



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)NO.982 OF 2008

K.Kunasekar

:Appellant/Appellant/Plaintiff

/vs/

- 1.The Executive Engineer and
Administrative Officer,
Thanjavur Housing Unit,
having his office at
New Housing Unit Colony,
Thanjavur Town and Munsifi.
- 2.The Superintendent of Police,
Thiruvarur District,
having Office at
Thiruvarur Town and Munsifi.
- 3.The State of Tamil Nadu,
represented by its District Collector,
Thanjavur,
having Office at
Cutchery Road,
Thanjavur Town and Munsifi.

:Responents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.48 of 2006, dated 13.07.2007, on the file of Additional Subordinate Judge, Thanjavur revising the judgment and decree made in O.S.No.549 of 1999, dated 2.3.2006, on the file of District Munsif, Thanjavur.



2

For Appellant	:Mr.V.Chandrasekar
For Respondent-1	:Mr.A.Kannan Standing Counsel for TNHB
For Respondents 2 and 3	:Mr.SRA.Ramachandran Addl. Govt.Pleader

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.48 of 2006, dated 13.07.2007, on the file of Additional Subordinate Judge, Thanjavur revising the judgment and decree made in O.S.No.549 of 1999, dated 2.3.2006, on the file of District Munsif, Thanjavur.

2.The plaintiff in the suit is the appellant. He filed a suit seeking declaration that the order passed by the first defendant directing recovery of penal rent from the plaintiff for unauthorized occupation. The suit was dismissed by the trial Court and the appeal filed by the plaintiff was also dismissed. Aggrieved by the concurrent findings, the plaintiff is before this Court.

3.According to the plaintiff/appellant, when he was working as Assistant in the Superintendent of Police Office, occupied a flat bearing No.2 in Block No.34 in Thanjavur Housing Unit Colony. After his transfer to Chennai, he continued to occupy the flat with



the hope that he would get re-transfer to Thanjavur. However, later he was transferred and posted at Thiruvarur. During the interggnum period, he was in possession of Flat No.2 in Thanjavur Housing Unit colony and possession was handed over to the first defendant only on 06.10.1999. The first defendant sent a communication on 14.10.1999 requesting the second defendant to recover penal rent at the rate of Rs.2685/- per month from the salary of the plaintiff towards penal rent payable by the plaintiff from 16.05.1997 to 6.10.1999, for his illegal occupation. It is the case of the plaintiff that for the period in which he occupied the flat, he paid rent and therefore, he was not liable to pay any penal rent. It was also averred by the plaintiff that the first defendant collected rent from the plaintiff without any protest and hence, he was not entitled to claim any penal rent later. The assessment made by the first defendant was challenged on the ground of arbitrariness and violation of natural justice principles.

4.The first defendant filed a written statement and resisted the suit on the ground that as per the allotment condition, the Government servant should inform the fact of his transfer within seven days to the Executive Engineer or the Administrative Officer of the Housing Unit and obtain appropriate prior permission to retain the flat or otherwise, penal rent shall be charged. It was



stated in the written statement that the plaintiff was relieved from Thanjavur District Police Office on 16.05.1997 and the said fact was not informed by the Plaintiff to the Officer-in-charge of the Housing Unit as per the allotment conditions. Thus, by suppressing the fact of transfer, the plaintiff occupied the flat allotted to him violating the allotment conditions and Government Orders. Therefore, treating his occupation as unauthorized one, penal rent was levied as per G.O.Rt.N O.102, dated 11.03.1982. It was also stated in the written statement that the occupant occupied the flat unauthorisedly after his relieving order on 16.05.1997 to 6.10.1999 and hence, he was liable to pay the penal rent of Rs.2,685/- per month besides water charges at the rate of Rs.20/- per month. The total amount to be recovered from the plaintiff was fixed at Rs. 78,059/-. Hence a communication was sent to the second defendant to recover the said sum from the plaintiff's salary in monthly instalments. Since the order of recovery of penal rent was passed as per the allotment conditions, the plaintiff is not entitled to question the same. On these pleadings, the defendants sought for dismissal of the suit.

5. Before the trial Court, the plaintiff was examined as P.W.1 and two documents were marked as Ex.A1 and Ex.A2. On behalf of the defendants, one witness was examined as D.W.1 and ten



documents were marked as Ex.B1 to Ex.B10.

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6.The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff failed to inform the fact of his transfer to the competent authority and continued his occupation unauthorizedly from 16.05.1997 to 6.10.1999 without any prior permission and the same is a clear violation of the terms and conditions of the allotment order. Therefore the trial Court was pleased to dismiss the suit filed by the plaintiff. Aggrieved by the same, he preferred an appeal in A.S.NO.48 of 2008, on the file of Additional Sub-Court, Thanjavur. The First Appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings of the Courts below, the plaintiff/appellant is before this Court by way of this Second Appeal.

7.The learned counsel for the appellant submitted that during the period the plaintiff was in occupation of the premises, the first defendant collected the rent from him without any objection and therefore, after two years, it is not open to the first defendant to say that the plaintiff was in unauthorized occupation of the premises and liable to pay the penal rent. The learned counsel also submitted that the collection of rent by the first defendant without



any protest, would amount to regularizing the occupation of the plaintiff even after transfer.

8. The Courts below on the basis of Exhibits marked on the side of the defendants, came to the conclusion that as per the terms and conditions of the allotment order, the Government servant was bound to inform the Officer-in-charge of the Housing Unit about his transfer within a period of seven days from the date of transfer and to obtain his prior consent to continue the occupation. In the case on hand, admittedly, the plaintiff failed to intimate the fact of his transfer to the competent authority and obtain his prior consent. When the plaintiff was examined as P.W.1, he clearly admitted that he forgot the terms and conditions of the allotment order and therefore, he had not obtained prior permission from the competent authority, after his transfer. Therefore, it is clear that the plaintiff occupied the flat even after his transfer without getting any authorization or prior consent from the competent authority. Merely because the rent was collected for the relevant period, it cannot be said that the defendants are not entitled to collect penal rent as per the terms and conditions of the allotment order. When it is not shown that the plaintiff informed the fact of his transfer to the defendants within seven days as per the terms and conditions of the allotment order, the plaintiff is bound to pay the penal rent



as per the conditions of the allotment order. The order passed by the first defendant requesting the second defendant to deduct the penal rent payable by the plaintiff from his salary on monthly instalment basis, is in accordance with law and as per the terms and conditions of the allotment order. Therefore, both the Courts below rightly came to the conclusion that the plaintiff had not made out any case to grant the relief of declaration as prayed for. The findings reached by the Courts below is based on proper appreciation of oral and documentary evidence available on record. This Court finds no perversity or illegality in the order of the Courts below.

9. In fine, the Second Appeal stands dismissed, confirming the judgments and decrees of the Courts below. No costs.

04.07.2024

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

1. The Additional Subordinate Judge,
Thanjavur.



2. The District Munsif,
Thanjavur.

3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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9

S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A(MD)N0.982 OF 2008

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