



S.A.No.160 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.160 of 2024

Neela

... Appellant

Vs.

C.Thamotharan

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 04.09.2023 in A.S.No.2 of 2023 on the file of the Sub Court, Tambaram, confirming the judgment and decree dated 29.04.2022 in O.S.No.74 of 2017 on the file of the District Munsif Court, Tambaram.

For appellant : Mr.D.Panchatsaram

For respondent : Mr.C.Sugumar

JUDGMENT

The defendant, who has unsuccessfully contested the suit in



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O.S.No.74 of 2017 in both the Courts below, is the appellant before this Court.

2. The facts of the case which have culminated in the filing of this second appeal are hereinbelow set out and the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff has filed the above referred suit for recovery of possession and costs. It is the case of the plaintiff that he is the absolute owner of the suit property which he had purchased from one K.Gabriel under a registered sale deed dated 13.11.2015. The plaintiff had paid a total sale consideration of Rs.12,65,000/- to K.Gabriel who is none else than the husband of the defendant herein. It is the case of the plaintiff that originally the property belonged to the defendant as well as her husband K.Gabriel, they having purchased the property jointly under a registered sale deed dated 28.01.1998.



2.2. Thereafter, it appears that the defendant had released her share in the suit property in favour of her husband under a registered release deed dated 16.09.2015. K.Gabriel who become the absolute owner of the suit property had thereafter, sold the property to the plaintiff. The plaintiff, after purchasing the property, has got the revenue records, electricity connection, tax assessment, etc., transferred to his name.

2.3. After the sale, the defendant's husband had requested the plaintiff's permission to stay in the suit property for six months on temporary basis as he was proceeding to Singapore. He offered to pay rent for the stay. The plaintiff also agreed to the same and a rental agreement was entered into between them on 14.11.2015. The defendant's husband agreed to pay a monthly rent of Rs.6,000/- excluding electricity charges. The tenancy was for a period of six months with a condition that there would be no further extension. The defendant's husband and the defendant had agreed that they would not request for any extension of time and that they would hand over the



possession within six months.

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2.4. The plaintiff would submit that for the months of November 2015, December 2015 and January 2016, the defendant had failed to pay the rents. He had therefore, gone to the suit premises to collect the rent which was a sum of Rs.15,000/-. The defendant had paid Rs.12,000/- and promised to pay the balance of Rs.3,000/- due towards the rent in the month of March 2016 ie., the next month. The plaintiff had also received the rental arrears for December 2015 and January 2016.

2.5. On 20.02.2016, the said K.Gabriel passed away, at which point in time, the defendant had requested a hand loan from the plaintiff. The plaintiff helped the defendant by giving a hand loan of Rs.24,000/- for performing her husband's funeral rites. The plaintiff submits that the defendant who had agreed to vacate the suit property by 14th April 2016 had not kept up her commitment. She had neither vacated the premises nor paid the rent amounts due from the month February 2016 to April 2016.



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2.6. Hence once again, the plaintiff had approached the defendant to pay the rental amounts for the months of February 2016 to April 2016 and reminded her about her promise to vacate the premises. The defendant assured the plaintiff that she would vacate the premises within a month. However, the undertaking was observed a breach. Owing to the fear of disconnection of electricity, the plaintiff had paid the electricity bill till August 2016. Once again, the defendant fell into arrears of rent from the month of August 2016. Therefore, the plaintiff has come forward with the present suit for the reliefs claimed *supra*. The plaintiff had claimed a total sum of Rs.81,000/- as follows:

<i>Rental agreement signed between the plaintiff and the defendant on 14.11.2015.</i>		
Rental amount November 2015		3,000
Rental amount for December 2015		6,000
Rental amount for January 2016 to December 2016		72,000
Rental amount for January 2017 and February 2017		12,000
Total rental amount payable		93,000
<i>Less</i>		
Rent already paid	12,000	
		12,000
Balance amount payable		81,000



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2.7. The defendant had resisted the above suit *inter alia* denying the contentions in the plaint and submitted that the defendant is the absolute owner of the suit property. She had denied the execution of the release deed and the sale deed executed by her husband in favour of the plaintiff. The defendant had also denied the rental agreement and the defendant sought to have the suit dismissed with exemplary costs.

TRIAL COURT:

3. The Trial Court *viz.*, District Munsif Court, Tambaram, had framed the following issues.

“(i) Whether the plaintiff is the landlord of the suit property?”

“(ii) Whether the plaintiff is entitled to quit and deliver the vacant possession of the suit property as prayed for?”

“(iii) To what other relief the parties are entitled”



for?”

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The above issue no.(i) was recasted as follows:

“(i)Whether the plaintiff has valid title over the suit property?”

4. The plaintiff had examined himself as P.W.1 and marked Exs.A1 to A15. The defendant had examined herself as D.W.1 and marked Exs.B1 – the Police complaint dated 23.04.2018.

5. The learned Judge, on considering the evidence on record, held that the plaintiff had established his right and title over the suit property and the defendant had failed to adduce her evidence. Once the Court had come to the conclusion that the plaintiff is the owner of the property, then, the defendant is bound to vacate and deliver the possession of the property to the plaintiff. Consequently, the learned Judge decreed the suit.



LOWER APPELLATE COURT:

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6. Challenging the same, the defendant had filed an appeal in A.S.No.2 of 2023 on the file of the Sub Court, Tambaram.

7. The learned Judge after perusing the evidence on record also held that the plaintiff is the absolute owner of the property and entitled to possession. The learned Lower Appellate Judge has also found that the defendant had set up a new case in the course of her evidence regarding the mortgage which she and her husband are said to have executed in favour of the plaintiff. Ultimately, the learned Judge dismissed the appeal.

8. Aggrieved by the same, the defendant is before this Court. The learned counsel for the respondent who had appeared in the condone delay stage and who had been directed to appear at the time of admission was present and reported the Court that the possession was taken in the said suit property.



9. Heard the learned counsel on either side and perused the materials available on record.

DISCUSSION:

10. The defendant's original argument was that she had not executed the release deed in her husband's favour and the sale deed which was executed by her husband in favour of the plaintiff was therefore, null and void, since the release deed was itself not correct the sale to the plaintiff is invalid. This is the stand which was taken by her in her written statement. However, when adducing oral evidence, the defendant would set up a plea of mortgage which has been rightly rejected the lower appellate Court.

11. Once the title to the property has been established and the plaintiff has proved his contention that the defendant had been put in possession under a rental agreement – Ex.A10 and that the rental receipts would show that the defendant had stopped payment, the plaintiff is entitled to recover the possession. Further, the defendant is setting up one case after the other to squat on the property.



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12. Both the Courts below have rightly held so. I see no reason to interfere with the findings of the Courts below and further, no substantial question of law has been made out by the appellant.

In fine, this second appeal stands dismissed. Consequently, connected C.M.P. stands closed. No costs.

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Index : Yes/No
Speaking order/non-speaking order
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To

1. The Subordinate Judge, Tambaram.
2. The District Munsif, Tambaram.
3. The Section Officer, V.R. Section, High Court, Madras.



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P.T.ASHA, J.,

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