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Judgment dated 23.06.2023
in S.A.Nos.1223 and 1224 of 2000

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23.06.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.Nos.1223 and 1224 of 2000

1. R.Deivasigamani

2. R.Manoharan

3. R.Balakrishnan

.. Appellants in both the Second Appeals

Vs.

1. M.Chinnasamy

2. M.Rathinam

3. Karur Nagara Maruthuvar Sangam
rep. by its Treasurer M.Chinnasamy
52 Azhagu Nilayam, Dindigul Road,
Karur Town.

4. Palaniammal (died)
(vide Memo in USR .994/2014,
dated 21.02.2014, ordered,
vide order dated 21.02.2014
made in S.A.Nos.1223 and 1224 of 2000)

5. Marudambal @ Jayalakshmi

6. Vimala

7. Arunachalam

8. Shanthi

(Respondents 6 to 8 are brought on record
as LRs of the deceased fourth respondent,
vide - Court order dated 18.03.2022

Page No.1/18



Judgment dated 23.06.2023
in S.A.Nos.1223 and 1224 of 2000

made in C.M.P.(MD).Nos.1600 and 1601
of 2016 in S.A.No.1223 and 1224 of 2000)

.. Respondents in S.A.No.1223 of 2000

1. M/s.Karur Maruthuvar Sangam,
Rep. by its Trustee Mr.Maruthamuthu,
Karur.
2. Palani Ammal (died)
(Second respondent died - vide
Memo in USR No.991/2014,
dated 21.02.2014 - recorded
vide order dated 21.02.2014
made in S.A.Nos.1223 and 1224 of 2000)

3. Marudambal @ Jayalakshmi

4. Vimala

5. Arunachalam

6. Shanthi

(Respondents 4 to 6 are brought on
record as LRs of the deceased
second respondent, vide Court
Order dated 18.03.2022 made in
C.M.P.(MD).Nos.1600 and 1601 of
2016 in S.A.Nos.1223 and 1224 of 2000)

.. Respondents in S.A.No.1224 of 2000

Second Appeal No.1223 of 2000 filed under Section 100 of the Civil Procedure Code (i.e. CPC) against the judgment and decree dated 12.07.2000 made in A.S.No.152 of 1999 on the file of the Additional District Judge-cum-Chief Judicial Magistrate, Karur, reversing the judgment and decree dated 30.08.1995 and made in O.S.No.730 of 1992 on the file of the Principal District Munsif Court, Karur.

Page No.2/18



Judgment dated 23.06.2023
in S.A.Nos.1223 and 1224 of 2000

WEB COPY

Second Appeal No.1224 of 2000 filed under Section 100 of the Civil Procedure Code (i.e. CPC) against the judgment and decree dated 12.07.2000 made in A.S.No.153 of 1999 on the file of the Additional District Judge-cum-Chief Judicial Magistrate, Karur, reversing the judgment and decree dated 30.08.1995 and made in O.S.No.986 of 1992 on the file of the Principal District Munsif Court, Karur.

For appellants in both the Second Appeals: Mr.P.Thiyagarajan

For respondents - in S.A.No.1223 of 2000 :

Mr.K.C.Ramalingam and V.R.Veludoss
for RR-1 and 2

No appearance for RR-3 & 5

R-4 died - steps taken

No appearance for RR-6 & 7

R-8 - Tapal returned - No such addressee

in S.A.No.1224 of 2000:

Mr.K.C.Ramalingam and V.R.Veludoss for R-1

R-2 - died - Steps taken

R-3 - No appearance

RR-4 and 5 - No appearance

R-6 - tapal returned - no such addressee



WEB COPY



Judgment dated 23.06.2023
in S.A.Nos.1223 and 1224 of 2000

COMMON JUDGMENT

Since the issues involved for adjudication in both the Second Appeals are inter-linked with each other, they are disposed of by this common judgment.

2. The appellants in S.A.No.1223 of 2000 are the plaintiffs 4 to 6 in O.S.No.730 of 1992 on the file of the Principal District Munsif Court, Karur. They have filed the said suit in O.S.No.730 of 1992 for bare injunction against the defendants 1 to 3 (respondents 1 to 3 in S.A.No.1223 of 2000). The respondents 4 and 5 herein are the plaintiffs 2 and 3. The trial Court decreed the suit in O.S.No.730 of 1992. Challenging the same, the defendants 1 to 3 in O.S.No.730 of 1992 have filed First Appeal in Appeal Suit (i.e.) A.S.No.152 of 1999 before the District Court, Karur. The first appellate Court (lower appellate Court) made over the case to the Additional District Judge-cum-Chief Judicial Magistrate, Karur for disposal. The learned Additional District Judge, after hearing the arguments, allowed the First Appeal in A.S.No.152 of 1999 and dismissed the said suit in O.S.No.730 of 1992 filed by the appellants herein (plaintiffs 1 to 3). Challenging the judgment and decree passed by the lower appellate Court/first appellate Court, the plaintiffs 4 to 6 in the suit, who are respondents 4 to 6



Judgment dated 23.06.2023
in S.A.Nos.1223 and 1224 of 2000

WEB COPY

herein, have filed the present Second Appeal in S.A.No.1223 of 2000.

3. The first respondent herein in S.A.No.1224 of 2000 had filed the other suit in O.S.No.986 of 1992 on the file of the Principal District Munsif Court, Karur, for recovery of possession against the respondents 2 and 3 and the appellants 1 to 3 herein (defendants 4 to 6 in O.S.No.986 of 1992). The trial Court (Principal District Munsif Court, Karur) dismissed the said suit in O.S.No.986 of 1992, against which, the plaintiff has filed A.S.No.153 of 1999, which was allowed-in-part, modifying the judgment and decree of the trial Court, as against which, the defendants 4 to 6 have filed the present Second Appeal in S.A.No. 1224 of 2000.

4. Out of the above two suits, one suit (O.S.No.986 of 1992) is filed by the owner of the suit property(ies) for recovery of possession and the other suit (O.S.No.730 of 1992) is filed by the tenant for bare injunction. Hence, both the suits were tried together and joint trial was conducted, and common judgment has been passed by both the Courts below on merits.

5. The suit 'A' schedule property, measuring 1343 Sq.Ft., belongs to the Karur Nagara Maruthuvar Sangam, represented by its Trustee (for brevity,



Judgment dated 23.06.2023
in S.A.Nos.1223 and 1224 of 2000

'hereinafter referred to as 'Sangam'), and the Treasurer and Secretary of the Sangam are parties to this litigation.

6. The case of the plaintiffs in O.S.No.730 of 1992:

The sole plaintiff (Sellandi) died and her legal heirs being impleaded as parties in the said O.S.No.730 of 1992. On 10.05.1985, the first plaintiff (since deceased) (and her legal heirs impleaded before the trial Court) had entered into a lease agreement with the then office bearer of third defendant, namely V.Annamalai and took the A.schedule property on lease on a monthly rent of Rs. 100/- and the lease agreement was reduced into writing. As per the lease agreement, the plaintiff(s) have been in possession and enjoyment of the suit property(ies) as a tenant and there are no arrears of rent. During the year 1986, for the purpose of expanding the business, plaintiffs had to alter the superstructure. Hence, after getting due permission from the defendants, the plaintiff(s) had constructed a tiled shed on the Western end and put up asbestos roof construction in the front portion at her own cost. Further, the plaintiff(s) is/are in possession of both A-schedule and B-schedule properties. That being so, the defendants 1 and 2 attempted to interfere with the possession of the plaintiff(s) in the suit properties. Hence, the suit.



Judgment dated 23.06.2023
in S.A.Nos.1223 and 1224 of 2000

7. The case of the defendants in O.S.No.730 of 1992 :

The plaintiff(s) is/are using the suit properties for the purpose other than the purpose for which it is stipulated in the lease agreement. The plaintiff(s) is/are in arrears of rent and the plaintiff(s) had also obtained electric service connection for the suit properties without the consent of the third defendant-Sangam. The suit properties are required for own use and occupation of the defendants and they have sent a legal notice to the plaintiff(s). The plaintiff(s) sent false reply stating that they have spent a sum of Rs.25,000/- for construction of a building in the suit property(ies) and the plaintiffs are in arrears of rent and even after sending the notice, the plaintiffs failed to surrender the suit property(ies). Therefore, the defendants prayed for dismissal of the suit.

8. The trial Court has decreed the suit in O.S.No.730 of 1992, against which the defendant(s) had filed the First Appeal in A.S.No.153 of 1999, which was dismissed, against which, the plaintiffs 4 to 6 have preferred S.A.No.1223 of 2000.

9. While admitting S.A.No.1223 of 2000 on 31.08.2000, this Court has

Page No.7/18



Judgment dated 23.06.2023
in S.A.Nos.1223 and 1224 of 2000

WEB COPY

formulated the following substantial question of law:

"When there is no dispute with reference to the tenancy in question still is the learned Additional District Judge right in reversing the decree of the learned District Munsif ?"

10. The case of the plaintiffs in O.S.No.986 of 1992 in a nut-shell is as follows:

The plaintiff-Sangam purchased the suit property(ies) for a valuable consideration under the sale deed and the first defendant (since dead) was a lessee in the suit property(ies). The first defendant took possession of the suit property(ies) and the lease agreement was entered into between the said Sangam and the first defendant (since deceased). The defendant(s) were using the suit property(ies) for the purpose other than those stipulated in the lease agreement. The defendant(s) are in arrears of rent. The suit property(ies) is/are required for the plaintiff-Sangam and hence, the plaintiff(s) issued a legal notice to the defendant(s), for which the defendants sent a false reply contending that they had spent Rs.25,000/- for construction of the building in the suit property(ies). As the defendants failed to surrender the possession of the suit property(ies) to the plaintiff-Sangam, and as there were arrears of lease amount, the suit in O.S.No.986 of 1992 was filed by the plaintiff(s) to pay the

Page No.8/18



Judgment dated 23.06.2023
in S.A.Nos.1223 and 1224 of 2000

WEB COPY

damages for unlawful possession and for recovery of possession.

11. The case of the defendant(s) in O.S.No.986 of 1992, shorn of unnecessary averments, is as follows:

The defendant(s) had taken the suit property(ies) on lease from the plaintiff-Sangam and after taking possession of the property(ies), the defendant(s) has/have put up superstructures on their own cost and after obtaining possession of the suit property(ies) in the year 1986 for the purpose of expanding the business of the defendant(s), they altered the superstructure after getting due permission from the plaintiff-Sangam, and constructed the tiled shed on the Western end and put up asbestos roof construction in the front portion at their own cost. The superstructures absolutely belongs to the defendant(s) and service connection was also obtained by them. During the month of September 1991, the office bearers of the plaintiff-Sangam refused to receive the rent and hence, the defendant(s) had sent the rent by Money Order, which was returned and subsequently, the defendant(s) was/were depositing the rent into Court. The plaintiff(s) have come forward with this suit only due to the developments then made by the defendant(s) and the requirements alleged by the plaintiff-Sangam are not bona-fide. The notice said to have been sent by the plaintiff terminating the tenancy is not in accordance with Section 106 of the



Judgment dated 23.06.2023
in S.A.Nos.1223 and 1224 of 2000

Transfer of Property Act, and hence, there is no question of termination of tenancy and the defendant need not surrender possession on the basis of the notice. The plaintiff(s) is/are not entitled to ask for any damages from the defendant, since the defendant(s) have taken the vacant site alone on lease and they are paying the rents without any default till date. The defendant(s) had constructed the present superstructure after removing the dilapidated construction which was in existence at the time of taking possession of the property(ies) in the year 1985 from the Sangam at the cost of more than Rs. 25,000/- and as such, the plaintiff(s) is/are having no right to evict the defendant(s). There is no cause of action to file the present suit and the suit is liable to be dismissed.

12. The trial Court has dismissed the suit in O.S.No.986 of 1992, against which the plaintiff(s) had filed the First Appeal in A.S.No.153 of 1999, which was allowed in part, against which, the defendants 4 to 6 have preferred S.A.No. 1224 of 2000.

13. While admitting S.A.No.1224 of 2000 on 31.08.2000, this Court has formulated the following substantial question of law:

"When the alleged President of the Sangam



WEB COPY



Judgment dated 23.06.2023
in S.A.Nos.1223 and 1224 of 2000

was examined as P.W.1 has admitted in evidence that he has no documents to show that he is the President of the Sangam and the documents produced through P.W.2 was filed after the examination of P.W.1 is the learned District Judge right in accepting the same when the document produced by the tenant as B-1 do not refer the name of Marudamuthu ?"

14. Learned counsel for the appellants submitted that the respondents have not sent any statutory notice under Section 106 of the Transfer of Property Act. He further submitted that the respondents have not assigned any reason for own use and occupation. The appellants have obtained permission from the respondents for putting up superstructure and therefore, they cannot say that it is unauthorised construction. Though the trial Court rightly appreciated the evidence and considering the long possession of the appellants, decreed the suit filed by them and dismissed the suit filed by the respondents, the first appellate Court failed to consider the oral and documentary evidence. The defendants in O.S.No.986 of 1992 have not produced any authenticated documents authorising them to file the suit for and on behalf of the Sangam. Therefore, the first appellate Court failed to consider the said fact and the respondents have not



Judgment dated 23.06.2023
in S.A.Nos.1223 and 1224 of 2000

proved that there are arrears of rent and that they are wilful defaulters. Under those circumstances, the judgment of the first appellate Court is liable to be set aside and the judgment of the trial Court is to be confirmed and the suit filed by the appellants has to be decreed and the suit filed by the respondents have to be dismissed.

15. Learned counsel for the respondents submitted that, admittedly, the appellants are tenants in the suit properties. Though originally they have taken the suit properties on lease, the said lease was reduced into writing and originally, rent was fixed as Rs.100. The appellants have not paid the rent properly and even without obtaining any permission or authorisation, they have put up construction and used the building other than the purpose for which they have taken it on lease. The learned counsel further submitted that Section 106 of the Transfer of Property Act is not applicable to the present case. The lease was only for specific period. Even the unused occupation need not be proved by the respondents and also wilful default need not be proved and once the lease is for stipulated time, on expiry of time, the appellants are liable to vacate and hand over the possession. Therefore, there is no statutory notice required and it is not a lease for month or years together or subject to renewal. Subsequently, the lease was also not extended. The trial Court failed to consider



Judgment dated 23.06.2023
in S.A.Nos.1223 and 1224 of 2000

the factual and legal proposition and decreed the suit filed by the appellants and granted bare injunction, whereas, the suit filed by the respondents for recovery of possession was dismissed. However, the lower appellate Court, considering the oral and documentary evidence, allowed the appeals by setting aside the judgment of the trial Court and hence, there is no merit in the present Second Appeals.

16. Heard both sides and perused the materials available on record.

17. Admittedly, the suit properties belong to the third respondent-Sangam. The suit properties are vacant site and they were purchased in the name of the third respondent-Sangam. The appellants entered into lease agreement with the respondent(s) with the title deed of the respondents. Learned counsel for the appellants fairly conceded that the properties belong to the said Sangam. The third respondent is the Sangam and the respondents 1 and 2 were the office bearers. Though they have taken a ground that the appellants have no locus-standi to file the suit and it is not proved that they are Trustees, though initially they have filed the suit, during the pendency of the trial, the lease agreement was also marked as an exhibit. The trial Court has not considered the same, but the lower appellate Court has considered it while

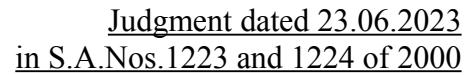


Judgment dated 23.06.2023
in S.A.Nos.1223 and 1224 of 2000

allowing the appeals. The fact remains that even the appellants admitted that the suit properties belong to the third respondent/Sangam and the respondents 1 and 2 were the office bearers of the Sangam, namely the Treasurer and Secretary. At the time of examination, they have filed the documents also, and Ex.P-1 clearly shows that they have got locus-standi to file the suit.

18. Further, it is admitted that the appellants are the tenants and the suit properties were originally vacant site and the measurement is about 1343 Sq.Ft.. They have entered into lease agreement on 10.05.1985. Originally, the rent was fixed and there is no dispute in that regard.

19. Further, the appellants were in possession of the properties and they have put up superstructure, namely the tiled portion and constructed the shed and also obtained electricity connection. Though the plaintiffs have stated that only with the permission and authorisation of the Sangam, they have put up the superstructure and also obtained electricity connection, the respondents have stoutly denied the same and the appellants have not proved that, before putting up the superstructure, they had obtained permission in writing. When the lease deed is in writing and the specific condition had been stipulated therein, then it is for the appellants to obtain the written permission or



20. Admittedly, the lease was for only 5 years and the lease agreement is dated 10.05.1985. The suits were filed in the year 1992 and the suits were filed beyond the period of lease. Since the lease is only for specific period, no statutory notice under Section 106 of the said Act is necessary. Admittedly, in this case, even at the time of filing the suit, the lease period expired. There is no express authorisation or permission for putting up superstructure or altering the suit properties or for getting any electricity connection.

21. A perusal of the lease agreement shows that it is only for the purpose of letting out the property(ies) on rent, and the respondent(s) had specifically stated that the appellant(s) is/are using the suit property(ies) for the purpose other than for which it was stipulated in the lease agreement. Therefore, there is violation of the conditions of the lease agreement. Viewed from any angle, there is landlord-tenancy relationship between the parties. There is no dispute between them on that score. Even though the appellants are disputing the locus-standi of the respondents in filing the suit, the fact remains that the suit properties belong to the third respondent-Sangam and admittedly,



Judgment dated 23.06.2023
in S.A.Nos.1223 and 1224 of 2000

both the first and second respondents are the office bearers and the appellants entered into lease agreement with the office bearers of the third respondent/Sangam.

22. When once the appellants admit that they are tenants and the respondents are landlords, and when there is jural relationship between them, they cannot challenge the locus-standing of the plaintiff(s) in filing the suit(s).

23. Therefore, in the above circumstances, when once the purpose for which the lease was mentioned in the lease agreement, stipulates the period of lease, the appellants cannot dispute the same and they cannot take contra stand that it was not written in the lease agreement. The appellants are also estopped from raising such plea, and since the lease agreement was for stipulated period and also for the specific purpose, the Second Appeals are not maintainable. Though the trial Court has not properly appreciated the oral and documentary evidence, the lower appellate Court rightly appreciated the same.

24. Thus, for the foregoing reasons, there are no merits in both the Second Appeals. The substantial questions of law formulated by this Court are answered in the above terms. Both the Second Appeals are accordingly



Judgment dated 23.06.2023
in S.A.Nos.1223 and 1224 of 2000

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dismissed. There shall be no order as to costs in both the Second Appeals.

25. One month's time is granted from the date of receipt of a copy of this judgment, for the appellant(s) to vacate and hand over the vacant possession of the suit property(ies) to the plaintiff-Sangam.

23.06.2023

Index: Yes/no

Speaking Order: Yes/no

Neutral Citation: Yes/no

cs/skn

To

1. Additional District Judge-cum-Chief Judicial Magistrate, Karur.
2. The Principal District Munsif, Karur.
3. The Section Officer, V.R. Section, Madurai Bench of Madras High Court.

Page No.17/18



WEB COPY



Judgment dated 23.06.2023
in S.A.Nos.1223 and 1224 of 2000

P. VELMURUGAN, J

cs/skn

S.A.Nos.1223 and 1224 of 2000

23.06.2023

Page No.18/18