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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.89 of 2005
and
C.M.P(MD)No.854 of 2005

Girija :Appellant/Appellant/Second Defendant

.VS.

1.The Pranobakari Trust,
Kanyakumari
represented by its President
M.Arumugam. :Respondent/Respondent/Plaintiff

2.A.V.Sangeetha Michael :Respondent/Respondent/Ist Defendant

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No. 81 of 2004, dated 25.8.2004, on the file of Second Additional Sub-Judge, Nagercoil confirming the judgment and decree made in O.S.No. 240 of 2000, dated 27.12.2003, on the file of Additional District Munsif Court, Nagercoil.

For Appellant :Mr.T.Arivukumar
for Mr.N.GA.Natraj

For Respondent-1 :Mr.C.Dhanaseelan

Respondent No.2 :Died

**JUDGMENT**

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The Second Appeal is directed against the judgment and decree made in A.S.No. 81 of 2004, dated 25.8.2004, on the file of Second Additional Sub-Judge, Nagercoil confirming the judgment and decree made in O.S.No.240 of 2000, dated 27.12.2003, on the file of Additional District Munsif Court, Nagercoil.

2.The Second defendant in the suit is the appellant. The suit is for recovery of possession and also for recovery of rental arrears by the first respondent/Plaintiff.The suit was decreed by the trial Court and the findings of the trial Court were affirmed by the First Appellate Court. Aggrieved by the concurrent findings of the Courts below, the second defendant has come forward by way of this Second Appeal.

3.According to the first respondent/plaintiff, the suit property belonged to the first respondent/Trust and the suit was filed by the first respondent in O.S.No.73 of 1983 against one Jerry for eviction. The suit was decreed exparte and the decree was put into execution and the property was delivered in favour of the first respondent/Trust. After taking possession from the said Jerry, the first defendant in the present suit entered into a lease agreement with the plaintiff on 13.04.1996. According to the plaintiff, the first



defendant agreed to pay a monthly rent of Rs.75/-.The second defendant said to be claiming as a tenant under the first defendant and hence, he was made as a party to the suit. The defendants failed to pay the rent and hence, a legal notice was issued on 26.08.1998 terminating the tenancy in favour of the first defendant, claiming arrears of rent and for eviction. There was no response from the first defendant. Therefore, the suit was filed for recovery of possession and for recovery of rental arrears from the first defendant.

4.The suit was resisted by the defendants by denying the title of the first respondent/Trust. It was claimed by the defendants that the lease deed was executed by the first defendant at the time of eviction proceedings against Jerry on the understanding that the suit property would be let out to the first defendant. However, the above said Jerry and his tenant the second defendant were not evicted and possession was not at all taken by the first respondent/Plaintiff. The defendant claimed that the plaintiff failed to hand over the lease agreement entered between the parties and misusing the same, the suit was laid for the above said relief.

5.Before the trial Court, two witnesses were examined on behalf of the plaintiff as P.W.1 and P.W.2 and 11 documents were



marked as Ex.A1 to Ex.A11. The first and second defendants were examined as D.W.1 and D.W.2 and on behalf of the defendants, five documents were marked as Ex.B1 to Ex.B5.

6.The trial Court, on appreciation of oral and documentary evidence, came to the conclusion that the plaintiff was entitled to the decree as prayed for. Aggrieved by the same, the second defendant preferred an appeal in A.S.No.81 of 2004, on the file of Second Additional Subordinate Judge, Nagercoil. The First Appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings of the Courts below, the second defendant has come forward by filing this Second Appeal.

7.At the time of admission, this Court formulated the following substantial question of law by order, dated 31.01.2008:

Whether the suit is maintainable, when the property belongs to a private Trust?

8.The learned counsel for the appellant vehemently contended that the suit property situate in a Rent Control Area and when the plaintiff is a private Trust, the suit for eviction filed before the Civil Court, is not maintainable and the same should



have been filed before the Rent Controller. The learned counsel further submitted that there is no relationship of owner and tenant between the plaintiff and second defendant and the second defendant is only a tenant under one Jerry. In the absence of any evidence to show that the plaintiff had taken possession of the property from Jerry, the suit for recovery of possession filed by the plaintiff against the second defendant based on rental arrangement with the first defendant, is not at all maintainable.

9.The lease deed entered between the plaintiff and first respondent was marked as Ex.A1. Xerox copy of Ex.A1 is produced before this Court and a perusal of the same would suggest that the first defendant executed a rental chit in favour of the plaintiff trust admitting it as a public charitable trust. The same can be gathered by description of the plaintiff found in Ex.A1 as "Samuthaya Dharma Madam" Therefore the contention raised by the learned counsel for the first respondent with regard to the maintainability of the suit before the Civil Court falls into insignificance in view of Ex.A1. The substantial question of law framed at the time of admission is answered against appellant accordingly.

10.It is seen from the records that the plaintiff trust filed a suit in O.S.No.73 of 1983 against one Jerry under whom the



appellant/second defendant claims right as a tenant and obtained a decree for possession and the said decree was put into execution in E.P.No.239 of 1994. The plaintiff had taken possession of the suit property from the above said Jerry as evidenced from the Delivery Account marked as Ex.A11. Therefore, it is clear that the plaintiff had taken possession of the suit property from the above said Jerry through Court. Hence the contention of the learned counsel for the appellant as if the Plaintiff has not taken possession from Jerry before execution of Ex.A1-lease deed is not acceptable. The Courts below also, on going through the evidence available on record, came to a factual conclusion that the second defendant is only the wife of the first defendant residing along with him in the suit property. Therefore the second defendant has no independent legs to stand and she is only a person who is in possession by claiming right under first defendant, who entered into a lease arrangement with the plaintiff. The lease with the first defendant was validly terminated by issuing a notice on 18.08.1998. Having received the notice, the first defendant has not issued any reply disputing his status as a tenant. Therefore the defense raised in the written statement is only an after-thought.

11. In view of the discussions made above, there is nothing to interfere with the findings rendered by the Courts below. In view of



the answer to the substantial question of law framed at the time of admission, the Second Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.07.2024

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

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



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S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A(MD)No.89 of 2005
and
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