



S.A.No.817 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.05.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

S.A.No.817 of 2013

and

M.P.No.1 of 2013

1.G.Ayyarappan
2.G.Munuswamy
3.G.Kannappan
4.G.M.Devaki ... Appellants/Respondents 3-6/Impleaded Defendants 3-6

Vs.

1.A/m.Arunachaleswarar Thirukoil
Having its Office at the
Thirukoil premises
At: Thiruvannamalai and represented by its
Deputy Commissioner/Executive Officer
... 1st Respondent/6th Appellant/Plaintiff

2.Ashok Sen ... 2nd Respondent/1st Respondent/1st Defendant

Prayer: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 12.09.2012 made in A.S.No.232 of 2009 on the file of the IV Additional City Civil Court, Chennai, reversing the judgment and decree dated 01.08.2008 passed in O.S.No.3326 of 2001 on the file of the Vth Assistant City Civil Court, Chennai.



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For Appellants : Mr.A.Thiagarajan, Senior Counsel
Assisted by Ms.L.Sweety
for Mr.S.Ramesh Kumar

For R1 : Ms.P.A.Samyuktha
for M/s.A.S.Kailasam Associates

For R2 : M/s.Kalaivani
for M/s.Richardson Wilson

JUDGMENT

This Second Appeal has been preferred by the Defendant Nos. 3 to 6 against the judgment and decree dated 12.09.2012 passed in A.S.No.232 of 2009 by the IV Additional City Civil Court, Chennai.

2.According to the plaintiff, plaintiff is the sole and absolute owner of the land situated in and around Adyar, including land measuring about 2411 sq.ft land, bearing Door No.52, Old No.42, Pleasant Avenue, Adyar, Chennai-20, bounded on the East passage forming part of New Door No.48, Old No.53 West; 8 feet passage, on the North; New Door No.5, Old No.1, 2 Vasantha Press Road; on the South Ramasamy Garden Street. Originally one



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Indiresan, father of the 1st defendant was a tenant in respect of the suit property and on his death, the 1st defendant continued to be a tenant on monthly rent of Rs.605/- and the tenancy being computed according to the English calendar month. The 1st defendant has been very irregular in payment of rent and a sum of Rs.21,175/- being the arrears of rent is due from him as on 31.05.2001. Though the payment of rent is demanded from the 1st defendant, he does not choose to pay so. Hence, the suit has been filed to order to recover the arrears of rent, for delivery of vacant possession and for damages for use and occupation from 01.06.2001 till the date of handing over possession.

3.On behalf of the defendant Nos.2 to 5, it has been averred that Indiresan, father of the 1st defendant was a tenant in respect of the suit land on a monthly rent of Rs.605/- per month is false. Originally, the rent in respect of the land in occupation of the defendant Nos.2 to 5 was Rs.1.48 per month and subsequently, it was increased and the plaintiff demanded a sum of Rs.50/- per month and the defendant Nos.2 to 5 have paid an advance of Rs.100/-. The H.R. & C.E. by its Order dated 19.03.1988 had directed the



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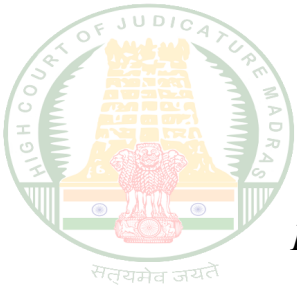
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plaintiff to recognize the 3rd defendant as the tenant. But the plaintiff did not recognize the 3rd defendant as the tenant. Therefore, W.P.No.873 of 1999 was filed before this Court and by an Order dated 25.01.1999, this Court directed the plaintiff to dispose of the representation of the defendant Nos.2 to 5 in respect to the tenancy, within a period of two months from the date of the order. The defendant Nos.2 to 5 are actually in possession and enjoyment of the property and by an order dated 06.02.2003 passed in I.A.No.17547 of 2001, they were impleaded as defendants. They are ready and willing to pay the reasonable rent as may be fixed by the plaintiff.

4.Despite the receipt of suit summons, 1st defendant/Ashok Sen remained ex-parte before the trial Court. On behalf of the 6th defendant/G.M.Devaki no written statement was filed before the Trial Court.

5.Based on the rival contentions, the trial Court framed the following issues.

- 1.Whether the plaintiff is entitled for the relief of vacant possession of the suit land?*
- 2.Whether the plaintiff is entitled for the arrears of rent of*



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Rs.21,175/- till 31.05.2001?

3. Whether the plaintiff is entitled for the damages of Rs.790/- per month from 01.06.2001 till the date of handing over all the possession of the suit land?

4. To what other relief the plaintiff is entitled?

6. At trial, to substantiate the plaint details, one witness was examined and five documents were marked. On the side of defendant Nos.2 to 5/appellants, the 3rd defendant/G.Ayyarappan has been examined as D.W.1 and nineteen documents have been marked.

7. Upon consideration of the oral and documentary evidence and after hearing both sides arguments, the trial Court granted decree in respect of arrears of rent and directed the defendant Nos.2 to 6 to pay a sum of Rs.50/- per month as rent from 01.06.2001 and as regards the relief of recovery of possession the suit was dismissed.

8. Aggrieved by the said judgment, Executive Officer of the Temple, the plaintiff herein preferred an appeal in A.S.No.232 of 2009 before the IV



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Additional City Civil Court, Chennai. Upon consideration of the case records

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and after hearing the arguments of either side, the appeal was allowed in entirety, by setting aside the judgment and decree dated 01.08.2008 passed in O.S.No.3326 of 2001 on the file of the Vth Assistant City Civil Court, Chennai. Aggrieved by the judgment and decree passed by the 1st appellate Court, the defendant Nos.3 to 6 have preferred this Second Appeal.

9.The learned counsel for the appellants/defendant Nos.3 to 6 would vehemently argue that by suppressing the fact that appellants are in possession for years together, the suit was filed. The fact that the 1st defendant neither appeared before the Court nor entered appearance through his counsel would show that he was never in possession of the suit property. He would further contend that the appellants had marked Exs.B1 to B19 which would prove the possession of the appellants for years together and they were not considered by the 1st appellate Court. The plaintiff is not entitled to evict the defendants without following due process of law.

10. Per Contra, Ms.P.A.Samyuktha, learned counsel for the 1st



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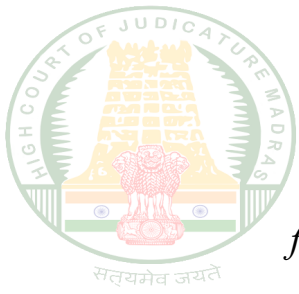
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respondent would strenuously contend that the appellants were not originally inducted as tenants, but, on a petition, they were ordered to be impleaded as defendants in O.S.No.3326 of 2001. The appellants cannot take any shelter under the guise of their representations or other proceedings pending before the Commissioner. It is her further argument that in the absence of any tangible material to show that they have attorned tenancy under the plaintiff, they cannot contend that they should be evicted by following due process of Law. She would further contend that Ashok Sen was a chronic defaulter of payment of monthly rents besides payment of damages for use and occupation from 01.06.2001.

11.The following substantial questions of law arise for consideration:-

a) Whether on the facts and circumstances of the case first appellate Court was right in holding that the appellants was unauthorized occupant when admittedly the appellants and his ancestors were living there for the past more than 70 years with the knowledge of the respondent.

b) Whether on the facts and circumstances of the case the



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first appellate Court was right in holding that the appellants is seeking for tenancy under the respondent and hence respondent has the right to recover the possession is right in law when admittedly the respondent has fixed the rent for the portion under the occupation of the appellants and calling upon the appellants to execute the deed.

c) Whether on the fact and circumstance on the case the Court below was right in allowing the appeal solely on the ground that the appellants have been impleaded as a party in the suit hence no relief can be given is correct in law.

12.Exs.C1 and C2 are the files, relating to the appellants herein and more, specifically, the 1st appellant/G.Ayyarappan had given an application to the HR & CE authority to record him as tenant in the suit property. Though so many requisitions of this nature are found in Exs.C1 and C2, which was given by the 1st appellant, no order was passed in favour of 1st appellant (D3) herein. It is relevant to note that the 1st defendant Ashok Sen did not appear before the trial Court and he was set ex-parte. Whereas the present appellants got impleaded as defendants as per the order passed in I.A.No.17547 of 2001. Plaintiff Thirukoil laid a suit only against Ashok Sen on the footing



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that he attorned tenancy under the Thirukoil in respect of the suit land and he, being a chronic defaulter sought for recovery of possession of suit land and for other reliefs. She would further contend that the appellants/defendant Nos.3 to 6 are not at all tenants under the Temple.

13.D.W.1 namely 3rd defendant/G.Ayyarappan during the cross examination would state that they are encroacher. The candid case of the plaintiff is that 1st defendant/Ashok Sen attorned tenancy under the Plaintiff Thirukoil. It is made clear that defendant Nos.3 to 6 are not tenants but the door number details of the suit property is new door number 52, old door number 47, Beasant Avenue Road, Adyar, Chennai. When the defendant Nos.3 to 6/appellants are not tenants under the Plaintiff Thirukoil, the question of tenancy and payment of rent does not arise at all. The suit was originally laid by the plaintiff temple against Ashok Sen.

14.When the appellants/defendant nos.3 to 6 are not tenants under the Plaintiff Temple, their contention that they have been in occupation of the suit land for years together will not strengthen their case. D.W.1 would also state



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that they are encroachers. Therefore, the 1st Appellate Court in consideration of the oral and documentary evidence rightly held that the plaintiff is entitled for the reliefs sought for in the plaint.

15.In view of the aforesaid discussions and observations, this Court does not find any good reason to upset the finding of the first appellate Court. So also there is no infirmity or perversity in the findings of the first appellate Court. The substantial questions of law are answered in favour of the plaintiff.

16.In fine, this Second Appeal stands dismissed. The judgment and decree dated 12.09.2012 passed in A.S.No.232 of 2009 by the IVth Additional City Civil Court, Chennai, stands confirmed. There is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes/ No
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To

- 1.The IV Additional City Civil Court,
Chennai.
- 2.The Vth Assistant City Civil Court,
Chennai.
3. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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R.KALAIMATHI, J.,

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