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S.A(MD).No.1668 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **29.10.2024**

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A.No.1668 of 2002

P.Subramani

... Appellant

Vs.

Arulmighu Kaliyamman Thirukovil
Y.M.R.Patti, through its
Executive Officer.

.... Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment passed in A.S.No.50 of 1999 on the file of the Principal District Court, Dindigul on 26.03.2002 confirming the decree and judgment passed in O.S.No.318 of 1997, on the file of the First Additional District Munsif Court, Dindigul on 28.10.1998.

For Appellant : Mr.S.Vellaichamy

For Respondent : Mr.R.G.Shankar Ganesh

JUDGMENT

The appellant, who is the defendant, filed the present appeal against the judgment and decree, dated 26.03.2002 made in A.S.No.50 of 1999, on the file of the Principal District Court, Dindigul confirming



the judgment and decree, dated 28.10.1998 made in O.S.No.318 of 1997, on the file of the First Additional District Munsif Court, Dindigul.

2. For the sake of convenience, the appellant and the respondent shall be referred to as per their ranks in the plaint, as the defendant and plaintiff respectively.

3. The plaintiff, who is the respondent in the present appeal, filed a suit in O.S.No.318 of 1997 before the I Additional District Munsif, Dindigul, for eviction.

4. On analyzing documentary and oral evidence, the learned I Additional District Munsif, Dindigul has decreed the suit in favour of the plaintiff and directed the defendant to vacate the plaint schedule property and hand over possession to the plaintiff within three months. Aggrieved by the judgment and decree of the trial Court, the defendant filed an appeal before the Principal District Court, Dindigul which is taken on file in A.S.No.50 of 1999. Considering the pleadings, evidences, judgment and decree of the trial Court, the learned Principal District Judge, Dindigul has dismissed the appeal by confirming the judgment and decree of the trial Court. Aggrieved



over the same, the defendant has filed the present appeal.

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5. The case set-up by the plaintiff in the plaint is as under:-

(i) The suit property belongs to the plaintiff's temple. The Executive Officer of the Temple has been Managing its day to day affairs. The defendant herein became a tenant in the suit property for the purpose of running a Hotel. The present rent of the suit property is Rs.100/- per month. The defendant agreed to abide by the conditions of the tenancy agreement entered into between the plaintiff and the defendant and also to abide by the provisions of the Hindu Religious and Charitable Endowment Act. The defendant had taken the premises only for running a Hotel. But quite contrary to the terms of the Tenancy agreement and also against the provisions of HR & CE Act. The defendant without any permission or consent of the plaintiff had put up a pucca construction and using the same as "pay and use lavatory". Even though the plaintiff had prevented the defendant from putting up construction in the Temple premises for using the same as Lavatory, the defendant with the influence of his position and the influence of the politics had put up constructions hurriedly and using the same for the purposes other than the purpose for which the property was taken on lease. Therefore, the plaintiff had terminated the tenancy of the defendant with the end of 31.08.1996 by a statutory



notice dated 5.8.96 calling upon the defendant to surrender the vacant possession of the property on 1.9.1996 after removing the constructions put up by him. The defendant is not entitled to the use of the property for the purpose other than the purpose for which it was taken on lease. Hence, the plaintiff has come forward with this suit for ejectment of the defendant from the suit property and to surrender the vacant possession of the same.

6. The defence set-up by the defendant in the written statement is as under:-

(i) The defendant has contended that the description of the suit property is not at all correct. It is correct to state that the defendant had entered into the vacant site of the suit property as a tenant. The defendant had orally agreed the suit site on lease from the plaintiff in the year 1990 for running a pay and use lavatory. The defendant had spent upto Rs.60,000/- for putting up construction and he had also obtained the electricity service connection at his costs, and as such now he is running a pay and use lavatory in the said premises. It is also correct to say that the rate of rent is Rs.100/- per month. The defendant has never agreed the suit property for running a hotel. Since the defendant has been running a "pay and use Lavatory" with the knowledge and consent of the plaintiff from the year 1990, he has



no locus standi to object the defendant. The defendant has been paying the rent for the ground site to the plaintiff then and there. The plaintiff has also been issuing receipts for the same. Therefore, the defendant has not committed any default in payment of rent. As on date, there is no arrears of rent. The defendant has suitably given a reply notice to the notice of the plaintiff dated 5.8.96. The defendant has been using the suit property for the purpose to which he has agreed the same on rent. There is no cause of action for the plaintiff to file the suit against the defendant. The reasons adduced in the plaint for the ejectment of the defendant from the suit property are not adequate and admissible. Since the defendant has spent a huge amount for putting up construction, he cannot be vacated from the suit property, without any valid reasons whatsoever. If it is allowed to be ejected he would be put to irreparable loss and hardship and prayed for dismissal of the suit.

7. Before the trial Court, on behalf of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and Ex.P1 to Ex.P4 were marked. On the side of the defendant, two witnesses were examined as D.W.1 and D.W.2 and Ex.D1 to Ex.D4 were marked.

8. On the basis of the rival pleadings made on either side, the



trial Court, after framing necessary issues and after evaluating both oral and documentary evidence, had decreed the suit.

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9. Aggrieved by the judgment and decree of the trial Court, the defendant filed an appeal before the Principal District Court, Dindigul which is taken on file in A.S.No.50 of 1999.

10 The first appellate Court, after hearing both sides and upon re-appreciating the evidence available on record, had dismissed the appeal by confirming the judgment and decree of the trial Court.

11. Challenging the said concurrent judgment and decree passed by the first appellate Court, the defendant has filed the present appeal.

12. At the time of admitting the present second appeal, this Court had formulated the following substantial questions of law for consideration:

"i) Whether the decree and judgment of the Courts below are legally sustainable inasmuch as they have failed to note that the respondent is estopped in filing the suit on the ground of different user as they have not raised any objection for the use?



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13. The learned counsel appearing for the appellant would submit that the courts below failed to consider both oral and documentary evidence adduced by the appellant. The Courts below failed to note that having accepted the rents from appellant from 1990 the respondent is estopped from pleading different user of the suit property by the appellant. The respondent has not given substantial evidence to prove its case. The courts below erred in decreeing the suit based on the oral evidence of the respondent.

14. The learned counsel appearing for the respondent would submit that the trial Court and the first appellate Court after hearing both sides and upon re-appreciating the evidence available on record, had rightly decreed the suit and dismissed the appeal and there is no interference is required. Hence, he prayed for dismissing the appeal.

15. I have heard the learned counsel for the appellant and the respondent and also perused the materials on record carefully.

16. P.W.1 in his cross-examination stated that there was no documentary proof to substantiate the contention that the suit property was leased out to the appellant/defendant for the purpose of



running a hotel. It is also an admitted fact that the appellant/defendant has been running a Hotel under the name and style of Chola Hotel at Trichy main road, Dindigul. It is also not disputed that the electricity service connection has been obtained in the name of P.W.2 Kaliappan while he was functioning as a Trustee of the temple for the suit property. P.W.2 has admitted that during the tenure of his office, he used to issue receipts for the rent paid by the appellant/defendant. Ex.A4 which contains the counter foil of receipts has the reference to substantiate the case of the respondent/plaintiff that the appellant/defendant had been running a Hotel in the suit property under the name and style of Hotel Chola. The learned counsel for the respondent/plaintiff has put forth his argument stating that P.W.2 in his cross-examination had admitted that the appellant/defendant had agreed to lease out the vacant site for the purpose of running a Hotel. He has also argued that contrary to the lease agreement, now the appellant/defendant had been running a pay and use lavatory in the suit property for which he had not obtained any licence of plan approval from the Municipality of the temple. The learned counsel for the respondent/plaintiff would further submit that the appellant had not obtained any concurrence from the sanitary inspector. This fact has been admitted by P.W.1 in his cross-examination. According to Ex.A1 the



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tenancy of the appellant/defendant was duly terminated. Since it is determined that the appellant/defendant has been using the suit property other than the purpose for which it was leased out, therefore, this Court do not find any reason to interfere with the findings of the courts below. Therefore, the substantial question of law is answered accordingly in favour of the plaintiff/respondent.

17. Accordingly, the second appeal is dismissed by confirming the judgment and decree of the courts below. The appellant is directed to vacate the premises on or before 31.03.2025, failing which, the respondent/temple can proceed with the same with the help of the police and the respondent shall proceed against the appellant/defendant for recovery of the arrears of rent in the the manner known to law. No costs. However, there shall be no order as to costs.

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Index : Yes/No
Internet : Yes/No
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To

1. The Principal District Court,
Dindigul.
2. The First Additional District Munsif Court,
Dindigul.
3. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.

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Judgment made in
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