



S.A. No. 1084 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. 1084 of 2007

and

M.P.No.1 of 2014 & C.M.P.No.17320 of 2017

1. S.Mathivanan
2. P.Navaladi
3. S.Nagammal
4. N.K.Saravanakumar
5. B.Poongothai
6. A.Soundhar
7. P.Dhandapani
8. R. Rajamani
9. M.Senthilkumar
10. T.P.Murugesan

.. Appellants

Vs

1. The Executive Officer,
Mohanur Town Panchayat.

2. R.Saravanan
3. Shanmugam
4. P.Nagarajan
5. C.Sekar
6. Manivasagam
7. A.P.Ramasamy
8. V.Krishnasamy

... Respondents



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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.84 of 2005 on the file of Subordinate Judge, Namakkal reversing the judgment and decree dated 22.12.2004 made in O.S.No.227 of 2003 on the file the Principal District Munsif Court, Namakkal.

For Appellants : Mr.N.Damodaran

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

R2 to R6 – Given up

JUDGMENT

The appellants, who are the plaintiffs 4 and 6 to 14 have filed the suit in O.S.No. 227 of 2003 and challenging the reversal findings of the courts below rendered in A.S.No.84 of 2005 on the file of Subordinate Judge, Namakkal arising out of trial court findings in O.S.No.227 of 2003 on the



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file of Principal District Munsif Court, Namakkal, this Second Appeal was preferred by them.

2. The learned Addl. Advocate General appearing for 1st 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 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



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order of permanent injunction in favour of plaintiffs. Challenging the said findings, the 1st respondent herein preferred an appeal suit in A.S.No.84 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 4 and 6 to 14 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.

4. The learned Addl. Advocate General appearing for 1st 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.



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WEB COPY 5. Heard and considered rival submissions made by learned counsel for appellant as well as learned Addl. Advocate General appearing for 1st 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 rendered in A.S.No.84 of 2005 on the file of Subordinate Judge, Namakkal 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 1st respondent to recover the arrears of rent as per manner known to law. Furthermore, if the rent is not paid by them, the 1st respondent has to work out their remedy under the Revenue



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Recovery Act. No costs. Consequently, connected Miscellaneous Petitions
are closed.

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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.



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T.V.THAMILSELVI, J.

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