



S.A. No. 1063 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 10.07.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No.1063 of 2009
and
M.P. No. 1 of 2009

Jannet

.. Appellant

Versus

The Church of South India Trust Association,
Rep. by its Power of Attorney Rt. Rev. Dr. M. Dorai,
S/o. Late Manickam,
Bishop, Coimbatore Dioceses,
CSI Dioceses Office,
256, Race Course,
Coimbatore.

.. Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 08.01.2009 passed in A.S. No. 1 of 2009 by the learned Sub Judge, Udthagamandalam, confirming the judgment and decree dated 11.08.2008 passed in O.S.No. 202 of 2005 by the learned District Munsiff, Udthagamandalam.

For Appellant : Mr. S. Arunachalam

For Respondent : Mr. J. Franklin



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JUDGMENT

WEB COPY This Second Appeal had been preferred the judgment and decree dated 08.01.2009 passed in A.S. No. 1 of 2009 by the learned Sub Judge, Udthagamandalam, confirming the judgment and decree dated 11.08.2008 passed in O.S.No. 202 of 2005 by the learned District Munsiff, Udthagamandalam

2. The suit in O.S.No.202 of 2005 was filed by the Church of South India Trust Association represented by its Power of Attorney Rt. Rev. Dr.M.Dorai against the Defendant/Appellant herein seeking direction to the Defendant to deliver the vacant possession of the suit schedule property to the Plaintiff and to direct the Defendant to pay Rs.100/- per month as damages for unauthorized occupation to the Plaintiff from 30.03.2005 till vacating the suit schedule property.

3. The Plaint averments briefly are as follows:

3.1. The Church of South India Trust Association is the landlord of the residential premises bearing D.No.3/143, Kinlock Cottage, Kandal, Ootacamund, the suit schedule premises and the Defendant is a tenant under the Plaintiff on a monthly rent of Rs. 120/-. The tenancy month is commencing



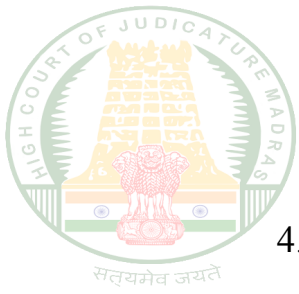
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from the 1st day of every English Calender month and the rent being payable

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on or before every succeeding month. The Defendant, as a tenant is very irregular in paying rent and he has failed to pay the rent for the premises from 01.11.2000 to till date amounting to Rs.6,120/- and the same is willful and deliberate and the Defendant is liable to be evicted. The suit premises is very old and it may collapse at any time and the same should be demolished. The tenancy has been terminated on account of arrears of rent and for demolishing and reconstruction. The Plaintiff has sent a legal notice on 18.03.2006, to the Defendant, terminating the tenancy and calling upon the Defendant to deliver the vacant possession of the suit promises. The said notice was received by the Defendant on 21.03.2005 but he has not come forward to vacate the premises and also he has not paid the arrears of rent. He has also not chosen to send any reply.

3.2. The Defendant is liable to pay a sum of Rs. 100/- per month from the date of termination of tenancy towards the damages for the unauthorized occupation of the suit premises. Since the Tamil Nadu Buildings (Lease and Rent Control) Act, 1964 is not applicable to Trust properties. Therefore, this Court has got jurisdiction to entertain this suit. Hence, the suit.



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4. The written statement filed by the Defendant in brief are as

follows:

4.1. The case of the Plaintiff is false and not maintainable both in law and on facts. There is no rent due by the Defendant to the Plaintiff as alleged. He has paid the entire rents upto January 2005 to the Plaintiff without any default. When he tendered the rent for the month of February, 2005 to the Plaintiff, the Plaintiff has refused to receive the same. The suit premises is in good condition. The Defendant and her parents have spent huge amount at about Rs. 1 lakh for maintenance of the suit premises. Initially the Plaintiff's Trust let the suit premises to the Defendant's father in a single room, hence the Defendant's father has constructed additional four rooms in his own by spending more than Rs.1 lakh. The suit premises and other premises are situate in a single engineering construction and all the premises are under one roof and the suit premises alone cannot be demolished. Further, without evicting the other tenants this suit premises cannot be demolished. The Defendant has sent a suitable reply on 5.4.2005 to the Plaintiff's notice dated 18.03.2005. The Defendant is not liable to pay Rs. 100/- per month as damages as alleged by the Plaintiff. Originally the Defendant's father was the original tenant under the Plaintiff's trust for the past 50 years and from the date of tenancy, the Defendant's father and the Defendant are paying the rent regularly. As the



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Defendant is in occupation of the suit premises for about 50 years, he is entitled to the protection of tenancy laws. He is not liable to vacate the suit premises. Hence, the suit is liable to be dismissed with cost.

5. Based on the pleadings of both the Plaintiff and Defendant the learned District Munsiff, Udhagamandalam, had framed the following issues:

1. Whether the Plaintiff is entitled to recover possession on the suit schedule property?
2. Whether the Plaintiff is entitled for damages at the rate of Rs.100/-p,m. from 30.03.2005 till the date of delivery of possession?
3. To what other relief?

6. During trial, the Plaintiff Trust had examined one Benjamin Franklin, one of the Power of Attorney of C.S.I. Trust Association and Property Officer of CSI Diocesan Council, Coimbatore as P.W-1. During his evidence the documents relied by the Plaintiff were marked as Ex.A-1 to Ex.A-11. The husband of the Defendant examined himself as D.W-1 and during his evidence the documents relied by the Defendant were marked as Ex.B-1 to Ex.B-15.



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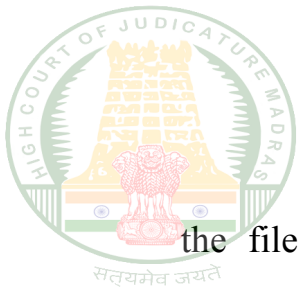
WEB COPY 7. On appreciation of evidence, the learned District Munsiff, Udthagamandalam, had by judgment dated 11.08.2008 decreed the suit of the Plaintiff with costs and directing the Defendant to vacate and hand over possession of the property to the Plaintiff within three months.

8. Aggrieved by the judgment and decree granted in favour of the Plaintiff, the Defendant in O.S.No.202 of 2005 had preferred Appeal in A.S.No.1 of 2009 before the learned Sub Judge, Udthagamandalam. The learned Sub Judge, Udthagamandalam had raised the following point for determination:

Whether the judgment of the trial Court is perverse warranting interference by the Appellate Court?

9. After hearing both parties and on re-appreciation of evidence independently by the learned Sub Judge, the learned Sub Judge, Udthagamandalam, by judgment dated 08.04.2009 dismissed the Appeal in A.S.No. 1 of 2009.

10. Aggrieved by the dismissal of the Appeal in A.S.No.1 of 2009 on



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the file of the learned Sub Judge, Udhagamandalam and confirming the judgment dated 11.08.2008 passed in O.S.No.202 of 2005, the Defendant in O.S.No.202 of 2005 and the Appellant in A.S.No.1 of 2009 had preferred this Second Appeal raising the following substantial questions of law:

(i) Whether non-framing of proper issue which left the lower Appellate Court, undecided of the real issue is correct?

(ii) Whether finding out the Appellant alone, affecting his livelihood by a charitable Trust when others are allotted to stay in, more particularly, when he is prepared to pay the entire rent due is arbitrary?

(iii) Whether when Ex.B-13 is clear and to default is there on the side of the Appellant, it could be learnt as default, much less wilful default?

(iv) When Ex.B-2, Ex.B-3, Ex.B-4 and Ex.B-8 are showing the conduct and illwill of the respondent, whether the answer to issue No.1 is correct?

(v) Whether the differentiation of commercial motive and service motive is correct?

11. The learned Counsel for the Appellant submitted that when the Plaintiff has taken a stand that the building is very old, he did not insist his



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ground of willful default, particularly, when the rent is being refused by the Respondent. Even today the Appellant is willing to pay arrears of rents if any.

With reference to Defendant that at the time when this Court granted stay as per the directions of this Court Rs.6,540/- was paid. The Appellant is willing to pay the arrears if any. On discussion between the Appellant and the Respondent it was agreed that the Appellant was permitted by the Respondent to stay in the residential house and till now she is living there with her family. The residential place in question is a row of houses and in one concrete structure. Therefore, pointing the Appellant alone is not meeting any equity and it is affecting the livelihood of the poor and old people who is serving to the public for more than 40 years. It is understood that as of now there is no rift between parties and there is a good relationship. Upto January 2005, no rent was due and then the rent was tendered for the month of February 2005. The Respondent refused to receive the same. The suit premises is in good condition the Plaintiff spent more than a lakh of Rupees together so far for the maintenance of the same. The tenancy continued till date and that originated from the Appellant father till now.

12. It is further submitted that the lower Court failed to note that the arrears in payment of rent is not willful and deliberate and it also failed to



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consider the attempt taken by the Defendant in payment of his Rent for February 2005 as deposed in D.W-1 evidence. The Lower Court failed to consider that the improvement to the Buildings that too additional construction have been carried out long back when the Defendant's father was alive and also only with the oral permission of the Plaintiff as followed to other Tenants in the same area. The Lower Court also failed to note that there are 4 Nos. of Tenants premises in the same quarters where the schedule mentioned property is situated and that all were built in single Engineering Construction. The premises including that of the Defendant are in a permissible accommodative condition and it is wrong to rely the evidence of P.W-1 to conclude that suit schedule property is in dangerous condition especially in the absence of any proof from local body authorities. Ex.B-13, is clear and no default is there on the side of Appellant. Ex.B-2, Ex.B-3, Ex.B-4 and Ex.B-8 are showing the conduct and illwill of the Respondent. This aspects have not been taken into account the trial Court and the Appellant failed to take note of the same. The trial Court has canvased so many reasons which are neither pleaded nor issue framed. The trial Court has travelled beyond the scope with a pre-judged mind to evict the poor dweller. No prejudice would be caused to the Respondent and in fact both Appellant and Respondent are maintaining good relationship now. The Appellant may be allowed to stay there as a tenant along with other



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tenants. Therefore, both the Courts below erred in considering the facts and therefore, the judgment of the trial Court and the Appellate Court are to be set aside.

13. It is the submission of the learned Counsel for the Respondent that the Respondent/Plaintiff filed a suit for recovery of possession and for damages. PW-1 (property manager of CSI) has been examined and Ex.A-1 to A-11 were marked. The Appellant/Defendant is a tenant for monthly rent of Rs.120/-. The rent being payable on or before fifth day of every succeeding month. The Defendant has failed to pay the rent from 01.11.2000 to the filing of the suit. On 18.03.2005 termination notice issued to deliver the vacant possession of the suit premises within 15 days on the receipt of the notice. In the written statement, the Appellant/Defendant admitted the tenancy and she pleaded that no default on rent as on date, further she pleaded that she made a lot of improvement on the suit premises and made additional construction by spending two lakhs. Both Courts below ordered delivery of possession and damages. The subject matter of appeal does not involve any substantial question of law. It is submitted that the Appellant/ Defendant squatting on the property, nearly 70 years for meagre rent. Admittedly, as there was arrears of rent, notice has been issued U/s 107 of Transfer of Property Act, no substantial



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defense raised by the Appellant/ Defendant. Therefore, the judgment of the trial Court and the Appellate Court are well reasoned judgment which does not warrant any interference by this Court. This Second Appeal lacks merit and the same is to be dismissed.

14. Heard the learned Counsel for the Appellant and the learned Counsel for the Respondent.

15. Perused the documents filed in the typed set, the judgment dated 11.08.2008 passed in O.S.No.202 of 2005 by the learned District Munsiff, Udhagamandalam and the judgment dated 08.04.2009 passed in A.S.No.1 of 2009 passed by the learned Sub Judge, Udhagamandalam.

16. On perusal of memorandum of appeal and on perusal of the judgments of the Courts below, as it is a concurrent finding against the tenant by the learned District Munsiff, Udhagamandalam as trial Judge and the learned Sub Judge as Appellate Judge, no substantial question of law arise for consideration in this Second Appeal warranting interference by this Court. Hence, this Second Appeal is to be dismissed as having no merits at the admission stage itself.



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WEB COPY In the result, **this Second Appeal is dismissed at the admission stage**

itself. The judgment and decree dated 08.01.2009 passed in A.S. No. 1 of 2009 by the learned Sub Judge, Udhagamandalam, confirming the judgment and decree dated 11.08.2008 passed in O.S.No. 202 of 2005 by the learned District Munsiff, Udhagamandalam are upheld. No costs. Consequently, the connected miscellaneous petition is closed.

10.07.2025

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Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order



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To

1. The Sub Court,
Udhagamandalam.
2. The District Munsiff,
Udhagamandalam.
3. The Section Officer,
V.R. Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J

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Judgment made in
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