



S.A.No.1247 of 2000

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.1247 of 2000

1.Ponnusami (Died)

2.Chinnathangam(Died)

3.Gunasundari

4.Sakthivel

5.Veeramuthu

6.V.Sivakumar

...Plaintiffs 2 to 7/Respondents/Appellants

7.Krishnaveni

8.Chandra

9.Thenmozhi

10.Prabakaran

11.Rukmani

12.Rajeswari

... Appellants/LR's of the deceased first
appellant

(*Appellants 7 to 12 are brought on record as the LR's of the deceased first appellant vide order dated 10.08.2016 made in C.M.P(MD).Nos.5859, 5860, 5862 of 2016 in S.A.No.1247 of 2000*)



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(*Appellants 3 to 6 already on record are recorded as LR's of the deceased second appellant vide order dated 10.08.2016 made in C.M.P(MD).No.5861 of 2016 in S.A.No.1247 of 2000*)

-Vs-

1.Ponnuthai

2.S.P.Balu (Died)

...Defendants/Appellants/Respondents

3.Sekar

4.Vijayarani

5.Dhanasekaran

6.Uma Rani

7.Subbulakshmi

8.Latha Rani

... Respondents/LR's of the deceased 2nd
respondent

(*RR3 to 8 are brought on record as LR of the deceased second respondent vide order dated 24.09.2003 made in C.M.P.No.8165 of 2002*)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree dated 08.02.2000 passed in A.S.No.45 of 1992 on the file of the Principal District Court, Dindigul, reversing the judgment and decree dated 08.10.1991 passed in O.S.No.212 of 1982 on the file of the Additional District Munsif, Dindigul.



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For Appellants : Mr.M.Saravanan

For Respondents : No appearance

JUDGMENT

The plaintiffs 2 to 7 are the appellants 1 to 6 herein and the defendants are the respondents 1 and 2 in the suit.

2. The appellants 1 to 6 have filed a suit in O.S.No.212 of 1982, on the file of the Additional District Munsif, Dindigul, for recovery of possession and arrears of rent. The Trial Court, after conducting the trial, decreed the suit. Challenging the said judgment, the respondents 1 and 2/defendants have filed an appeal before the Principal District Court, Dindigul in A.S.No.45 of 1992. The First Appellate Court, after hearing the appeal and considering the facts, has allowed the appeal and set aside the judgment and decree passed by the trial Court. Challenging the said judgment and decree passed by the Appellate Court, the appellants have filed the present second appeal before this Court.

3. It is the case of the plaintiffs that the suit property originally belonged to the first defendant. She sold the said property to the first plaintiff on 31.01.1980 under a registered sale deed for a sale consideration of Rs.15,000/-.



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After selling the property, the respondents approached the first plaintiff to continue as tenants in the suit property for a sum of Rs.375/- per month as rent and they have also entered into rental agreement. They agreed to pay the above said rent on or before 7th of every month. They have paid the rent in three installments on 31.12.1980, 19.05.1980 and 18.08.1980 as Rs.375/-, Rs.800/- and Rs.400. Totally, they have paid a sum of Rs.1575/- as rent. Thereafter, they did not pay the rent and from 31.01.1980 to 31.01.1982, the arrears of rent came to Rs.9000/-. Since they have already paid a sum of Rs.1575/-, the arrears of rent was Rs.7425/-. Though the defendants were asked to pay the arrears of rent, they did not pay the rent. Therefore, the plaintiffs have cancelled the rental agreement and made a request to vacate the house and hand over it to them. However, neither the respondents paid the amount nor vacated the house. Therefore, the appellants sent a legal notice dated 01.12.1981 and the same was received by the respondents. However, the respondents have sent a false reply and in that reply, it has been stated that though they have admitted the rental agreement, the same was executed for loan and a sum of Rs.5625/- has been paid as interest for 15 months and thereafter, a sum of Rs.10,000/- was paid on 05.10.1981 for principal amount which is false. Since they have sent a false reply, the plaintiffs have filed a suit for



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recovery of arrears of rent and for possession.

4. The case of the respondents/defendants is that they never sold the property and they have approached the plaintiffs for borrowal of a sum of Rs.15,000/- as loan. At that time, the plaintiffs stated that if they have to give the said amount, the defendants have to pay interest at the rate of Rs.2.50/- per Rs. 100/- per month and execute the sale deed with regard to the suit property. Since at the instance of the plaintiffs, the defendants have executed the sale deed and re-sale agreement, it does not mean that they have sold the property. When the defendants approached the plaintiffs to reconvey the property, they have refused to reconvey and filed the suit as if the first defendant has sold the property to the first plaintiff, which is false.

5. Considering the above pleadings raised before the trial Court, on the side of the plaintiffs, two witnesses were examined and seven documents were marked. On the side of the defendants, five witnesses were examined and eight documents were marked. Based on the pleadings, oral and documentary evidence, the trial Court granted the decree in favour of the plaintiffs.



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6. The learned counsel appearing for the appellants would submit that the respondents have admitted the sale deed and the recitals of the sale deed are very clear that the suit property was sold for a sale consideration of Rs.15,000/-. However, the respondents have stated that there was a re-sale agreement but in Ex.A2, it has not been stated that there is re-sale agreement. Further, the respondents have agreed to pay the rent and Ex.B5 and Ex.B6 are the receipts. After filing the suit by the appellants, the respondents filed Ex.B.7 for depositing the arrears of rent. Therefore, it is clear that after selling the property, they agreed to continue in possession as tenants and also paid the rent for a sum of Rs.1,575/-. Subsequently, they did not pay the rent. Hence, they were asked to pay the rent. However, they did not pay the arrears of amount, though they have admitted the rental agreement. But the said rental agreement is not registered. However, the trial Court has rightly proceeded that though it is not a valid document, the defendants were in possession of the property as tenants and agreed to pay the rent. Therefore, there was a landlord and the tenant relationship and the suit was decreed. As against the judgment and decree passed by the trial Court, the respondents/defendants have preferred an appeal before the First Appellate Court. However, the First Appellate Court, without considering the above facts, allowed



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the appeal. Hence, the Second Appeal has been filed.

7. When the matter came up for hearing on 03.04.2023, there is no representation of the respondents. In order to give an opportunity, the matter was adjourned today. Today also, there is no representation for the respondents. Therefore, the matter is proceeded with in the absence of the respondents.

8. Heard the learned counsel appearing for the appellants and perused all the pleadings of both parties.

9. While admitting this second appeal, this Court has formulated the following substantial questions of law:

(i) Whether the finding of the lower appellate court that the relationship between the deceased plaintiff and the defendants is only that of a Creditor and Debtor and not that of a landlord and tenant is correct?

(ii) Is not the respondents estopped from denying the relationship of landlord and tenant under Section 114 of the Indian Evidence Act especially when the defendants executed the Rent Deed in favour of the deceased plaintiff?



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10. It is the specific case of the appellants that the suit property originally belonged to the first defendant and she sold the property to the first plaintiff for a sale consideration of Rs.15,000/- under a registered sale deed dated 31.01.1980. Since the respondents agreed to continue in possession as tenants and agreed to pay the monthly rent of Rs.375/-, the plaintiffs were waiting for two years and there were arrears of rent from 31.01.1980 to 31.01.1982. Hence, the appellants sent a legal notice to the respondents and the respondents gave a reply. Since the appellants were not satisfied with the reply, they filed the suit in O.S.No.212 of 1982 for recovery of possession and arrears of rent. The trial Court accepted the case of the appellants and after receiving the summons, the respondents wanted to deposit the arrears of rent. Ex.B5 and Ex.B6 are the receipts of payment of rent and Ex.B7 is the copy of the lodgment schedule filed by the respondents before the trial Court. Aggrieved by the judgment and decree passed by the trial Court, the respondents preferred an appeal in A.S.No.45 of 1992 and the First Appellate Court allowed the appeal.

11. This Court has to consider the fact as to whether there was a landlord and tenant relationship. Admittedly, there was a sale and according to the



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appellants, the first defendant has sold the property to the first plaintiff, however, the defendants were in possession of the property as tenants. They have also paid the rent for sometime. As far as the defendants are concerned, they only borrowed the money as loan and at the instance of the appellants, they executed the sale deed and rental agreement and they never sold the property. On the same day, there was oral agreement for re-conveyance.

12. A perusal of the records would show that Ex.B5 and Ex.B6 are the proof for payment of rents and on receipt of summons, the respondents filed the lodgment schedule before the trial Court for depositing the arrears of rent and however, it is not stated any deposit of borrowal money or interest. Therefore, a combined reading of Ex.B5 to Ex.B7 would clearly show that there were arrears of rent and even Ex.B2 is the rental agreement. However, it is an unregistered document. If any rental agreement is more than 11 months, it should be registered otherwise it is not admissible in evidence. However, it could be used for collateral purposes. Though the defence taken by the respondents is that there was only loan transaction and they repaid a sum of Rs.10,000/-, if at all the loan amount has been repaid, they should have made entry in the sale deed and they have not made



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any endorsement. Even assuming that the respondents are ready to pay the said money, they should have filed a suit for specific performance as per the re-conveyance agreement, Ex.B2. But they have not chosen to do so. In the present case, Ex.A1 is the sale deed for a sum of Rs.15,000/- and subsequently, there was a rental agreement. Soon after receiving the summons, the respondents wanted to deposit the arrears of rent which clearly shows that the respondents have not filed any counter claim for declaration. Therefore, the trial Court has rightly held that there was a landlord and tenant relationship and the suit was decreed. However, the First Appellate Court erroneously reappreciated the evidence and reversed the judgment and decree passed by the trial Court which warrants interference of this Court. Since the appellants have proved that the first defendant has sold the property to the first plaintiff vide Ex.A1 that was not challenged by way of filing of counter claim by the respondents herein and simply, the respondents have denied the same, it clearly shows that the respondents were in possession of the property as tenants and none of the documents shows that the respondents borrowed money and the same was repaid and the sale deed was sham and nominal. Therefore, this Court finds that there was a landlord and tenant relationship. Accordingly, the substantial question of



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law No.1 is answered accordingly.

12. As far as the second substantial question of law is concerned, once it is established that the relationship between the appellants and the respondents is a landlord and tenant, they are estopped to deny the relationship of landlord and tenant under Section 116 of the Indian Evidence Act. Accordingly, the substantial question of law No.2 is also answered.

13. Therefore, the judgment and decree of the Principal District Court, Dindigul in A.S.No.45 of 1992 dated 08.02.2000 is set aside and the judgment and decree of the Additional District Munsif, Dindigul in O.S.No.212 of 1982 dated 08.10.1991 is restored.

14. In the result, this Second Appeal is allowed. No costs.

05.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
SSB

11/13



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To

1. Principal District Court, Dindigul
2. Additional District Munsif, Dindigul.
3. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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