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S.A.No.425 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.10.2024

CORAM

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Second Appeal No.425 of 2023
and
Civil Miscellaneous Petition No.12990 of 2023

Arunachalam

... Appellant

-Vs-

T.Chandrika

... Respondent

Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 04.03.2022 in A.S.No.36 of 2020 on the file of the IV Additional District and Sessions Court, Coimbatore confirming the Judgment and Decree dated 31.10.2019 in O.S.No.838 of 2011 on the file of the I Additional Subordinate Court, Coimbatore.

For Appellant : Mr. V.Ramamurthy
For Mr.B.K.Girish Neelakantan

For Respondent : Mr.Vinoth Kumar

JUDGMENT

This Second Appeal has been filed by the defendant challenging the concurrent findings of the lower Courts wherein, the suit for refund of advance amount of Rs.3,75,000/- along with interest has been ordered.

2. For the sake of convenience, the parties are referred to hereunder

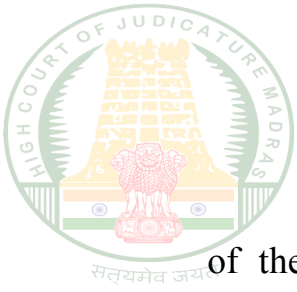


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according to their litigative status and ranking before the Trial Court.

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3. The case of the plaintiff is that, the plaintiff and her husband introduced by the house brokers, for the purpose of leasing out the property belongs to the defendant and that on 27.05.2010, a lease agreement was entered between the plaintiff and the defendant in the presence of said two land brokers, who were also witnesses to the agreement. The plaintiff had also paid Rs.3,75,000/- on the same day and given possession of ground floor and the said period was completed, the total time for lease period is 11 months. After completion of 11 months, the plaintiff has expressed his willingness to vacate the premises however, the defendant has not shown any interest to take possession. Subsequently, after intimating the defendant on 08.09.2011, the plaintiff vacated the defendant's property and shifted to another property for monthly rent basis. Even, after shifting the house, the defendant has not come forward to repay the amount of Rs.3,75,000/- and hence, the appellant lodged the police complaint in this regard. Eventhough, he has agreed to repay the amount, he has not come forward to return the money. Subsequently, on 07.10.2011, the plaintiff has issued legal notice seeking return of amount along with Rs.25,000/- as interest for the non-payment



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of the said amount. It was replied by the defendant on 13.10.2011, denying the agreement for lease hence, the plaintiff filed a suit for specific performance.

4. The case of defendant is that, he is the owner the of the property of ground and first floor. The plaintiffs and her husband approached the defendant for seeking the ground floor of the property to let them for rental basis. Accordingly, Rs.30,000/- was received as advance and rent was fixed at R.5,000/- per month. Since rent was not paid regularly, they were vacated by the defendants. Subsequently, he received a notice stating that, there was a lease agreement between them and same is replied properly. There was no lease between the parties and he has not received Rs.3,75,000/- as lease amount hence need not pay any amount to plaintiffs. He stated that the plaintiff has failed to pay the monthly rent from May 2011 hence, he has been suitably replying.

5. Based on the pleadings, the Trial Court has framed the following issues:

“1. Whether the plaintiff paid a sum of Rs.3,75,000/- to the defendant vide an agreement of bogiyam dated



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21.05.2010?

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2. Whether the plaintiff is entitled for the suit claim?

3. To what other relief? ”

6. After framing of the above issues, on the side of the plaintiff, P.W.1 to P.W.3 were examined and Ex.A1 to Ex.A15 were marked On the side of the defendants, D.W.1 and D.W.2 were examined and Ex.B1 to Ex.B18 were marked.

7. After appreciating the evidences placed on record, the Trial Court has decreed the suit for refund of advance paid the lease i.e., sum of Rs.3,75,000/- with interest at the rate of 6% per annum. However, the relief of compensation was dismissed.

8. Aggrieved over the same, the landlord has filed First Appeal before the IV Additional District Court and after hearing the parties, the Lower Appellate Court has also dismissed the suit, accepting the findings of Trial Court. Aggrieved over the dismissal of First Appeal, this Appeal is filed and this Court before admission ordered notice to the other side,



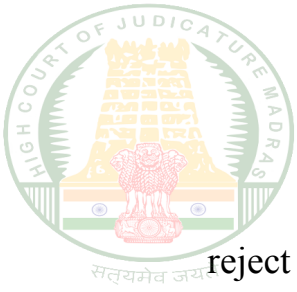
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to hear the parties that, whether any substantial questions of law is arrived in this appeal for consideration?

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9. The learned counsel appearing for the appellant submitted that there is ample evidence adduced on the side of the defendant to show that there is no agreement of lease entered between the parties and there is no consideration i.e., the lease advance amount was paid to the defendant. Both the Courts have erred in brushed aside the evidence adduced on the side of the defendant and blindly accepted the evidence adduced on the side of the appellant side. He further submitted that the Trial Court has also failed to appreciate the fact that the earlier usage of mortgage and it was not a lease agreement as stated by the plaintiff. Hence, prays to dismiss the suit.

10. The learned counsel appearing for the respondent/plaintiff submits that both the Courts have held, as per the evidence of both sides and more particularly, there are admission on the side of the defendant, by way of oral evidence as well as documentary proof and those evidence have been considered against the defendant and there is no reasons to



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reject those admissions. Hence, prays to confirm the appeal.

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11. I have considered the submissions made on both sides and also perused the records.

12. Though, it is disputed by the defendant that the execution of lease agreement and it has been termed as usage of mortgage. On careful perusal of the orders passed by the both Courts shows that, these agreement was entered only to let out the portion of the property in favour of the plaintiff and the maximum period is fixed as 11 months. The plaintiff has also examined P.W.2 and P.W.3, who are the attestors in the said documents and their evidence has been appreciated by both the Courts, elaborately, and their evidence has been accepted. Their evidence not only for supporting the evidence of P.W.1 and also for proving the execution of the lease agreement Ex.A1 between the parties. There is also an admission, with regard to the receipt of advance in this regard. Even though, the defendant No.1 has examined himself as D.W.1, denying the nature of documents and examined another witness as D.W.2, who is a third party and who is not a party to the Ex.A1.



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13. Both the Courts have not accepted the evidence of D.W.1 since, there is admission on the part of D.W.1 in various facts and more particularly, Ex.A6 and reply notice, the Lower Appellate Court has also recorded in its order, regarding statement by the defendant to the effect that the plaintiff has approached the defendant for seeking ground portion to let out and the same was agreed and based on such agreement he has come forward to execute Ex.A1. This reply notice as well as recitals in Ex.A1 and further combined reading of the evidence of P.W.2 and P.W.3 only gives the conclusion that the defendant has come forward to let out the property in favour of the plaintiff only after receiving the huge amount of Rs.3,75,000/-. Both the courts have also held that there is no evidence to show that non payment of Rs.3,75,000/- and no point of time, the defendant has demanded the payment of this amount while the plaintiff is in possession of the property.

14. Accordingly, I am of the view that both the Courts have appreciated the evidence by proper perspective and they have not brushed aside any of the evidence and no question of law raised in this appeal and



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this Court finds there is no merit in the above findings and the same is liable to be dismissed.

15. In the result, the Second Appeal is dismissed. The Judgment and Decree dated 04.03.2022 in A.S.No.36 of 2020 passed by the IV Additional District and Sessions Judge, Coimbatore confirming the Judgment and Decree dated 31.10.2019 in O.S.No.838 of 2011 passed by the I Additional Subordinate Judge, Coimbatore is hereby confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

24.10.2024

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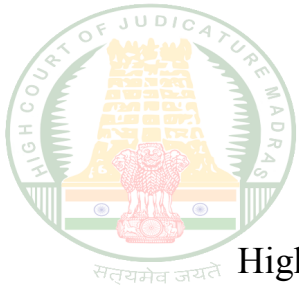
Index : Yes/No

Speaking Order: Yes/No

Neutral Citation Case : Yes/No

To:

1. The IV Additional District and Sessions Judge,
Coimbatore.
2. The I Additional Subordinate Judge,
Coimbatore.
3. The Section Officer,
VR Section,



High Court of Madras.

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K.RAJASEKAR,J.

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