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S.A.No.437 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.437 of 2020

1.Kannagi Rajkumar

2.C.Nallathambi

.. Appellants

Vs.

K.V.Alagesan

.. Respondent

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree, dated 09.03.2020, made in A.S.No.19 of 2019 on the file of the learned Sessions (Fast Track Mahila) Judge at Namakkal in confirming the judgment and decree, dated 18.12.2018, made in O.S.No.280 of 2016 on the file of the Additional Sub Court at Namakkal.

For Appellants : Mr.T.Danyakumar

For Respondent : Mr.S.Ramesh

JUDGMENT

The present Second Appeal arises out of the judgment and decree of the Court of the learned Sessions (Fast Track Mahila) Judge at Namakkal in A.S.No.19 of 2019, dated 09.03.2020, in confirming the judgment and decree of the Court of the learned Additional Subordinate Judge at



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Namakkal in O.S.No.280 of 2016, dated 18.12.2018.

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2. For the sake of convenience, the parties will be referred to as per their rank in the suit.

3. O.S.No.280 of 2016 is a suit for recovery of money of a sum of Rs.7,07,067/- to be paid as arrears of rents by the defendants jointly and severally.

4. The plaintiff is the owner of the property situated at 1st Floor, K.V.A.Complex, 90A, Thuraiyur Road, Namakkal - 637 001. The defendants entered into possession pursuant to a lease agreement dated 01.03.2005. As there was default in the payment of rent right from the time of entering into the premise, after exchange of notices, a Rent Control Original Petition was filed for eviction in R.C.O.P.No.7 of 2008 on the file of the Rent Controller/Principal District Munsif at Namakkal. The said Rent Control Original Petition came to be dismissed on 04.07.2012.

5. Aggrieved by the same, a Rent Control Appeal was preferred to the



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file of the learned Subordinate Judge - cum - Rent Control Appellate Authority at Namakkal in R.C.A.No.6 of 2012. The Appellate Authority reversed the judgment of the Rent Controller, and ordered eviction on 27.02.2013.

6. Aggrieved by the order of eviction, a Civil Revision Petition was presented before this Court in C.R.P.(NPD)No.2846 of 2013. The said revision came to be dismissed on 05.11.2014. After the dismissal of the revision, execution proceedings were initiated by the respondent/plaintiff against the appellants/defendants. The possession was also taken on 06.01.2016.

7. After the possession was taken, a suit for recovery of money for the amounts that have not paid as rentals was presented on 26.09.2016. The period for which the rental arrears were claimed was from 01.08.2005 till the date of handing over the possession.

8. A written statement was presented by the defendants pleading that



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the plaintiff can claim rents only for a period of three years and not for a period prior to that. They would state that the maximum claim can be only a sum of Rs.82,000/-, and therefore, they sought dismissal of the suit with respect to the remaining portions as the same is barred by time.

9. On the basis of these pleadings, the trial Court framed the following issues :

“1. Whether the plaintiff is entitled to the suit amount of Rs.7,07,067/- with subsequent interest from the defendant as prayed for ?

2. To what other relief ? ”

10. The plaintiff entered the witness box, and marked Ex.A1 to Ex.A9, and the 1st defendant examined herself as D.W.1, and she marked Ex.B1 to B4.

11. Relying upon the judgment of this Court in *The State of Tamil Nadu vs. M.Kazim Khaleeli and 7 Others [(1993) 1 LW 667]*, the trial Court came to the conclusion that the plaintiff will be entitled to the benefit of Section 14 of the Limitation Act, and decreed the suit as prayed for. The



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trial Court had granted an interest of 12 % from the date of filing of the suit till the date of realization.

12. Aggrieved by the same, the defendants preferred an appeal in A.S.No.19 of 2019 before the learned Sessions (Fast Track Mahila) Judge at Namakkal. The learned Appellate Judge confirmed the judgment of the trial Court, against which the present Second Appeal.

13. At the time of admission, the following substantial questions of law had been framed :

“ i. Whether the suit claim filed for arrears of rent for 125 months is barred under Article 52 of Limitation Act ?

ii. Whether the plaintiff is entitled to interest at more than 6 % on the suit claim ?

iii. Whether the appellate Court was right in relying upon the Judgment of the Division Bench reported in (1993) 1 MLJ 681 which arose on a completely different set of facts ? ”

14. Heard Mr.T.Danyakumar, appearing on behalf of the appellants



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and Mr.S.Ramesh, appearing on behalf of the respondent.

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15. This is a simple suit for recovery of money claiming arrears of rent. All that it requires is an application under Article 52 of the Limitation Act.

16. Article 52 of the Limitation Act would state that a suit for arrears of rents would have to be presented within 3 years when the arrears become due. It is no doubt true that the tenant did not pay the rents from 01.08.2005 onwards. However, that does not mean that till the handing over of the possession on 06.01.2016, the limitation for the suit stands postponed. In case, the tenant does not pay the rents, the landlord will always be entitled to file a suit for recovery for every block period of three years, otherwise, on the 37th month, the suit insofar as the first month becomes barred by time.

17. On the admitted facts in the present case, the possession had been taken over by the plaintiff on 06.01.2016. Therefore, under Article 52 of the Limitation Act, the plaintiff could have gone back only by a period of three years in order to recover the rents.



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18. The judgment of the High Court in *The State of Tamil Nadu vs. M.Kazim Khaleeli and 7 Others [(1993) 1 LW 667]* arose under the circumstances where a fair rent was ascertained by the Court, and that relates back the date on which the petition was filed. This principle of fixation of fair rent cannot be telescoped into the suit for mere recovery of rents. This is because till the order of fair rent attains finality, there is no cause of action for the landlord to initiate the suit for recovery of money. Unfortunately, the said principle has been applied in this case, and the simple suit for recovery of money based on arrears of rent has been decreed for 125 months. This I feel, despite the vehement contentions of Ramesh to sustain the decree, is unsustainable.

19. Therefore, the substantial questions of law framed are answered in favour of the appellants herein and against the respondent herein.

20. In fine, the judgment and decree of the Court of the learned Sessions (Fast Track Mahila) Judge at Namakkal in A.S.No.19 of 2019,



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dated 09.03.2020, in confirming the judgment and decree of the Court of the learned Additional Subordinate Judge at Namakkal in O.S.No.280 of 2016, dated 18.12.2018, is set aside.

21. The suit for recovery of money shall stand decreed for a period of three years from January 2013 till January 2016 at the rate of Rs.3,000/- per month.

22. Accordingly, the Second Appeal stands allowed. The suit for recovery of money shall stand decreed at the rate of 12 % per annum from January 2013 till January 2016. The respondent will be entitled for costs in the Second Appeal.

04.07.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

V. LAKSHMINARAYANAN, J.

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WEB COPY To

- 1.The learned Sessions (Fast Track Mahila) Judge,
Namakkal
- 2.The Additional Sub Court,
Namakkal

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