



WEB COPY

SA No. 570 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-04-2025

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA No. 570 of 2023

and

CMP Nos. 17830 & 17831 of 2023

Mariammal

Appellant

Vs

Ramdass Naicker

Respondent

PRAYER: Second Appeal filed under Sec.100 of Civil Procedure Code, praying to set aside the Judgement and decree dt. 27.09.2022 in AS No.52/2022 passed by the Subordinate Court, Thiruvottiyur, confirming the Judgment and decree in OS No.27/2007, dated 11.06.2014 passed by the District Munsif, Thiruvottiyur.

For Appellant: Mr. M.Manimaran

For Respondent: Mr N.R.Gopaalan



JUDGEMENT

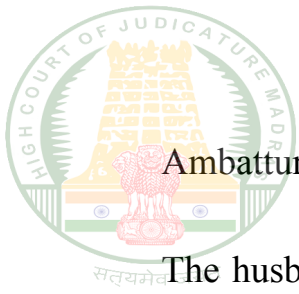
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The appellant herein is the defendant in the suit in O.S.No. 27 of 2007 on the file of District Munsif Court, Thiruvottiyur, against whom, the respondent/plaintiff filed a suit for the relief of delivery of vacant possession, arrears of rent along with future damages. The said suit was contested by the defendant. On hearing both sides, the trial judge granted the relief in favour of plaintiff and the suit was decreed in favour of plaintiff. Against which, she preferred an appeal in A.S.No. 52 of 2022 on the file of Sub-Court, Thiruvottiyur and the same was also been dismissed by confirming the findings of trial judge. Challenging the concurrent findings of courts below, the defendant preferred this Second Appeal.

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

3. Brief facts of the case is as follows:-

The case of plaintiff is that the suit property as described in the plaint schedule an extent of 3 cents in Survey No. 107/10F of Mathur Village,



Ambattur Taluk was succeeded to the plaintiff through his father Mani Naicker.

The husband of defendant was the Watchman of mango grove in another land,

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which was owned by the plaintiff's family in the same village. The defendant's husband died 20 years ago. Soon after his death, defendant approached the plaintiff and requested to let out the thatched structure admeasuring an extent of east to west about 15 ft. and north to south about 10 ft. in the southern portion of Survey No.107/10-F, which was shown as suit property herein. Considering the fact that her husband already worked under the plaintiff's family, he agreed to give the said portion of property to the defendant for a nominal monthly rent of Rs.25/- per month in the year 1993, thereafter it was increased to Rs.30/- per month in the year 1997 and then increased to Rs.40/- per month in the year 2000. All the enhanced rent was reduced into rental agreements. Though the survey number was written by mistake as 107/F instead of 107/10-F, the plaintiff owned a land in Survey No. 107/10F, not in Survey No. 107/F also undisputed fact. The plaintiff wanted to put up a pucca building, so, he informed the defendant to vacate the suit property in the year of 2006. She requested one month time as her son has to arrange another accommodation for her upto April



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2006, but thereafter, she did not vacate the premises. Hence, the notice was issued in the month of June 2006 claiming her to vacate and hand over the premises. Accordingly, the suit was filed to vacate and deliver vacant possession of suit property.

4. The defendant appeared and contested the suit by filing written statement stating that she requested the plaintiff to let out the thatched structure, on the other hand, she would submit that after her husband's death, she was permitted to occupy the land for an extent of 3 cents in Survey No.107/10-F in Mathur Village, wherein she put up a thatched shed, possessed and enjoyed the same not as a tenant, but with implied consent of plaintiff. She had also contended that she never executed rental agreements with him and all were fabricated with the intent to evict her unlawfully. She had also disputed the specimen thumb impression on the lease agreements not that of her. Further, she would content that nearly about 20 years, she is uninterruptedly possessing and enjoying the suit property, thereby she perfected title by adverse possession. Further she would content that the suit as such is not maintainable and the plaintiff ought to have initiated proceedings under Rent Control Act, if at all,



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any landlord tenant relationship is existed between them. She had also contended that superstructure was put up by her and it was periodically altered, so there is no cause of action arose to file the suit nor the plaintiff is entitled for any future damages. Accordingly, she prayed to dismiss the suit as no merit.

5. Before the trial court, both parties adduced evidence oral and documentary. On the side of plaintiff, he was examined as P.W.1 and lease agreements were marked as Ex.A1 to A4. On the side of defendant, D.W.1 to 3 were examined and the documents Ration card, voter identity card were marked as Ex.B1 to B3. Expert opinion was obtained and the same was marked as Ex.C1. The learned trial judge framed four issues. Considering the evidence on record, the trial judge held that the thump impression found in the lease agreement was compared with admitted signatures of defendant. As per the expert opinion, Ex.C1, thump impression found in the lease agreement are tallied with thump impression found in the admitted signature of defendant, thereby the plaintiff established that between himself and the defendant, there was a lease agreements in respect of suit property. The trial judge also held that no contra evidence adduced on the side of defendant to disprove the expert



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opinion. So, as per the lease agreement, periodically tenancy was extended, which proves that there was a landlord and tenancy relationship exist between parties, besides notice was also issued to vacate and surrender the possession of the property to the plaintiff before filing the suit. Therefore, the plaintiff had complied all the requirements. Accordingly, he is entitled for the relief as prayed for. Thus, the suit was decreed by granting three months time to hand over to vacant possession. Against which, the defendant preferred an appeal in A.S.No.52 of 2022 and the same was dismissed by the first appellate judge holding that the plaintiff proved the landlord and tenant relationship through oral and documentary evidence. Accordingly, the appeal was dismissed by confirming the findings of trial judge. Challenging the said concurrent findings, the defendant preferred this Second Appeal.

6. The learned counsel for appellant would argues that she was in uninterrupted possession of the suit property for more than 20 years, thereby, she perfected title by adverse possession. Hence, he prayed to set aside the findings of courts below.



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7. Considering the fact that the appellant is aged about 60 years and the respondent is aged about more than 70 years, this Second Appeal is taken on file and admitted on the following question of law :-

- (a) Whether the courts below are justified in decreeing the suit based only on Ex.C1 when the finger print report ought to have been used only as a corroborative evidence?*
- (b) Whether the courts below are justified in not taking into consideration the fact that the appellant has been in continuous possession and all revenue records stand in her name?*
- (c) Whether there could be legal presumption that Ex.A1 to 3 are proved relying upon Ex.C1 alone?*
- (d) Whether the courts below are right in holding that the suit is maintainable in law when the plaintiff ought to have filed a Rent Control proceedings for eviction?*

8. On considering the written statement, as rightly pointed out by the learned counsel for plaintiff, she had stated that she was permitted to occupy the land to an extent of 3 cents in Survey No. 107/10-F, Mathur Village by the plaintiff, but not as a tenant, which itself proves that she admitted the plaintiff as



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landlord, now the burden is casted upon her to prove that she was permitted to occupy the portion of property by the plaintiff, however the lease agreements relied on by the plaintiff was disputed by the defendant challenging her thumb impression and also contended that the lease agreements Ex.A1 to A4 are fabricated one, but the expert opinion proves that the thumb impression belong to defendant. Therefore, those documents were proved that there was a landlord and tenant relationship between parties, but no contra evidence adduced on the side of defendant. Hence, the permissive occupation as claimed by the defendant has not been established, on the other hand, expert opinion proves that there was landlord and tenant relationship between the parties. Accordingly, the question of law (a) is answered.

9. Furthermore, the defendant also raised another defence that more than 20 years, she enjoyed the property uninterruptedly, thereby she perfected title by adverse possession and the revenue records stand in her name, but on perusal of documents relied on by the defendants Ex.B1 to B3 viz., ration card and voter I.D., except that she has not relied any other revenue documents to show her uninterrupted long possession. Ration card would be given to the party for



residing in the property, which would not confer any right and title. When the

defendant took a defence that she perfected title by adverse possession, the

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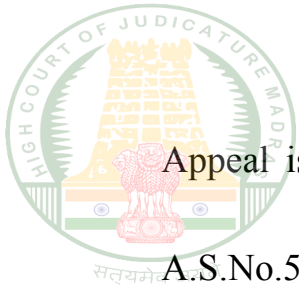
burden is casted upon her to prove the same. But, as discussed above, she has

not adduced any other revenue records to show her uninterrupted long

possession of the property. The courts below have rightly admitted the said fact.

Accordingly, the question of law (b) is answered.

10. The defendant raised other defence stating that the said suit is not maintainable, only the rent control proceedings ought to have been initiated, but the case of plaintiff is that as per tenancy/lease agreement, the defendant entered into tenancy agreement for a monthly rent, now he claimed to vacate and hand over the possession by removing the superstructure of thatched shed. Those lease agreements was also proved by the plaintiff. As the claim is proved with regard to vacant possession, the said suit as such is maintainable and the question of law (c) is answered. Therefore, both the courts below rightly appreciated the facts and rightly held the findings, which needs no interference of this court. Hence, there is no question of law is involved for consideration and this Second Appeal is liable to be dismissed. Accordingly, this Second



Appeal is dismissed and the findings of the first appellate court rendered in

A.S.No.52 of 2022 is confirmed. Suit is decreed as prayed for. The appellant is

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directed to vacate and hand over possession of the suit property by removing the

thatched structure within a period of three months from the date of receipt of

this judgement. No costs. Consequently, connected Civil Miscellaneous

Petitions are closed.

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. Sub-Court, Thiruvottiyur.

2. District Munsif, Thiruvottiyur.

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



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T.V.THAMILSELVI J.

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