



WEB COPY



S.A. No. 1082 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04-12-2024**

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

S.A.No. 1082 of 2007

and

M.P.No.1 of 2014 & C.M.P.No.17319 of 2017

1. S.Suresh

2. S.Mohan Kumar

.. Appellants

Vs

The Executive Officer,
Mohanur Town Panchayat.

... Respondent

Prayer : Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 31.08.2007 passed in A.S.No.86 of 2005 on the file of Subordinate Judge, Namakkal reversing the judgment and decree dated 22.12.2004 made in O.S.No.231 of 2003 on the file the Principal District Munsif Court, Namakkal.

For Appellants : Mr.N.Damodaran

For Respondent : Mr.S.Silambanan,
Addl. Advocate General
assisted by Mrs.R.Anitha,
Special Govt. Pleader &
Mr.M.Babu Barveez for R1



S.A. No. 1082 of 2007

WEB COPY

JUDGMENT

The appellants, who are the plaintiffs have filed the suit in O.S.No.231 of 2003 and challenging the reversal findings of the courts below rendered in A.S.No.86 of 2005 on the file of Subordinate Judge, Namakkal arising out of trial court findings in O.S.No.231 of 2003 on the file of Principal District Munsif Court, Namakkal, this Second Appeal was preferred by them.

2. The learned Addl. Advocate General appearing for respondent would submit that the first appeal was already dismissed on 31.08.2007 confirming the findings of the trial court. Therefore, all the appellants/plaintiffs are deemed to be encroachers. All the shops belonging to panchayat were auctioned through a tender process in the year 2001, wherein the appellants have participated in the auction and secured shops on lease, through which the appellants were initially inducted as tenants . The successful bidders acquired the lease of 22 shops and those tenants are the



S.A. No. 1082 of 2007

appellants herein. He would further submit that after the expiry of lease period, the 1st respondent Municipality initiated steps to take over the shops and as of now, they have failed to pay the rent arrears, which is amounting to a total sum of Rs.3,80,40,887/-. Aggrieved over the same, they have approached the court and filed a suit in the year of 2003, but as on date, no rent has been paid by the appellants. The trial court erroneously granted an order of permanent injunction in favour of plaintiffs. Challenging the said findings, the respondent herein preferred an appeal suit in A.S.No.86 of 2005, wherein the first appellate judge independently analysed the facts and evidence on record and finally dismissed the same by setting aside the findings of trial court with respect to the order of permanent injunction holding that all the appellants/plaintiffs are deemed to be encroachers. Challenging the said findings, the appellants/plaintiffs have preferred this Second Appeal.

3. Today when the matter taken up for hearing, learned counsel for appellants would submit that till date, fair rent was not fixed. Hence, they are not able to pay the rent.



S.A. No. 1082 of 2007

WEB COPY

4. The learned Addl. Advocate General appearing for respondent would submit that as of now, a sum of Rs.3,80,40,887/- is due to be paid by the appellants and owing to the unavailability of funds, they are not able to pay the salary of its employees. Furthermore, even today, the rent was not paid by the appellants.

5. Heard and considered rival submissions made by learned counsel for appellant as well as learned Addl. Advocate General appearing for respondent and perused the materials available on record.

6. Considering the facts and circumstances as well as considering submissions of both sides, lease period was expired long back, appellants are deemed as encroachers and considering huge pendency of rent arrears, enjoyed suit shops all these years without remitting even admitted rent in time, they are not entitled to proceed with this Second Appeal. The first appellate court rightly appreciated the facts, which needs no interference. Accordingly, this Second Appeal is dismissed as no merit and the findings



S.A. No. 1082 of 2007

rendered in A.S.No.86 of 2005 on the file of Subordinate Judge, Namakkal

WEB COPY

is confirmed and the Suit is dismissed. Time is granted for the period of twelve weeks to vacate the premises from the date of receipt of copy of this judgment. Liberty is granted to the respondent to recover the arrears of rent as per manner known to law. Furthermore, if the rent is not paid by them, the respondent has to work out their remedy under the Revenue Recovery Act. No costs. Consequently, connected Miscellaneous Petitions are closed.

04-12-2024

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

To

1. Sub-Judge,
Namakkal.
2. The Executive Officer,
Mohanur Town Panchayat.
3. The Public Prosecutor,
High Court, Madras.



WEB COPY



S.A. No. 1082 of 2007

T.V.THAMILSELVI, J.

rpp

S.A. No. 1082 of 2007

**04.12.2024
(2/3)**



WEB COPY



S.A. No. 1082 of 2007