



A.S.No.600 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-06-2025

CORAM

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

AS No. 600 of 2019

Prof.Dr.D.Purushothaman
Principal of Law College (Retd.)
S/o.Deivasigamani,
No.63/80, T.V.S. Nagar, 5th Street,
Padi, Chennai-600050

Appellant(s)/Plaintiff(s)

Vs

T.T.Bhoopalan
S/o.T.P.Thiagarajan,
New No.24, Old No.135, Corner House, Ground Floor,
4th Street, Karpagam Avenue, R.A.Puram,
Chennai-600028

Respondent(s)/Defendant(s)

First Appeal filed under Order XLI Rule 1 & 2 r/w Section 96 of the CPC to set aside the judgment and decree dated 01.07.2019 passed in O.S.No.350 of 2018 on the file of the III Additional District Court, Tiruvallur at Poonamallee.

For Appellant(s): Mr.T.Ayyasamy



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For Respondent(s): Mr.K.Venkatesan

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JUDGMENT

Unsuccessful plaintiff has preferred the present first appeal challenging the judgment and decree dated 01.07.2019 passed in O.S.No.350 of 2018 on the file of the III Additional District Court, Tiruvallur at Poonamallee.

2. The parties are referred to as per their rankings in the trial Court.

3. Suit is filed for mandatory injunction directing the defendant to remove the old furniture *viz.* two cots and two chairs abandoned by the defendant in the suit property or alternative decree of recover of possession and for recovery of Rs.9,88,600/- towards damages for use and occupation with subsequent interest at the rate of 12% per annum.

4. The trial Court decreed the suit in part by granting mandatory injunction directing the defendant to remove the old furniture *viz.* two cots



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and two chairs from the suit property and dismissed the suit for damages for use and occupation.

5. The brief case of the plaintiff is as follows:

The plaintiff is the absolute owner of the suit property and his wife A.Vanaja is employed in Tamil Nadu Metro Water and the defendant is her colleague. When the plaintiff was constructing a building, the defendant advanced a loan of Rs.8,00,000/- without interest in the year 2013. After completion of construction in the year 2014, the defendant wanted a portion of the building for his residential purpose. Considering the long-term friendship and timely help of the defendant by advancing the loan amount, the plaintiff allowed the defendant to occupy the suit property in June 2014. The possession of the suit property by the defendant was a permissive one and no rent was collected. The plaintiff had paid a part sum of Rs.2,00,000/- towards the loan amount in December 2014 and the balance amount of Rs.6,00,000/- was repaid in July 2015. However, contrary to the understanding, the defendant did not vacate the suit property and hence, the plaintiff approached the mediators in August 2015 and in their presence, the defendant agreed to vacate the suit property, but, the defendant failed to



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do the same. Thereafter, the defendant issued a legal notice dated 19.10.2016 stating that he had spend a sum of Rs.5,00,000/- towards the construction of second floor and interior work and demanded the plaintiff to pay the said amount. While so, the defendant vacated the premises by handing over the keys to the plaintiff, but, kept two old damaged chairs and two old wooden cots. Subsequently, the defendant filed a suit in O.S.No.141 of 2018 for permanent injunction and for refund of Rs.5,00,000/-. Hence the suit.

6. The defendant remained *ex parte* in the suit proceedings.

7. On the side of the plaintiff, the plaintiff examined himself as PW1 and Exs.A1 to A6 were marked.

Findings of the trial Court:

8. When the plaintiff contends that the defendant has already handed over the keys, then, in such context, recovery of possession is found to be contrary to the facts narrated by the plaintiff. Similarly, when the plaintiff contends that the defendant was permitted to be in the suit premises



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free of rent, then, in such case, the claim for damages for use and occupation of suit premises, is also found to be in contrary and further more, the plaintiff is found to have computed the monthly rent on assumption. Hence, the trial Court finds that the plaintiff is not entitled for recovery of possession or damages for use and occupation, but, entitled for mandatory injunction.

9. The point for determination that arises in this appeal is whether the plaintiff is entitled for damages for use and occupation for a sum of Rs.9,88,600/-?

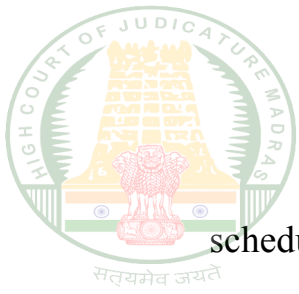
10. The learned counsel for the appellant/plaintiff would submit that though the plaintiff has given up his claim against damages for use and occupation till the date of repayment of the loan in July 2015, the respondent/defendant is liable to pay damages for use and occupation after the date of repayment of the loan. The payment made by the plaintiff towards electricity charges has not been taken into account by the trial Court. The trial Court, while rightly decreeing the suit for the main relief for



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mandatory injunction, has committed an error of law by dismissing the suit in respect of granting damages for use and occupation.

11. Ex.A1 is the certified copy of the sale deed dated 03.05.1995 stands in the name of the plaintiff. Ex.A2 is the legal notice issued by the defendant to the plaintiff dated 19.10.2016, wherein, the defendant states that he had advanced an amount of Rs.13,00,000/- for completing the construction of the suit schedule building. It is also stated that he has spent more than Rs.5,00,000/- for finishing the second floor and for interior works and it is further stated that during July 2015, the plaintiff returned a sum of Rs.8,00,000/- and informed that the balance amount of Rs.5,00,000/- will be considered as a interest free loan till he occupies the house and the same will be returned once he vacates the house. Further, it is stated that the plaintiff was called upon to refund the amount of Rs.5,00,000/- and on receipt of the same, the defendant will vacate the premises and hand over the possession on the date and time fixed by the plaintiff. The plaintiff has not filed any documents to show that he had paid electricity charges and the calculation pertains to the damages for use and occupation of the suit



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schedule property.

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12. Ex.A3 is the reply notice issued by the plaintiff to the defendant dated 01.02.2018, wherein, it has been stated that during the month of June 2017, the defendant vacated the portion of the house and handed over the keys to the plaintiff and claimed to withdraw the notice dated 19.10.2016. It is to be noted that in the reply notice in Ex.A3, there is no demand made for claiming damages for use and occupation.

13. Ex.A6 is a photocopy of the plaint in O.S.No.141 of 2018 pending on the file of the Subordinate Court, Poonamallee. The respondent/defendant has filed a suit in O.S.No.141 of 2018 against the plaintiff and his wife Vanaja seeking the relief of permanent injunction and for refund of a sum of Rs.5,00,000/-. It is seen from the records that the suit schedule property mentioned in O.S.No.141 of 2018 is the subject matter in this appeal. It is also stated that the defendant, in the month of June 2017, has vacated and handed over the keys, but, kept the damaged and old wooden cots and chairs in the suit schedule property.



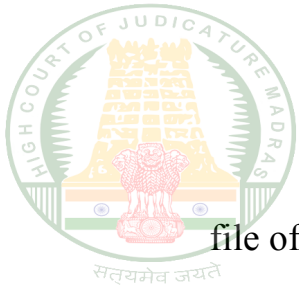
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14. When the plaintiff himself admits that the defendant had already vacated the premises and handed over the keys, then, the question of recovery of possession does not arise. It is also stated in the plaint in Ex.A6 that the defendant was permitted to occupy the suit premises, and that too, free of rent, then, the question of claiming damages for use and occupation of the suit schedule property does not arise. Hence, the trial Court has rightly returned a finding that claiming damages for use and occupation does not arise since the defendant was permitted to be in the suit schedule property free of rent.

15. In view of the foregoing discussions, this Court finds no reason to interfere with the judgment and decree of the trial Court, insofar as, dismissing the claim of recovery of a sum of Rs.9,88,600/- towards damages for use and occupation of the suit schedule property. The point is answered accordingly.

In the result, the First Appeal is dismissed by confirming the judgment and decree dated 01.07.2019 passed in O.S.No.350 of 2018 on the



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file of the III Additional District Court, Tiruvallur at Poonamallee. No costs.

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26.06.2025

nsd
Index: Yes
Speaking order
Internet: Yes
Neutral Citation: Yes/No



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To

The III Additional District Judge,
Tiruvallur at Poonamallee



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M.JOTHIRAMAN J.

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