



S.A. No.1200 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No.1200 of 2009

and

M.P.No. 1 of 2009

Adhilakshmi Ammal (died)

1. Emarose,
D/o. Govindasamy

2. Raja,
S/o. Govindasamy

3. Mohan,
S/o. Govindasamy

... Appellants

Vs.

Pazhaverkadu Venkatasami Gramani
Trust,
by its Trustee S. Venkatraman

.. Respondent

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 24.06.2009 passed in A.S.No.71 of 2004 on the file of Addl. District Judge, Fast Track Court



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No.III, Tiruvallur confirming judgment and decree dated 27.04.2004 passed in O.S.No.639 of 1996 on the file of District Munsif Court, Tiruvallur.

For Appellants : Mr. I.Kowser Nissan

For Respondent : Mr.C.Uma Shankar

JUDGMENT

The appellants, who are the defendants in the suit in O.S. No. 639 of 1996, against whom, the respondent/plaintiff herein obtained a decree of eviction from the suit premises with arrears of rent. Challenging the same, the defendants preferred an appeal in A.S.No. 71 of 2004, wherein the findings of trial judge was confirmed. Challenging the concurrent findings of the courts, the defendants preferred this Second Appeal.

2. The learned counsel for appellants would submit that there was no arrears in payment of rent. But, the courts below failed to appreciate the said fact and erroneously ordered for eviction, which needs interference of this court. Accordingly, he prayed to set aside the findings of courts below.



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3. Considering the facts and circumstances, this Second Appeal is admitted on the following question of law :-

(a) Whether the lower appellate court erred in not allowing the appeal?

(b) Whether the judgment and decree of the courts below are not in accordance with law having failed to properly appreciate the oral and documentary evidence?

(c) Whether the courts below are right in ordering eviction without going into the aspect of termination of tenancy?

4. Admittedly, the fact reveals that the appellant/defendants are the tenants in the suit premises. Originally, the 1st defendant's husband Govindasamy was a tenant under the plaintiff and paid a rent of Rs.10/- per month. As there was a default in payment of rent, already the plaintiff has initiated R.C.O.P. proceedings and the same was dismissed as if it was not maintainable. Thereafter, the present suit was filed for eviction.



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The contention of defendants is that they are in possession of suit premises as a tenant for more than 55 years and paying rent of Rs.10/- regularly and there is no default in payment of rent.

5. Before the trial court, both parties have adduced their evidence. Already the plaintiff issued a notice and the same was replied by the defendants stating that they have paid the rent regularly, but they have not furnished any receipts for the same before the trial court. Therefore, on observing all those facts, the trial court granted the relief in favour of plaintiff. However, now the building is in a dilapidated condition. Against which, the defendants preferred an appeal and the first appellate judge on analysing facts and evidence, dismissed the appeal suit and confirmed the findings of trial judge. Challenging the same, the defendants preferred this Second Appeal.

6. Today, when the matter taken up for hearing, learned counsel for respondent/plaintiff would submit that there is an arrears of rent, but it was not paid till date and the same is also not in dispute, however they



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have not produced any receipt to show that they have paid the rent before the suit and after the suit, thereby the appellants/defendants committed willful default in payment of rent. Admittedly, his property is in Tiruvallur Town and a meagre rent of Rs.10/- also has not been paid by the defendants. Therefore, both the courts below rightly granted relief of eviction in favour of plaintiff, which needs no interference. Accordingly, this Second Appeal is dismissed. The defendants are directed to vacate the premises within a period of 10 months from the date of receipt of copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp

To

The Addl. District Judge-Fast Track Court No.III,
Tiruvallur.



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T.V.THAMILSELVI, J.

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Pre-delivery judgment in
S.A. No.1200 of 2009

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