



SA(MD)No.328 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	30/07/2024
Date of Pronounced	22/10/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

SA(MD)No.328 of 2021

Thirumalaikumar : Appellant/Respondent/
Plaintiff

Vs.

Puthiyan : Respondent/Appellant/
Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 25/01/2021 passed in AS No29 of 2020 on the file of the Additional District and Sessions Court (Fast Track Court), Tenkasi, partly modifying the judgment and decree dated 07/12/2019 passed in OS No.134 of 2017 on the file of the Additional Sub Court, Tenkasi.

For Appellant : Mr.D.Venkatesh

For Respondent : Mr.T.Thirumurugan

J U D G M E N T

This second appeal is filed against the judgment and decree dated 25/01/2021 passed in AS No29 of 2020 by the Additional District and Sessions Court (Fast Track Court), Tenkasi, partly modifying the judgment and decree



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dated 07/12/2019 passed in OS No.134 of 2017 by the
Additional Sub Court, Tenkasi.

2.Plaint averments in brief:-

The suit property belonged to the plaintiff. The defendant was the cultivating tenant in the property. The defendant did not pay the lease amount properly. So the plaintiff filed TCTP No.30 of 2007 and TCTP No.28 of 2009 before the revenue court for eviction. By order, dated 30/10/2012 the revenue court directed the defendant to pay Rs.9,600/- or கோட்டை நெல் (Vernacular language) within a month. That order is related to TCTP No.28 of 2009. In respect of TCTP No.30 of 2007, by order, dated 15/12/2014 directed the defendant to pay a sum of Rs.27,200/- or its cultivative account in the form of paddy measuring about 32 kottai. The defendant failed to comply the order. So, EP Nos.1 and 2 of 2015 were filed. He was evicted from the suit property on 18/11/2015. On 11/04/2016 possession was taken over by the plaintiff. The defendant was removed from the tenancyship from the record of tenancy right. The defendant is bound to pay the above said decree amount, apart from the lease amount till the date of eviction namely 11/04/2016. In spite of repeated demand, that was not paid. Hence, the suit, after sending notice to the defendant.



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3. Statement was filed which contains the following

averments:-

Without proper particulars, the plaint is filed. How the calculation is made is not mentioned in the plaint. The lease amount prior to 2013-2014 is barred by limitation. On what ground, the limitation is saved is not mentioned in the plaint. The suit for recovery of the lease amount ought to have been filed within three years from 2014-2015.

4. On the basis of the pleadings, the following issues were framed by the trial court:-

1. Whether the amount claimed by the plaintiff is relating to barred by limitation?

2. Whether the plaintiff is entitled to get subsequent interest?

3. To what other reliefs?

5. Before the trial court, on the side of the plaintiff, one witness was examined and 6 documents marked. On the side of the defendant, one witness was examined, but no document was marked.



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6.At the conclusion of the trial process, the suit was decreed as prayed for. Against which, appeal was preferred before the appellate court namely FTC, Tenkasi in AS No.29 of 2020. The appellate court modified the decree and judgment and decreed the suit partly, directing the defendant to pay Rs.28,800/- for the period 2013-2014, 2014-2015 and 2015-2016 with pro-costs and interest.

7.Against which, this second appeal is preferred by the plaintiff.

8.At the time of admission the following substantial questions of law were framed:-

(a)Whether the lower Appellate Court was right in rejecting the entire claim of the appellant by applying Article 52 of the Limitation Act, more particularly, when the proceedings under the Cultivating Tenants Act came to an end only, on 15.12.2014, which order has been marked as Ex.A6?

(b)Whether the lower Appellate Court was right in relying upon the Judgement passed in C.R.P.No.2057 of 2005, dated 22.02.2013, which had no relevancy to the facts of the present case?



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9. Heard both sides.

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10. Only simple issue is involved, whether the plaintiff's claim is barred by limitation prior to the claim period of 13/02/2014.

11. In the plaint, the lease amount is calculated from the Fasali year 1409 to 1416 upto Fasali 2015-2016. The lease amount claimed as per Fasali year cannot be disputed because it was the agreed terms between the parties. Only Fasali year will come into play and not the financial year. Now whatever it may be, according to the defendant, the lease amount prior to the year of order passed by the revenue court is barred by limitation. That was the simple point placed by the defendant.

12. The trial court recorded a finding that no plea was taken by the defendant; that there was no income from the property during the relevant period. On the basis of the judgment of the Hon'ble Supreme Court in **Bhimsen Gupta Vs. Bishwanth Prasad Gupta (AIR 2004 SC 1770)**, the trial court decreed the suit as prayed for stating that it is not barred by limitation. Against this finding, appellate court states that Article 52 of the Limitation Act will apply and the plaintiff is entitled for the arrear amount only for the three years period.



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13. On that account, it recorded a finding that the revenue Court has no right to pass an order directing the defendant to pay the time barred arrear. The plaintiff is entitled for the arrear only for three years prior to the date of filing of the suit. The above said finding is called in question.

14. The learned counsel appearing for the appellant would submit that quantified was due on the date of the order passed by the revenue court namely 30/10/2012 and 15/12/2014. So according to him, Article 52 must be construed that the rent become due only on the date of the order of the revenue court and not contra. But however, the learned counsel appearing for the respondent would rely upon the judgment of this court in **Anandan Vs. Lingam (CRP (NPD) Nos. 2057 and 766 of 2005, dated 22/02/2013)** for negating the relief for the payment of rent in respect of the period of three years prior to the filing of the suit. An elaborate discussion was made by the Coordinate Bench of this court and finally settled the principle that the revenue Court has no right to pass an order directing the tenant to pay rent for more than three years prior to the filing of the petition. According to the respondent, the order passed by the revenue court directing the respondent herein to



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pay the rent for the disputed period is per se illegal.

According to him, an illegal order may not be complied and there is no cause of action for the appellant.

15. Now we will go to the argument advanced by the appellant. As mentioned above, he wanted to interpret the Article 52 to his advantage stating that only on the date of passing the order by the revenue court the arrear become due. So this contention is not available for the simple reason that as decided in Anandan's case, the revenue court has no right to pass any order directing the tenant to pay rent which are timed barred. So the contention on the part of the appellant that the amount was quantified by the revenue court and passed the order. The quantified amount must be taken as arrear and the suit was filed within three years cannot be accepted for one other reason also. As per the terms of agreement between the parties, the lease amount due on the expiry of the Fasli year. So, fresh cause of action will arise on expiry of each Fasali year. So the contention on the part of the appellant that the amount became due only on the date of passing of the order by the revenue court is completely unacceptable and not legal also. On that only ground, I am of the considered view that no interference is called for in the finding recorded by the first



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appellate court with regard to the factual and legal aspect. The judgment and decree passed by the first appellate court is perfectly legal which requires no interference. According, both the questions of law are answered against the appellant.

16.In the result, this second appeal fails and the same is **dismissed** confirming the judgment and decree passed by the first appellate court. No costs.

22/10/2024

Index:Yes/No
Internet:Yes/No
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To,

1.The Additional District and Sessions Judge,
(Fast Track Court), Tenkasi.

2.The Additional Sub Judge,
Tenkasi.

3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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