



A.S(MD) No.135 of 2010

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Dated: 07.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

A.S(MD) No.135 of 2010

T.S.Govindarajan

... Appellant/Plaintiff

Vs.

1.Ramayee(Died)

2. T.Muthumanickam

3. T.Senthamarai

(Respondents 2 and 3 are brought on record as LR's of the deceased /sole respondent vide court order dated 04.03.2022 made in CMP(MD) No.2406/2021)

4.Alamelu

5.A.Thiyagarajan

6.A.Sivagami

(Respondents 4 to 6 are brought on record as LR's of the deceased /sole respondent vide court order dated 27.07.2023 made in CMP(MD) No.7856/2023)

... Respondents

Prayer : This Appeal Suit has been filed under Section 96 of C.P.C., to set aside the judgment and decree in O.S. No.72 of 2006 on the file of the Additional District Judge, Fast Track Court No.I, Tiruchirapalli dated 31.03.2009

For Appellant : Mr.S.Ramesh

For R2 to R6 : Mr.J. Balameenakshi

JUDGMENT

This Appeal suit has been filed as against the decree and judgment passed in O.S. No.72 of 2006 on the file of the Additional District Judge, Fast Track Court, Tiruchirapalli, Wherein the



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appellant herein has filed the suit as against the defendant for the relief of recovery of money towards the arrears of rent. The trial Court has partly decreed the suit as against the decree and judgment passed by the trial Court the plaintiff has preferred this appeal.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

3.The gist of the plaint are as follows: Originally the suit property belongs to the plaintiff and the suit property was rented out to defendant for a rent of Rs.1500/- per month. The defendant also paid the rent amount regularly. Thereafter the plaintiff filed an application before the Rent Controller, Trichy in RCOP No.53/1997 for fixation of fair rent and the same was allowed and rent was fixed at Rs.7,900/- per month. Thereafter the appeal was preferred in RCA No.7 of 2006 by the defendant herein and no stay was granted by the appellate authority. As per the order passed in RCOP 53 of 1997 the arrears of rent from 01.03.1997 to 31.07.2006 is Rs.9,92,700/- The defendant has paid a sum of Rs.1,21,500/-. Therefore the defendant has to pay remaining amount of Rs. 7,71,200/-



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4. The gist of the written statement averments are as follows.

The suit is not maintainable either in law or on facts. It is admitted that the plaintiff is owner of the property and the defendant is the tenant and filing of RCOP 53 of 1998 is also admitted. The rent controller has fixed the fair rent at Rs.7900/- and same was challenged through appeal in RCA No.7 of 2006 and the same is pending. Whiles, until the rent is fixed by the appellate authority the defendant need not pay the said amount. Therefore the suit is liable to be dismissed.

5. Based on the pleadings and hearing both sides the trial Court has framed the following issues

- a) வாதி கோரியுள்ளபடி தாவா தொகையை பெற உரிமையுள்ளதா?
- b) பிரதிவாதி தாவா தொகையை வாடகை பாக்கியாக செலுத்தக் கடமைப்பட்டுள்ளாரா?
- c) வாதிக்கு என்ன பரிகாரம் பெற உரிமையுள்ளது?

6. In order to prove the case of the plaintiff he examined P.W.1 and marked exhibits A.1 and A2. On the side of the defendant D.W.1 was examined and no documents was marked. After hearing both and evaluating the evidence adduced on both sides, the trial Court



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has partly decreed the suit by holding that the plaintiff is only entitled to recover the arrears of rent for three years. Being aggrieved over the said decree and judgement the present appeal has been filed by the plaintiff on the following grounds:

a) the Court below failed to assign any reason for granting relief only for recovery of three years of fair rent alone while the claim is for 113 months

b) the Court below though referred the citation 2005(3)LW page 63 Chandra Mohan Vs.K.Ram Mohan has miserably failed to apply the principles laid down in the said ruling

c) the Court below failed to apply its mind while deciding the issues No. 1 and 2

d) the Court below failed to take into consideration that the respondent/tenant is keeping the money due to the plaintiff payable as fair rent

e) the Court below ought to have considered that the respondent/defendant has unjustly enriched herself by retaining the plaintiff's money for more than 12 years i.e. from 1997

f) the Court below ought to have found that plaintiff's claim has been crystallized even on the date of filing the suit and ought to have decreed the suit as claimed for



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7. The learned counsel appearing for the appellant would contend that the appellant/plaintiff is the owner of the property and the respondent/defendant is the tenant and the same is not denied by the defendant and the appellant/plaintiff has filed an application before the Rent Controller for fixation of fair rent and the same was allowed by the Rent controller. The respondent/defendant has preferred appeal before the appellate authority and the same is pending. After fixation of the rent by the rent controller, the appellant/plaintiff has filed the suit for recovery of arrears amount and the trial Court also accepted the contention of the appellant/plaintiff but misconstrued the judgment produced by the appellant/plaintiff and wrongly held that the appellant /plaintiff is entitled to recover the arrears amount only for three years. The limitation starts only after the fixation of fair rent and thereby the order passed by the trial Court is not in accordance with law and the same is liable to be set aside by allowing this appeal

8. The learned counsel appearing for the respondent/defendants would contend that the relationship as landlord and tenant is admitted and the filing of RCOP for fixation of fair rent and the order passed by the Rent Controller is also admitted. But at the same time the order passed by the rent controller has been



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challenged before the appellate authority and the same is pending.

While pending appeal, the appellant/ plaintiff has filed the suit and thereby the trial Court has directed the respondent/defendant only to arrears amount for three years. Therefore the present appeal is liable to be dismissed.

9. This Court heard both sides and upon hearing both sides and perusing the records and the judgment of the trial Court, the points for determination in this appeal is

1) Whether the plaintiff is entitled to the arrears of rent as fixed by the rent controller authority ?

2) Whether during pending appeal the defendant is liable to pay the fair rent fixed by the rent controller?

3) Whether the appeal has to be allowed or not?

4) To what relief the parties are entitled to?

10. During the pendency of the appeal the sole respondent /defendant died and her legal heirs were impleaded as respondents.

Points No.1 and 2

11. This is the case filed by the appellant/ plaintiff as against the first respondent /defendant for recovery of arrears of rent



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amount. In this case it is admitted fact that the first respondent/defendant was the tenant under the appellant /plaintiff and it is also admitted fact that the appellant /plaintiff filed an application before the rent controller and fair rent was fixed at Rs.7900/- per month and the same was challenged through appeal by the first respondent/ defendant. Pending appeal the appellant /plaintiff has filed the suit for recovery of arrears for the period from 01.03.1997 to 31.07.2006. The first respondent/defendant also admitted the arrears of rent but her contention is that fair rent fixed by the rent control is too high and thereby she preferred the appeal and the same is not yet decided. According to the appellant /plaintiff, though the appeal has been preferred the appellate court has not stayed the operation of the decree and thereby the respondent/ defendant is liable to pay the arrears amount.

12. It is well settled law that unless the decree passed by the trial court is stayed by the appellate Court, the decree will be in force and the same is executable, therefore in the case on hand it is admitted by both parties that though appeal was filed as against the fixation of fair rent no stay was granted by the appellate authority. Therefore the appellant/ plaintiff is entitled to the arrears of rent amount. The trial court also observed that the defendant is liable to



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pay the amount as prayed in the plaint but only awarded for three years without any reasons. Therefore the plaintiff is entitled to the arrears of rent as fixed by the rent controller and the defendant is liable to pay the fair rent even during pending appeal. Thus point Nos. 1 and 2 are answered.

Points No. 3

13. The trial Court has partly decreed the suit and only decreed the suit for three years i.e 01.03.1997 to 01.03.2000. There is no reason stated by the trial Judge as to why the trial court has restricted the claim of the plaintiff only for three years. Without any reasons the trial Court has only passed the decree for three years and the same is erroneous. In this context the learned counsel appearing for the appellant/plaintiff has produced the judgment in the case of **Chandramohan .vs. Rammohan** reported in **2005 (3)LW 63**, wherein it is held as follows:

"Held: Pendency of either an appeal or a CRP challenging the order fixing the fair rent by itself, would not stop the running of the time, which already had started from the date of Rent Controller fixes the fair rent

Once the fair rent is fixed by the Rent Controller, unless there is an express provision of excluding the appeal period or the revision period from computing the period of limitation, the right to sue, which had already arisen for the landlord, would continue to run. Once fair rent is fixed, then the landlord has right to recover the same by moving the civil Court"



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14. On careful perusal of the above said judgment it is clear that one fair rent is fixed by the Rent Controller then land lord can recover the same by moving civil Court Therefore in view of the above said judgment the plaintiff is entitled to recover the arrears of rent by filing the suit. In the case on hand also the plaintiff has filed suit for recovery of money after fair rent was fixed. The trial Court has misconstrued the judgment and mis- interpreted the same by holding that the plaintiff is entitled to recover the money only for three years. Therefore the judgment and decree passed by the trial Court is liable to be modified and the present appeal is liable to be allowed in part with costs.

15. The plaintiff is entitled to decree for arrears of rent as prayed for in the plaint from 01.03.1997 to 31.07.2006 for a sum of Rs.9,92,700/-. As per the plaint, the plaintiff had already received a sum of Rs.1,21,500/- towards rent and thereby the remaining amount of Rs.7,71,200/- has to be paid by the first respondent/defendant to the appellant / plaintiff towards arrears of rent. During pendency of appeal the first respondent/defendant died and her legal heirs were impleaded as 2 to 6 respondents in this appeal. Therefore the appellant /plaintiff is entitled recover the said amount,



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subject of availability of the estate of the deceased/first respondent/defendant. Thus point no. 3 is answered.

Point No.4.

16. In view of the earlier discussions made in point Nos.1 to 3 the appeal is liable to be allowed in part and the decree and judgement passed by the trial Court is modified as stated above.

17. In the result, this appeal suit is partly allowed and the decree and judgment passed in O.S. No.72 of 2006 on the file of the Additional District Judge, Fast Track Court No.I, Tiruchirapalli is modified to the effect that the suit is decreed and plaintiffs is entitled to sum of Rs.7,71,200/- with interest @ 6% Per annum from the date of plaint till the date of realization. The respondent 2 to 6 in the appeal are liable to pay the suit amount from the estate of the deceased if any.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

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1. The Additional District Judge,
Fast Track Court No.I, Tiruchirapalli
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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