



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.919 of 2009

and

M.P(MD)No.2 of 2009

P.Subramanian

:Plaintiff/Appellant/Appellant

.VS.

Tirunelveli Municipal Corporation,
represented by its Commissioner,
S.N.High Road,
Tirunelveli District

:Defendant/Respondent/
Respondent

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.111 of 2003, dated 10.09.2004, on the file of Second Additional Sub-Judge, Tirunelveli confirming the judgment and decree made in O.S.No.257 of 2000, dated 5.8.2003, on the file of Second Additional District Munsif, Tirunelveli.

For Appellant :Mr.C.Rajesh

For Respondent :No appearance

JUDGMENT

This Second Appeal is directed against the judgment and



decree made in A.S.No.111 of 2003, dated 10.09.2004, on the file of Second Additional Sub-Judge, Tiunelveli confirming the judgment and decree made in O.S.No.257 of 2000, dated 5.8.2003, on the file of Second Additional District Munsif, Tirunelveli.

2.The unsuccessful plaintiff in the suit is the appellant. The suit is for declaration that the notice of eviction issued by the defendant on 13.05.2000 was null and void and for recovery of possession of the suit property. The suit was dismissed by the trial Court and on appeal, the findings of the trial Court were affirmed by the First Appellate Court. Aggrieved by the concurrent findings of the Courts below, the plaintiff/appellant is before this Court by filing this Second Appeal.

3.According to the appellant/plaintiff, the suit property situated within Central Bus Stand, Tirunelveli and the same was let out to him by the respondent/Corporation for conducting a petty shop. It was asserted by the plaintiff that he has been paying rent to the defendant without any default or failure and all of a sudden, the defendant issued a notice to the plaintiff on 13.5.2000 terminating the licence on the ground that the plaintiff had violated the terms and conditions of the order granting licence. It was also asserted that the notice issued by the defendant was void abinitio.



Hence he was constrained to file a suit seeking declaration that the notice issued by the defendant was null and void. Initially, the suit was filed for declaration and injunction. Subsequently, the prayer was amended to include the prayer for recovery of possession instead of injunction, on the averment that the defendant had taken forcible possession of the suit property in the first week of August 2001.

4.The defendant filed a written statement claiming that the plaintiff was granted licence to conduct a petty shop in the suit property and the licence period was already over. It was also claimed by the defendant that the plaintiff earlier approached this Court by way of a Writ Petition to protect his possession and the same was dismissed. Suppressing the same, the suit has been filed by the plaintiff. It was also claimed by the defendant that the plaintiff failed to conduct the shop personally and had allowed a third party to occupy the premises and hence, licence granted in his favour was terminated and notice for eviction was issued. On these pleadings, the defendant sought for dismissal of the suit.

5.Before the trial Court, two witnesses were examined as P.W.1 and P.W.2. Five documents were marked as Ex.A1 to Ex.A5. On behalf of the defendant, one witness, the Regional Assistant



Revenue Officer of the respondent Corporation was examined as D.W.1 and two documents were marked as Ex.B1 and Ex.B2.

6.The trial Court, on appreciation of oral and documentary evidence, came to the conclusion that the plaintiff was not entitled for any relief as sought for in the suit and dismissed the suit. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.111 of 2003, on the file of Second Additional Subordinate Judge, Tirunelveli and the First Appellate Court affirmed the findings of the trial Court and dismissed the appeal. Aggrieved by the concurrent findings of the Courts below, the appellant/Plaintiff is before this Court by way of this Second Appeal.

7.The learned counsel for the appellant submitted that there was a lessor-lessee relationship between the plaintiff and defendant and hence the notice issued by the defendant treating the plaintiff as a licensee, is not at all valid. The learned counsel also submitted that the respondent issued a notice for eviction of the plaintiff by giving 24 hours time and the same was not in accordance with law.

8.Ex.A5 is the order passed by the respondent Corporation, dated 20.12.1994 granting permission to plaintiff to occupy suit property for a period of three years and to conduct a petty shop in



a space with measurement of 8 ft x 4 ft abutting the first platform in the bus stand belong to the respondent Corporation. In that order, it was mentioned that the property was let out to the plaintiff for a period of three years from 1.1.1994. Therefore, even assuming that the property was let out to the plaintiff and there was lessor-lessee relationship, the lease was for a period of three years and the same was already over. Hence, the lease arrangement between the plaintiff and defendant got determined by efflux of time. In such circumstances, the notice issued by defendant cannot be termed as a notice to quit and challenged as if notice to quit was not proper. The lease arrangement expired as early as on 19.12.1997 and notice of eviction was issued by respondent only on 13.05.2000, nearly after thirteen years. Further, respondent has not filed a suit for ejectment. In these circumstances, the appellant has no valid ground to challenge the notice of eviction, dated 13.05.2000 as invalid in law.

9. The Courts below also noted, based on the admission of the plaintiff, that the suit property was handed over to the defendant by the plaintiff on 15.05.2000 itself. However, suppressing the same, the suit was filed for declaration and permanent injunction. Thereafter, a prayer for recovery of possession was included, as if the plaintiff was forcefully evicted



by the defendant during August 2001. The said averment of the plaintiff was falsified by the admission of P.W.1, who in his deposition admitted that the plaintiff had vacated the premises on 15.5.2000. Therefore the plaintiff is guilty of suppression of material facts. Once it is admitted that even prior to the filing of the suit, the plaintiff had vacated the premises and handed over the possession of the premises to the defendant, it is not open to the plaintiff to seek for recovery of possession against the real owner of the property namely, the respondent Corporation. The cause of action pleaded for recovery of possession as if the plaintiff was dispossessed in August 2001 is falsified by his own admission by the plaintiff. The said witness P.W.1 stated that the plaintiff has handed over the premises on 15.5.2000. Therefore the cause of action pleaded by the plaintiff fails and both the Courts below, on proper appreciation of evidence available on record, came to the conclusion that the plaintiff is not entitled to any relief as sought for in the suit. I do not find anything to interfere with the said conclusion reached by the Courts below. In the absence of any substantial question of law, I am unable to agree with the arguments advanced by the learned counsel for the appellant and thus the Second Appeal fails.



10. In fine, the Second Appeal stands dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

23.07.2024

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

1. The Additional Sub-Judge,
Tirunelveli.
2. The Additional District Munsif,
Tirunelveli.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



8

S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A(MD)No.919 of 2009
and
M.P(MD)No.2 of 2009

23.07.2024