



S.A(MD)No.549 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A(MD)No.549 of 2017

R.A.R.Arumugasamy (Died)

2. A. Murugaraj

... Appellants

[2nd Appellant is brought on record as Legal Representative of the deceased of the Sole Appellant, vide Order of this Court, dated 20.12.2023]

Vs.

Hazarath Syed Sha Mian Sakkaf Saheb Khadiri Thaikkal,
Thanjavur,

Represented by its Senior Trustee

Janab Syed Moin Ahamed.

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Decree and Judgment, dated 01.11.2016 passed in A.S.No.17 of 2016 on the file of the II Additional District & Sessions Judge, Thanjavur, partly reversing the Judgment and Decree, dated 08.03.2016 passed in O.S.No.86 of 2012 on the file of the Additional Subordinate Court, Thanjavur.



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For Appellant : M/s.M.P.Senthil
For Respondents : Mr.P.Sesubalan Raja

JUDGMENT

This Second Appeal is filed against the Judgment and Decree, dated 01.11.2016 passed in A.S.No.17 of 2016 on the file of the II Additional District & Sessions Judge, Thanjavur, partly reversing the Judgment and Decree, dated 08.03.2016 passed in O.S.No.86 of 2012 on the file of the Additional Subordinate Court, Thanjavur.

2. The Plaintiff is the Appellant and the Defendant is the Respondent. For the sake of convenience, the parties shall be referred as Plaintiff and Defendant as per the ranking in the suit.

3. The suit was filed praying to permitting the plaintiff to deposit the agreed monthly rent before the Court. After full-fledged trial, the Trial Court has dismissed the suit stating that the Lease deed was entered between the parties on 08.04.2008 for a period of three years for monthly rent of Rs.11,000/-. After the



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said period of three years lease, the defendant had not extended the period of lease. Therefore, the Trial court held when there is no extention of lease between the parties and hence the prayer to deposit the lease amount for the subsequent period cannot be entertained. The same was confirmed by the Appellate Court. Aggrieved over the same, the present Second Appeal is filed.

4. The Learned counsel appearing for the respondent relied on the Judgment rendered in Civil Appeal No.7774 of 2022 @ SLP (C)No.16019 of 2020 in the case of Sumer Corporation Vs. Vijay Anant Gangan & Others, wherein it is stated that after eviction the tenant is liable to pay mesne profits or compensation for use of the premises. The relevant paragraph No.7.1. is extracted hereunder:

....

“ 7.1 As observed and held by this Court in the case of Atma Ram Properties (P) Limited (Supra), from the date of the decree of eviction, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have



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vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree.”

5. Further it is admitted by the Learned Counsels appearing for both the parties that for ejectment of the plaintiff, the defendant has already initiated a separate proceeding. And also, for damages a separate petition has been filed and the same is pending.

6. In such circumstances, any order or observation is passed after hearing the case of the merits, it will affect the rights of the parties in other pending proceedings. Therefore, this Court simply confirmed the Judgment and Decree, dated 01.11.2016 passed in A.S.No.17 of 2016 on the file of the II Additional District & Sessions Judge, Thanjavur, partly reversing the Judgment and Decree, dated 08.03.2016 passed in O.S.No.86 of 2012 on the file of the Additional Subordinate Court, Thanjavur, are hereby confirmed. The amount paid by the plaintiff shall be treated as part of the damages.



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7. With these observations, this Second Appeal is disposed of as stated supra. No Costs.

Index : Yes / No
Internet : Yes
KSA

21.12.2023

To

1. The II Additional District & Sessions Judge,
Thanjavur.
2. The Additional Subordinate Court,
Thanjavur.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J

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**Judgment made in
S.A(MD)No.549 of 2017**

21.12.2023