



S.A.No.340 of 2017
& C.M.P. No.8015 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.340 of 2017

and

C.M.P. No.8015 of 2017

P.R.M. Kamal Basha
Represented by its Power Agent
K. Haleel Bayes,
No.171, Mahatma Gandhi Road,
Kottakuppam, Vanur Taluk.

...Appellant

Vs.

1. Vijayalakshmi (died)
2. G. Viswanathan
3. V. Ramkumar
4. V. Sashikala

... Respondents

R1 died. RR2 to RR4 are brought on record as legal heirs of the deceased R1 vide court order dated 10.01.2024 made in CMP Nos.28633, 28640 and 28644 of 2023.

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 31.08.2016 passed in A.S. No.9 of 2014, on the file of the I Additional District Court, Tindivanam, upholding the decree and judgment dated 08.03.2013 passed in O.S.No.103 of 2005, on the file of the District Munsif cum Judicial Magistrate Court, Vanur.



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For Appellant : Mr.B. Divakaran
For Respondents : Mr.P. Gopalan

JUDGMENT

The appellant is the defendant in the suit in O.S.No.103/2005 on the file of the District Munsif cum Judicial Magistrate Court, Vanur. The first respondent/plaintiff filed the said suit to evict the defendant from the suit premises in Door No.171, Mahatma Gandhi Road, Kottakuppam village, Vanur Taluk.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3.The case of the plaintiff in a nutshell is as follows :

3.1. The suit premises, a commercial building, is owned by the plaintiff and it was let out to the defendant on a monthly rent of



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Rs.1,900/- through an agreement dated 05.06.2002 (Ex.A1). As per the agreement, the defendant paid a sum of Rs.75,000/- towards advance. The rental agreement was for a period of three years and the defendant agreed to increase the rent by 5% every year. However, the defendant did not pay the rent for the months of June, July and August 2005 and committed willful default in payment of rent. Therefore, the plaintiff terminated the tenancy of the defendant and requested him to vacate the premises. The plaintiff also required the premises for the own use and occupation of her husband. Therefore, she sent legal notices dated 12.08.2005 and 24.09.2005 (Ex.A2 and Ex.A5) to the defendant to vacate the building. The defendant sent reply notices dated 18.08.2005 and 06.10.2005 (Ex.A4 and Ex.A6), which, according to the plaintiff, contained false narration. Hence the suit.

4.The suit was resisted by the defendant on the following grounds:

- i. The defendant was inducted as a tenant in the year 1990 and he had spent a sum of Rs.3,00,000/- for renovation. However, the



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plaintiff and her brother caused various hindrance in running the shop by the defendant. Therefore, the defendant was forced to lodge a complaint with the Inspector of Police, Kottakuppam police station. As per the instructions of the police, an agreement dated 05.06.2002 (Ex.A1) was entered into between the plaintiff and the defendant.

- ii. The defendant has been paying the rents regularly and all the averments made in the plaint are false. He therefore, prayed for dismissal of the suit.

5. On the basis of the above pleadings, the trial Court framed the following issues :

- i. *"Whether the defendant is to be vacated from the suit premises since he had committed willful default in payment of rents?"*
- ii. *Whether the plaintiff requires the suit premises for setting up a business for her husband?*
- iii. *Whether the plaintiff is entitled for the relief as prayed for by*



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iv. To what other relief the plaintiff is entitled?"

6. In the trial Court, the plaintiff examined herself and one another witness and marked Ex.A1 to Ex.A6. The defendant examined two witnesses on his side and marked Ex.B1 to Ex.B4.

7. After full contest, the learned District Munsif cum Judicial Magistrate, Vanur, decreed the suit in favour of the plaintiff, vide his decree and judgment dated 08.03.2013, on the following grounds:-

- i. The defendant has committed willful default in payment of rents.
- ii. The plaintiff has issued notice as contemplated under Section 106 of the Transfer of Property Act.
- iii. The plaintiff requires the suit premises for the purpose of setting up a business for her husband.

8. Aggrieved over the decree and judgment passed by the trial court, the plaintiff filed an appeal in A.S.No.9/2014, before the I



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Additional District Court, Tindivanam. The learned I Additional District Judge, Tindivanam, upheld the findings recorded by the trial court vide his decree and judgment dated 31.08.2016, as against which the present second appeal is filed.

9. The second appeal is admitted by my learned predecessor on the following substantial question of law:

"Whether Section 10(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, would not affect the jurisdiction of the Civil Court in passing a judgment against the tenant for eviction?"

10. During the pendency of the present appeal the first respondent/plaintiff died and her legal heirs were brought on record as respondents 2 to 4.

11. Heard Mr.B. Divakaran, learned counsel appearing for the appellant and Mr.P. Gopalan, learned counsel for the respondents.



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12. Mr. B. Divakaran, learned counsel appearing for the appellant contended that the plaintiff ought to have filed a rent control proceedings and the suit filed by her for evicting the defendant is not maintainable. He also relied on the decision of this Court in ***T.P. Abdul Khadar and others vs. Rajammal and others*** reported in ***(1980) 1 MLJ 331*** and contended that when a petition to the rent controller has to be filed for evicting a tenant, the landlord cannot seek a decree for recovery of possession on any one of the grounds mentioned in Section 10(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (herein after referred as 'the Act'). He would therefore contend that the suit filed by the plaintiff for evicting the defendant is not maintainable.

13. Per contra, Mr. P.Gopalan, learned counsel appearing for the respondents/plaintiff relied on the decision of this Court dated 25.11.2019 in ***Mandhirikodi vs. E. Balaraman (S.A. Nos.100 and 101 of 2014)*** and contended that there is no transitory provision under the Tamil Nadu Rent Control Act which provides for transfer of proceedings for eviction pending before the competent Civil Court on the date of

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extension of the Act to new areas also. It is also his contention that since the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 has been repealed and the new Act has been put in place, namely, the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, there is no bar for executing the decree obtained against a tenant. He therefore, prayed for dismissal of the appeal.

14. Both the courts below had held that the defendant committed willful default in payment of rents and that the plaintiff requires the premises for her own use and occupation. The plea of maintainability of the civil suit was not taken in the written statement. However, this plea was taken before the first appellate court. The first appellate court in its judgment had observed that the defendant has not filed the Government Order that the Tamil Nadu Lease and Land Control Act was extended to Kottakuppam at the time of filing of the suit. It was further observed that the decree and judgment passed by the District Munsif is not null and void. However, it cannot be executed under Section 10(1) of the Act.



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15. In the decision in **Mandhirikodi vs. E. Balaraman** (cited supra) it has been held thus:

"15. there is no transitory provision under the Tamilnadu Act which provides for transfer of proceedings for eviction pending before the competent Civil Court on the date of extension of the Act to new areas also. Therefore, to conclude that a Civil Court's jurisdiction to pass a decree of eviction will be taken away in a pending proceeding,"

The definition of a tenant under new Act is substantially different from that of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960. Under the new Act, as per [Section 2\(n\)](#), a tenant is defined as follows:

“tenant” means a person by whom or on whose account or behalf the rent of any premises is, or, but for a contract express or implied, would be payable for any premises and includes any person occupying the premises as a sub-tenant and also, any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made;”



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16. While the definition of tenant under the 1960 Act includes the person who had suffered an order of eviction. The new Act does not include a tenant who had suffered an order of eviction. *Section 40* of the new Act bars the jurisdiction of a Civil Court so far as it relates to any provision of the Act and *Section 21(1)* of the new Act, which offers protection to the tenants reads as follows:-

“The tenants shall not be evicted during the continuance of the tenancy agreement except in accordance with the provisions of Subsection 2.”

17. Therefore, the provisions of the new Act are vastly different from that of the 1960 Act. From an analysis of the provisions of the enactment as well as judgments rendered by this Court and the Hon'ble Supreme Court, the following principles emerge:-

- 1) *The provisions of the Tamilnadu Buildings Lease and Rent Control Act, 1960 does not bar jurisdiction of a Civil Court to pass decrees for eviction.*
2. *What is barred is execution of such decrees for eviction.*
3. *There is no machinery provided under the Act for transfer of pending proceedings to Rent Controllers*



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where there is an automatic extension of the Act by certain areas being included in an existing Municipality or a Corporation. Therefore, necessarily the power of the Civil Courts to continue with the eviction proceedings that have been initiated prior to the date on which the act is made applicable of area in question should be preserved.

18. No doubt, Mr.V.Sesachari would contend that there is a interdict on execution of the decree under the Tamilnadu Buildings (Lease and Rent Control) Act. But the said interdict no longer survives in view of the fact that the very enactment namely, the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 has been repealed and the new Act has been put in place. The new Act namely, the Tamilnadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 does not bar execution of a decree obtained against a tenant, in view of the definition of tenant under the new Act. I therefore conclude that the decree passed by the Civil Court is executable in the changed scenario. In the absence of any provision in the 2017 Act, I do not think the suit could be said to be barred and the decree could be said to be invalid. I therefore, conclude that the decree passed in O.S.No.1061 of 2004 is valid and is executable."



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It is pertinent to point out that at the time of passing of judgment in ***T.P.***

Abdul Khadar and others vs. Rajammal and others (cited supra), the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, was not enacted and therefore, the said decision may not be applicable to the facts of the present case. The decision in **Mandhirikodi vs. E. Balaraman** is clear on this aspect. Therefore, the substantial question of law is answered against the appellant.

16. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.
- ii. The decree and judgment dated 31.08.2016 passed in A.S. No.9 of 2014, on the file of the I Additional District Court, Tindivanam, and the decree and judgment dated 08.03.2013 passed in O.S.No.103 of 2005, on the file of the District Munsif cum Judicial Magistrate Court, Vanur, are upheld.
- iii. The appellant has deposited a sum of Rs.1,16,600/- at the time of admission of the present second appeal to the credit of O.S.



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WEB COPY No.103/2005 on the file of the District Munsif Cum Judicial

Magistrate Court, Vanur. The legal heirs of the first respondent/plaintiff, namely, respondents 2 to 4, shall withdraw the same after filing proper application.

iv. The appellant/defendant is directed to vacate the suit premises within a period of two months from the date of this order.

08.11.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The I Additional District Judge, Tindivanam
2. The District Munsif Cum Judicial Magistrate, Vanur.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.
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