has rightly awarded Rs.25,000/- as compensation. As rightly observed by the learned trial Judge, despite the fact that the permanent injunction granted in favour of the plaintiff was in force, they have unlawfully evicted the plaintiff and that the mental agony or sufferings of the plaintiff can easily be inferred. The plaintiff has claimed a sum of Rs.50,000/-towards value of the articles and goods that were allegedly taken away by the first defendant. The plaintiff has listed out the articles ie., refrigerator, fan, table fan, tube lights, racks, table chairs and the eatable items such as biscuits, juice. The trial Court has specifically observed that the plaintiff has not produced materials or evidence to show what were the articles / goods that were available at that time and what were the articles / goods that were taken by the first defendant. As rightly pointed out by the learned trial Judge, the plaintiff has not produced any materials to show that the refrigerator, fans, table fans were available in the suit shop and also not furnished the value of the articles that were available in the suit shop. The learned trial Judge, taking note



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of the nature of the shop run by the plaintiff, has rightly awarded Rs. 10,000/- towards compensation for the loss caused to the plaintiff. Except the above, the plaintiff has not shown any other material or evidence sufficient enough to claim more compensation.

23. On considering the entire pleadings and the evidence available on record, this Court is of the clear view that the learned trial Judge has rightly awarded a sum of Rs.95,000/- as compensation and the same cannot said to be meagre or excessive and as such, there is nothing to interfere with the judgment and decree of the trial Court. Hence, this Court concludes that the Appeal Suit is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

24. In the result, the Appeal Suit is dismissed and the Judgment and Decree dated 29.12.2009, passed by the learned Additional District Judge (Fast Track Court No.I), Madurai, in O.S.No.119 of 2006 is confirmed. The parties are directed to bear their own costs.



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Index : Yes : No

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To

1. The Additional District Court (Fast Tract Court No.I), Madurai,

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

A.S.(MD)No.49 of 2014

03.03.2023