



S.A.No.620 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.11.2023
Pronounced on	31.01.2024

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.620 of 2016
and C.M.P.No.11663 of 2016

D.Thirumalai (Died)

1.Rajaveni
2.Buvana
3.Omprakash

... Appellants/ defendants 2 to 5

Versus

Selva Kalpana

... Respondent/Respondent

Prayer : The Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 17.03.2016 made in A.S.No.20 of 2013 on the file of the learned Principal Subordinate Judge, Puducherry confirming the judgement and decree dated 05.03.2013 made in O.S.No.738/2008 on the file of the learned I Additional District Munif, Puducherry.

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For Appellants : Mr.G.Sumitra
For Respondent : Mr.D.Ravinchander

JUDGMENT

The Second Appeal is preferred as against the judgment and decree dated 17.03.2016 made in A.S.No.20 of 2013 on the file of the learned Principal Subordinate Judge, Puducherry, confirming the judgement and decree dated 05.03.2013 made in O.S.No.738/2008 on the file of the learned I Additional District Munif, Puducherry and Sessions Court, Salem.

2.The above suit in O.S.No.738 of 2008 was filed by the plaintiff for a direction directing the defendant to vacate and hand over vacant possession of the suit property.

3.According to the plaintiff, the plaintiff is the absolute owner of the suit property along with adjacent shops. She leased out the suit premises to one Palani under the lease agreement dated 09.03.1995 on monthly rent. The plaintiff filed a suit against the said Palani for eviction in O.S.No.619 of

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2000 on the file of the Additional District Munsif, Puducherry and the same was decreed on 27.09.2002. Thereafter, E.P.No.61 of 2003 was filed for execution of the decree passed in favour of the plaintiff and the same was dismissed on 02.02.2005 against which, the plaintiff preferred appeals in A.S.No.14 and A.S.No.15 of 2006 before the Additional Sub court, Puducherry. During the pendency of the appeals the defendant approached the plaintiff and requested him to rent out the suit premises. Accordingly, on 01.04.2007 the plaintiff accepted the defendant as his tenant for a monthly rent of Rs.1000/- from the month of April 2007 onwards. Since the plaintiff left to France, he directed the defendant to pay the monthly rent to one baptized Palani and after returning from France on 26.01.2008, the plaintiff learnt that the defendant failed to pay rent from the beginning of tenancy and also came to know about the appeals filed by the plaintiff were dismissed. The plaintiff issued a legal notice on 15.03.2008 to the defendant terminating his tenancy and calling upon him to vacate the property within three days from 31.03.2008. The said notice was returned as "no such addressee" which shows that the defendant is not in occupation of the shop



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leased out to him and keeping the same under lock and key. Hence, the plaintiff issued another notice on 07.12.2008 addressed to the shop as well as to his residence terminating the tenancy in respect of the suit property. The defendant received the legal notice sent to his residential address. In spite of receipt of the notice, the defendant neither replied nor vacated the premises. Hence, the plaintiff was constrained to file the above suit.

4. On the other hand, it is the contention of the defendant that no oral lease agreement was entered into on 01.04.2007 and he also denied the payment of rent of Rs.1000/- as rent per month. According to the defendant he obstructed the delivery warrant in E.P.No.61 of 2003 since he was a tenant under the plaintiff and on that ground the defendant filed a suit in O.S.No.471 of 2003 by depositing the rent into the Court and therefore, there was no necessity to the defendant to approach the plaintiff and her husband requesting them to accept the defendant as a tenant again. The defendant was inducted as a tenant in the suit property on 01.12.2002 on a monthly rent of Rs.500/- and paid a sum of Rs.6000/- as advance. Since the



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defendant suffered from prolonged illness he was taking treatment as in-patient. On that circumstances, the plaintiff caused a legal notice stating that the defendant was not in occupation of the suit property and further the defendant denied the termination of tenancy with effect from 30.04.2008 which is not valid under law as there was no lease agreement on 01.04.2007 and no cause of action arose on 01.04.2007. According to the defendant, he became a tenant from 01.12.2002 and if there is any cause of action, it would arise only on 01.12.2002 and not on 01.04.2007. Hence, the suit is liable to be dismissed.

5. Based on the above pleadings the trial Court framed the following issues:

- 1. Whether the plaintiff is entitled to the relief sought for ? and*
- 2. To what relief ?*



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6.Before the trial Court, the plaintiff examined himself as P.W.1 and marked Exs.A1 to A7. On the side of the defendants D.W.1 and D.W.2 were examined and Ex.B.1 to B.3 were marked.

7.The trial court upon considering the averments made on either side and the arguments advanced by the respective counsel for the parties, decreed the suit directing the defendant to vacate and hand over the vacant possession to the plaintiff and also held that the plaintiff is entitled for mesne profit and by giving liberty to the plaintiff to withdraw the arrears of rent deposited by the defendant into Court and also stipulated two months time for vacating the premises.

8.Aggrieved by this, the defendant preferred the appeal suit in As.No. 20 of 2013 before the learned Principal Sub Court, Puducherry. The first appellate Court dismissed the above appeal suit confirming the judgement and decree passed by the trial court in O.S.No. 738 of 2008 dated 05.03.2013.

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9. Aggrieved by this, the present second appeal is preferred on the following grounds:

It is submitted that the trial court erroneously came to the conclusion that tenancy commenced on 01.04.2007 which is against the documentary evidence marked as Exs. B.2 and B.3. Since the tenancy commenced much prior to 2007, the tendency agreement cannot be terminated by issuance of legal notice, stating that the tenancy agreement was commenced on 01.04.2007. No valid termination of lease was done as contemplated under Section 106 of Transfer of Property Act.

10. At the time of admission of the second appeal, this Court formulated the following substantial question of law:

"A. whether both the Courts below misdirected themselves in assuming that the tenancy was created by the plaintiff in favour of the defendant on 01.04.2007, when admittedly in A.S.No.14 of 2006 was



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pending and it was contested by both the parties and the judgement itself was delivered only on 27.06. 2007?

B. Whether the issue regarding the creation of a tenancy by the plaintiff in favour of the defendant can be set to be proved as per the test applied under Section 3 of the Indian Evidence Act, 1872, when the parties were at loggerheads at the relevant point of time?

C. Whether the findings of both the Courts below suffers from perversity due to improper appreciation of oral and documentary evidence available on record?

11. Heard on both sides, records perused.

12.The dual relationship as Landlord and Tenant between the plaintiff and the defendant is not in dispute. But, the plaintiff would contend that the lease agreement commenced only from 01.04.2007. On the other hand, the contention of the defendant is that he became a tenant under the plaintiff from 01.12.2002 itself. However, the present suit is filed by the plaintiff for



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eviction on the ground that the defendant has committed default in payment of rents to the plaintiff. As rightly pointed out by the Courts below whether the lease was commenced either on 11.12.2002 or from 01.04.2007, the fact remains that the defendant is in occupation of the suit property as a tenant under the plaintiff. Since it is only a decree for possession as against the defendant, the period of tenancy is irrelevant. According to the plaintiff, defendant has not paid the rent and therefore, she was compelled to issue the legal notice under Section 106 of Transfer of Property Act which was duly served on the defendant and the receipt of notice were exhibited as Ex.A.5 and A.6 which would establish causing of notice and receipt of the same by the defendant.

13.The defendant failed to reply. Since there was default in payment of rent, the plaintiff terminated the lease as per Section 106 of Transfer of Property Act. Since the commencement of lease is immaterial in the present suit, the arguments putforth on the side of the defendant that the said notice under Section 106 of Transfer of Property Act is not valid under the eye of

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law. Whether the tenancy commenced on 11.12.2002 or on 01.04.2007 is immaterial for passing a decree for possession against the defendant on the ground of default of payment of rent. The only question to be decided is whether the defendant has paid the rent regularly without any default. Though the defendant had stated that he had deposited the rent into Court in the suit filed by him in O.S.No. 474 of 2003, no proof was filed to establish the same. Moreover, while examining himself as D.W.1, the defendant has admitted that he did not take any steps to pay the rent since the plaintiff has filed a vexatious suit against him. Therefore, from the above admission, it is proved that the defendant is not regular in paying the rent. Only at the time of argument, the defendant filed an application seeking permission to deposit a sum of Rs.43,000/- as rent for the period from December 2005 to January 2013. Though the defendant would contend that he had paid the rent to the husband of the plaintiff under Ex.B.1, the same is not proved by the defendant.

14. Moreover, there was no reference in the above documents that the



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defendant had paid the rent to the plaintiff's husband. Therefore, the Courts below has rightly held that the defendant is a chronic defaulter in the payment of rent and occupying the suit property for nearly 10 years without paying rent regularly. The plaintiff filed the above suit for evicting the defendant from the suit property under due process of law. The trial Court has rightly held that the plaintiff is entitled for future mesne profits. Even in the absence of such prayer, the trial Court has rightly directed the defendant to hand over the suit property within a period of two months. The said judgement and decree of the trial Court was rightly confirmed by the first appellate Court which warrants no interference. Therefore, there is no infirmity or perversity found in the findings of the Courts below. The Courts below have properly appreciated the materials on record. Accordingly, the judgement and decree in O.S.No.738/2008 on the file of the learned I Additional District Munsif Judge, Puducherry is confirmed.

15. In the result, the second appeal is dismissed. No cost. Consequently, connected miscellaneous petition is closed.



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vsn

Index:Yes/No

Speaking Order : Yes/No

To

The I Additional District Munsif Judge,

Puducherry

K.GOVINDARAJAN THILAKAVADI,J.

vsn

PRE- DELIVERY JUDGEMENT MADE IN

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