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SA No. 220 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-03-2025

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA No. 220 of 2025

and

CMP No. 6593 of 2025

A.R. Kaviya

Appellant(s)

Vs

Sukumar

Respondent(s)

PRAYER: Second Appeal filed under Sec.100 of Civil Procedure Code, praying to set aside the Judgement and decree dated 19.10.2023 in AS No. 57 of 2022 on the file of the First Additional Sub Court, Coimbatore confirming the judgement and decree order dated 25.03.2022 passed in OS No.1709 of 2019 on the file of III Addl. District Munsif Court, Coimbatore.

For Appellant(s): Mr.Raja Srinivas for
M/s.P.V.S.Giridhar Associates

For Respondent(s): Mr. C. Veeraraghavan



JUDGMENT

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The appellant herein is the defendant in the suit in O.S.No.1709 of 2019 on the file of III Addl. District Munsif, Coimbatore, which was filed by the respondent/plaintiff seeking a direction directing the defendant to vacate and hand over the possession of suit property as described in the plaint schedule and the same was decreed in favour of plaintiff. Against which, the defendant preferred an appeal before the I Addl. Sub-Court, Coimbatore in A.S.No. 57 of 2022 and on hearing both sides, the first appellate judge dismissed the appeal by confirming the findings of trial judge. Challenging the concurrent findings of the courts below, the defendant had preferred this Second Appeal.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.

3. Before the trial court, the plaintiff filed a suit for the relief of direction directing the defendant to vacate and hand over possession of the suit property stating that the suit property belong to him and the defendant entered into tenancy agreement for the period of one year and paid an advance amount of



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Rs.40,000/-, thereby she was inducted as a tenant from 28.10.2010 for the

monthly rent of Rs.3500/-. After the expiry of the said period of one year, again

it was extended with the condition to enhance the rent by 10%. While so, son of

plaintiff needs the suit property to conduct his own business. So, after the

completion of tenancy, the plaintiff demanded the defendant to vacate and hand

over the premises, instead of that, she gave a complaint against him before the

police station and also filed a suit in O.S.No.2761 of 2012. To avoid further

complications, on negotiations in the presence of panchayat, there was a further

agreement of five years tenancy was entered on 31.07.2013 with a condition

that on or before 27.11.2017, the defendant has to vacate the premises. But, with

ulterior motive, the defendant filed another suit in O.S.No 1116 of 2015,

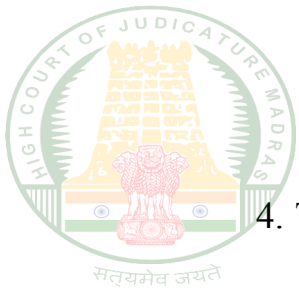
wherein she prayed not to vacate the premises except due process of law and the

same was granted in her favour on 09.07.2019. Thereafter, the plaintiff filed the

present suit after issuance of notice by terminating the tenancy, since the

premises is required for his son's business purpose. The defendant gave the

reply, but not inclined to vacate the premises. Hence, the suit was filed.



4. The defendant contested the suit admitting the relationship of landlord and tenant and also admitted the tenancy, but she contended that she has not committed any wilful default, but the plaintiff caused interference. Hence, she filed a suit against the plaintiff not to cause interference unlawfully in the year 2012, thereafter compromise was entered in the year 2013. Again the plaintiff caused interference. Hence, she filed another suit in the year 2015, wherein she obtained an order of injunction not to vacate except due process of law. She gave suitable reply to the plaintiff stating that the plaintiff had owned other buildings, hence he gave false requirement. Accordingly, she prayed to dismiss the suit.

5. On hearing both sides as well as considering the evidence on record, the trial judge held that the landlord and tenant relationship was admitted between the parties and the evidence of P.W.1 reveals that as per terms of lease agreement, enhanced rent was not paid by the defendant/tenant. During the Covid period, she committed wilful default, however, she had also obtained an order not to vacate except under due process of law. Now, the plaintiff/landlord,



after issuance of notice by giving two months time terminated the tenancy and

he come forward with the present suit as such is legally enforceable. Hence, the

suit was decreed directing the defendant to vacate and hand over the premises.

Against the said findings, the defendant preferred an appeal in A.S.No. 57 of

2022 before the I Addl. Sub-Court, Coimbatore, wherein the defendant raised

submissions stating that she has not committed any wilful default in payment of

rent. Furthermore, the requirement made by the landlord for own use of his son

also not true and correct one, besides, she paid the rent regularly without any

default. But, the courts below not considered all these aspects. Hence, she

prayed to sustain the findings. The said appeal was contested by the

plaintiff/landlord. On hearing both sides, the first appellate judge analysed the

evidence on record and finally concludes that as per the evidence adduced by

both parties, the relationship of landlord and tenant is admitted and as per

Sec.106 of Transfer of Property Act, plaintiff/landlord gave sufficient time by

issuing notice demanding the defendant/tenant to vacate the premises, but the

defendant not complied the said requirement. Hence, the plaintiff rightly

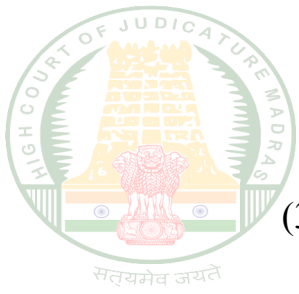


approached the court, which needs no interference. Accordingly, the findings of trial judge is confirmed and dismissed the appeal.

6. Challenging the concurrent findings, now the defendant preferred this

Second Appeal by raising the following grounds for consideration :-

- (1) The learned Sub-Court has erroneously decreed the suit without considering the oral evidence of P.W.1 (Respondent/Plaintiff) and D.W.1 (Appellant/Defendant) and appreciating the exhibits marked bearing Exs. P1 to P8 and D1 and D2 properly, especially the rental agreements and the judgment and decree in O.S.No. 1116 of 2015 of the District Munsif Court of Coimbatore.
- (2) The courts below erred in mechanically accepting Ex.P2 (rental agreement entered between the respondent/plaintiff and his son with one Mr.Devaraj) and Ex.P3 (rental agreement entered between the respondent/plaintiff and his son with one Mr.Devaraj) without bringing on oath the parties to the rental agreement to ascertain the veracity of the documents and its contents.



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- (3) The courts below erred in not bringing on oath the respondent's son, Dinesh Babu, for whom the said premises is alleged to be required for personal use.
- (4) The courts below erred in not considering the fact that the respondent has failed to prove and establish his case as per the pleadings, prayer and documents through corroborative evidences.
- (5) The courts below failed to note that the appellant/defendant has been regularly paying the monthly rent to the respondent/plaintiff as a lawful tenant under him and the respondent/plaintiff has been giving troubles to the appellant/defendant to evict her from the suit property by using force and unlawful methods.
- (6) The lower court has failed to note that the appellant/defendant has filed suits in O.S.No. 2761 and 1116 of 2015 on the file of District Munsif Court, Coimbatore for the relief of permanent injunction against the respondent/plaintiff and his men from interfering with her peaceful possession and enjoyment of the property.
- (7) In **1974 (2) SCC at page 366, Mattulal vs. Radhe Lal**, it was the Court held that the word 'required' has a greater



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connotation than a mere desire on the part of the landlord by observing as follows:-

“(iii) The mere assertion on the part of the landlord that he requires the non-residential accommodation in the occupation of the tenant for the purpose of starting or continuing his own business is not decisive. It is for the court to determine the truth of the assertion and also whether it is bona fide. The test which has to be applied is an objective test and not a subjective one and merely because a landlord asserts that he wants the non-residential accommodation for the purpose of starting or continuing his own business, that would not be enough to establish that he requires it for that purpose and that his requirement is bona fide. The word 'required' signifies that mere desire on the part of the landlord is not enough but there should be an element of need and the landlord must show the burden being upon him that he genuinely requires the non-residential accommodation for the purpose of starting or continuing his own business.”

(8) Whether the requirement is bonafide is a question of fact. In the instant case the Sub-Court did not properly decide the issues based on the oral and documentary evidences and came to an erroneous conclusion. The lower appellate court is final



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so far as findings of fact are concerned. The decision of the Sub-Court was mechanically adopted in the appellate court without adequate appreciation of Ex.P2 (rental agreement entered between the respondent/plaintiff and his son with one Mr.Devaraj and Ex.P3 (rental agreement entered between the respondent/plaintiff and his son with one Mr.Devaraj).

- (9) The courts below ought to have noted that the respondent/plaintiff failed to establish bonafide requirement of the suit premises.

By submitting the above grounds, the learned counsel for appellant stated that the following substantial question of law is involved in this Second Appeal :-

- (a) Whether the Sub-Court has erroneously decreed the suit without considering the oral evidences of P.W.1 (respondent/plaintiff) and D.W.1 (appellant/defendant) and appreciating the exhibits marked bearing Exhibits P1 to P8 and D1 and D2 properly, especially the rental agreements?
- (b) Whether the courts below erred in holding that the respondent/plaintiff was entitled to the vacant possession of the suit property?
- (c) Whether the courts below erred in not appreciating that the question of bonafide requirement assumes greater importance



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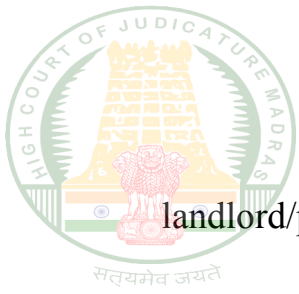
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when considering petitions for eviction on the ground of own use?

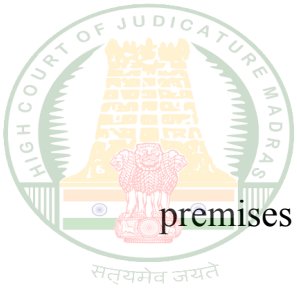
7. Heard and considered rival submissions of both learned counsel for appellant and respondent and perused the materials available on record.

8. On considering submissions of the learned counsel for appellant, the fact reveals that the appellant was the tenant under the respondent/plaintiff for the monthly rent of Rs.3500/- for the period of one year from 28.10.2010 and paid advance of Rs.40,000/- and after the completion of one year period, another one year was extended. After that, the premises was in need of plaintiff's son, who already conducted the business in the rental building. Therefore, the plaintiff demanded to vacate the premises immediately. But, the defendant filed a suit for bare injunction, wherein they entered into a compromise for another period of five years, thereby the time was extended. After that, the plaintiff again demanded to vacate the premises, but she refused and also filed another suit and obtained an order of permanent injunction not to cause interference except due process of law. Even after the compromise, there was a dispute between the parties. So, the tenant gave a complaint against the



landlord/plaintiff in the police station, after that, the plaintiff needs the property

for his own use of son's occupation to conduct business. Therefore, he issued a notice under Sec.106 of Transfer of Property Act. For that, she gave reply, but not inclined to vacate the premises. Hence, he come forward with the present suit directing the defendant to vacate and hand over the possession of property by giving six months. However, the defendant contended that the plaintiff owned nearly about 20 shops in that locality. Therefore, his requirement is not bonafide one nor she has not committed any wilful default. Therefore, his claim as such is vexatious one. But, admittedly, in order to prove the defence, the defendant has not adduced any material evidence that the plaintiff has owned 20 numbers of shops in that locality. Furthermore, as per the terms of lease, after completion of one year period of lease, 10% of enhanced rent to be paid by the tenant, but she has not complied the said terms though she continued her tenancy. That apart, landlord and tenant relationship is admitted, it is not disputed. Moreover, under Sec.106 of Transfer of Property Act, the plaintiff/landlord issued a notice by giving six months time to vacate the



premises as it is required for his son's own occupation. Therefore, the first

appellate judge held that already the defendant/tenant obtained an order of injunction not to vacate except under due process of law. Thereafter, by issuing notice, the plaintiff had given six months period and after the completion of said period, he come forward with the present suit as such is legally permissible as per Sec.106 of Transfer of Property Act. Therefore, the defendant was already given sufficient time, but he has not vacated from the premises. Hence, the suit was filed and the first appellate judge has rightly granted the relief in favour of plaintiff by relying Sec.106 of Transfer of Property Act and also rightly held that the suit as such is maintainable. Accordingly, the findings are confirmed. Though the plaintiff/tenant submitted that she has not committed any wilful default as on date, but on seeing tenancy agreement, every year, 10% of rent is to be enhanced, but it was not paid by the appellant. Therefore, the terms of tenancy has also not been properly complied. Above all, by issuing notice under Sec.106 of Transfer of Property Act, the landlord complied the legal requirement, which requires no interference. Accordingly, this Second Appeal



is dismissed as there is no question of law involved. Time is granted for the

period of three months to the appellant to vacate the premises. If the appellant is

not vacated within that period, the respondent/plaintiff is entitled to approach

the Executing Court to execute the decree as per manner known to law. No

costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. I Addl. Sub-Judge, Coimbatore.

2. III Addl. District Munsif, Coimbatore.

3. Section Officer, VR Section, Madras High Court.



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T.V.THAMILSELVI J.

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