

S.A.(MD).No.434 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.434 of 2012

P.Sakthivel

... Appellant/ Appellant/
Defendant

/Vs./

1.R.Jegannathan

2.Narayanan

3.R.Mamundi

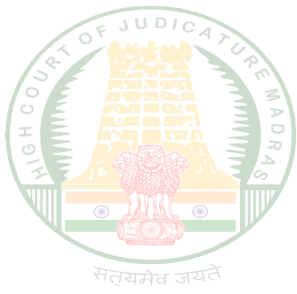
4.Pandi

...Respondents/ Respondents/
Plaintiffs

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 06.07.2011, made in A.S.No.97 of 2008 on the file of the Sub Court, Dindigul, confirming the Judgment and Decree, dated 22.12.2006, made in O.S.No.976 of 2004 on the file of the Principal District Munsif Court, Dindigul.

For Appellant : Mr.S.Vijayashanthi

For Respondents : Mr.H.Lakshmi Shankar



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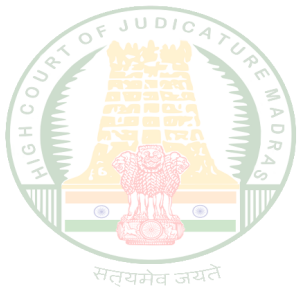
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JUDGMENT

The present second appeal is preferred by the defendant in the suit against the judgment and decree dated 06.07.2011, passed in A.S.No.97 of 2008 on the file of the Sub Court, Dindigul, confirming the judgment and decree, dated 22.12.2006, passed in O.S.No.976 of 2004 on the file of the Principal District Munsif Court, Dindigul.

2. The defendant in the suit is the appellant herein and the plaintiffs in the suit are the respondents herein. For the sake of convenience, the parties are referred as plaintiffs and defendant as per the ranking in the suit.

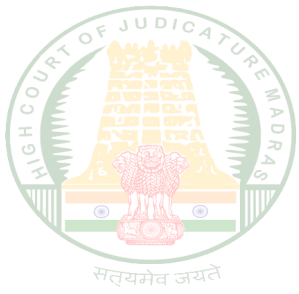
3. The suit is filed for eviction of the defendant and recovery of vacant possession of the suit property and for the recovery of rent arrears of Rs.27,000/- to be paid by the defendant to the plaintiffs.



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4. The brief facts as stated in the plaint are that the suit property situated in S.No.171/2 and other properties originally belonged to the family Trust of Narayanasamy Pillai. It was administered by the eldest legal heir, as such the plaintiffs' father Ramakrishnan was managing the properties and collecting the rent. As per the rental agreement between Ramakrishnan and the defendant a monthly rent of Rs.650/- was agreed to be paid from 10.04.1994 for three years and the defendant paid advance amount of Rs.30,000/- and the same is payable without interest at the time of vacating the property. Further it was also agreed that if Ramakrishnan became ill or unable to collect the rent, the plaintiffs trust would be entitled to collect the rents. Furthermore, as per the Narayanasamy Family Trust, the right to collect the rents devolve upon the male legal heirs of Narayanasamy Pillai. On 15.03.1998, the plaintiffs' father Ramakrishnan died. The rental agreement between Ramakrishnan and the defendant expired on 09.04.1997. the deceased Ramakrishnan had sons namely Jagannathan and Narayanan, Mamundi, Pandi (the plaintiffs). The other brothers Narayanan, Mamundi and Pandi had executed a power of attorney deed, dated 08.06.1998, to collect the rent in favour of the plaintiff

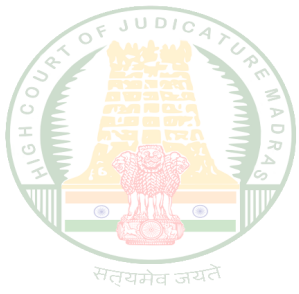


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Trust. After the demise of Ramakrishnan, on 01.03.1998, the 1st plaintiff Jagannathan had been demanding the rent from the defendant and the defendant agreed to pay the rent at Rs.1,000/- from March 1998, but failed to pay the rent at Rs.1,000/-. Thus, from 01.03.1998 to January 2000, the defendant failed to pay the rent for 23 months at the rate of rent Rs.1,000/- per month. Hence, the plaintiffs issued a legal notice to the defendant. As the plaintiffs' grand parents' cemetery are lying adjacent to the suit property, the suit property is required by the plaintiffs for developing the cemetery. In spite of the legal notice, the defendant neither paid the rent arrears nor vacated the suit property, therefore the plaintiffs are entitled for future mesne profits also. Hence, the plaintiffs had preferred the suit for eviction and mesne profits.

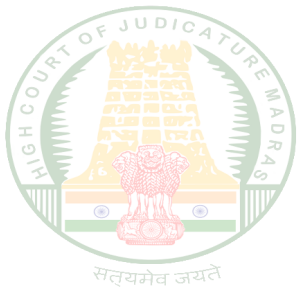
5. The defendant had filed written statement wherein he had denied all the allegations stated in the plaint, further stated the plaintiffs are not entitled to the relief sought for, the suit is not maintainable either in law or on facts and liable to be dismissed in limine. On 20.03.1993 the defendant had taken the property situated in



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S.No.171/2 having calicut tiled house measuring north south 20 east west 35 feet, within the vacant land to an extent of north south 103 feet and east west 35 feet for rent from late Ramakrishnan to run automobile workshop. The suit property was unlevelled and the defendant had levelled the land and raised the compound wall by spending a sum of Rs.50,000/-. Hence, the averment only with door number and Madras terraced house is bald description. The defendant has paid a sum of Rs. 40,000/- towards advance and the monthly rent is fixed at Rs.625/-. The defendant continued the tenancy with advance amount of Rs.30,000/- and monthly rent of Rs. 1,000/- per month from 11.10.1996 onwards. In the meanwhile, Ramakrishnan died. Hence, the plaintiffs tried to evict the defendant forcefully and unlawfully by disconnecting the electricity service connection, hence the defendant has obtained temporary injunction in O.S.No.797 of 1999. Subsequently, the plaintiffs with some local respectable persons approached the defendant and pressurised the defendant to vacate the property saying that they are going to lease the property to Pitchai and also stated that the said Pitchai had agreed to return the advance amount together with expenses incurred by the defendant in developing the property totalling to a



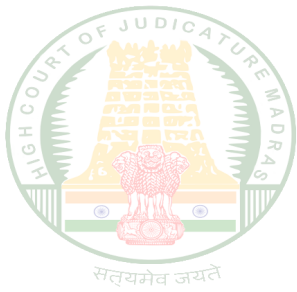
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tune of Rs.80,000/- to the defendant and agreed to adjust the rent arrears in the advance amount. Hence, the defendant handed over the possession of the property of the said Pitchai on a rent transfer agreement, dated 10.12.2000. Hence, O.S.No.797 of 1999 was left for dismissal. Subsequent to that, the suit property to an extent of 3605 square feet of vacant site and the tiled shed is under the possession and enjoyment of the said Pitchai. The plaintiffs having suppressed the above said true facts, have filed this false suit. Hence, it is liable to be dismissed. It is understood that the plaintiffs had received rent from the above said Pitchai and hence the plaintiffs are not entitled for the rent arrears of Rs.39,000/-. And the defendant prayed to dismiss the suit.

6. Considering all the averments in the plaint and the written statement, the Trial Court has framed the following issues:

1. Whether the plaintiffs are entitled for the recovery of possession as prayed for?

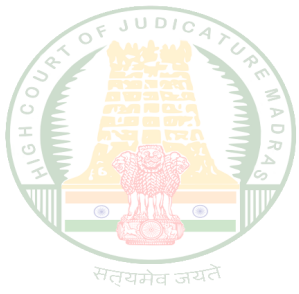


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2. Whether the defendant is liable to pay the rent arrears as prayed in the plaint to the plaintiffs?
3. Whether the suit rented property is not in the defendant's tenancy possession?
4. Whether the defendant has entered into a tenancy alteration agreement on 10.12.2000 with one Pitchai and whether it is maintainable?
5. To what other relief?

7. On the side of the plaintiffs, the 1st plaintiff has examined himself as PW1 and the plaintiffs have marked Exhibits A1 and A2. On the side of the defendant, the defendant examined himself as DW1 and one independent witness viz., Kandasamy as DW2 and the defendant has marked Exhibits B1 and B2. After considering the pleadings, documents and evidences, the Trial Court decreed the suit with costs directing the defendant to vacate the suit property and handover the same to the plaintiffs within two months from the date of the judgment and also directed the defendant to pay a sum of Rs.27,000/- towards the rent arrears to the



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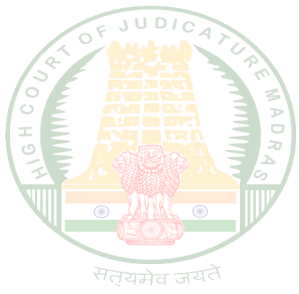
plaintiffs. Aggrieved over the same, the defendant preferred an Appeal Suit and the same was dismissed. Aggrieved over the same, the defendant has preferred the present second appeal.

8. The second appeal was admitted on the following substantial questions of law:

“(1) Whether the Courts below right in decreeing the suit for recovery of possession of suit property from the defendant when the defendant is not in possession of the suit property and the same was admitted by the plaintiffs also?

(2) Whether the Courts below right in decreeing the suit, when the necessary party, the actual possessor was not added to the suit proceedings and when the suit itself is not maintainable for non-joinder of necessary parties?

(3) Whether the Courts below right in decreeing the suit by picking up holes in the defendant's case, when the plaintiffs failed to prove their case as the suit property was the family trust property and the plaintiffs and the authorized person to sue for the trust property by way of material documents?”

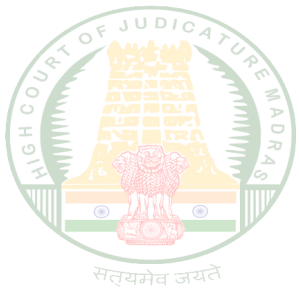


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9. The defendant had admitted that initially the defendant was the tenant from 20.03.1993 for a rent of Rs.625/- with an advance of Rs.40,000/- for a period of three years. Thereafter the tenancy was extended from 11.10.1996 onwards by increasing the rent of Rs.1000/- with advance amount of Rs.30,000/-. Thereafter, the legal representative of the Trust namely Ramakrishnan died on 01.03.1998, from this date onwards the trouble stated between the landlord and tenant.

10. The tenant is denying the title of the Trust and had stated that the said Ramakrishnan is the owner of the property. But the contention of the plaintiffs is that the said Ramakrishnan is representing the family trust started by Ramakrishnan's father namely Narayanasamy Pillai. Be that as it may be, whether the property belongs to the family trust or belongs to the Ramakrishnan is the issue ought to be decided by the trust and others who are interested in the property. But the tenant cannot take shelter under such dispute between the trustees and the family of Ramakrishnan. Hence the defendant is liable to be evicted once the landlord demands to vacate. Further it is seen that the defendant had defaulted in



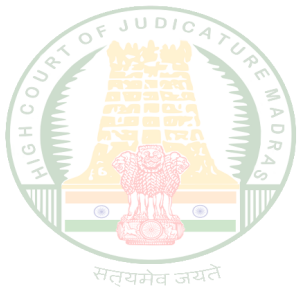
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paying the rents and hence the tenant is liable to be evicted from the premises. Therefore the 3rd substantial question of law is answered and the same is held against the defendant.

11. The next contention of the defendant is that the defendant is not in possession of the property and the plaintiffs had inducted one Pitchai in the suit property by executing another lease agreement dated 10.12.2000 which was executed between the plaintiffs and Pitchai. Further the defendant has pleaded that the subsequent tenant Pitchai was not impleaded as party and hence the suit is bad for non-joinder of the said Pitchai who is a necessary party. But the same is denied by the plaintiffs and submitted that they never inducted the said Pitchai as tenant, it is only the defendant who had sublet the premises to the said Pitchai and the said act is against the rental agreement and also against the law of lease.

12. After hearing the rival submission this Court had given its anxious consideration. It is seen that the said Ramakrishnan died on 15.03.1998. Thereafter

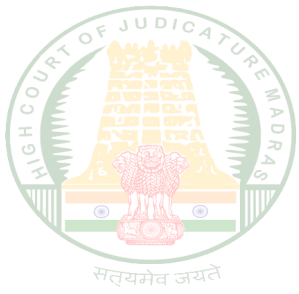


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the defendant failed to pay the rent by raising the plea of ownership. Hence the plaintiffs had directed the defendant to vacate the premises. In order to pre-empt the rights of the plaintiffs, the defendant had filed the suit in O.S.No.797 of 1999 for injunction restraining the plaintiffs from forcefully evicting the defendant. Thereafter the plaintiffs had issued legal notice dated 26.02.2000 marked as Ex.A1, requesting the defendant to vacate the premises, otherwise the defendant would be evicted by due process of law. After receipt of the said notice the defendant had left the said suit and the same was dismissed for non-prosecution.

13. The defendant had stated in the written statement that the said Pitchai had agreed to pay the advance amount and the expenses the defendant had incurred, hence the defendant had executed the tenancy transfer agreement dated 10.12.2000 to the said Pitchai. If the defendant is intended to vacate the premises by taking back the advance or adjusted the balance rent and would have straight away vacated the premises. When the defendant had executed the tenancy transfer agreement, it would mean that the said Pitchai was inducted by the defendant. Further it is stated



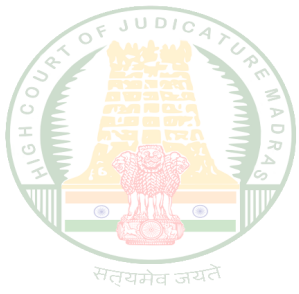
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that pending second appeal the said Pitchai had vacated the premises and again the defendant had sublet the premises to another person namely * PalKani. Therefore, this Court is of the considered opinion that the said Pitchai and * PalKani are sub lessee under the defendant and it is not necessary to implead them as parties. Hence the plea of non-joinder of necessary parties is rejected. The 2nd substantial question of law is answered against the defendant.

14. Having held so, then the defendant is responsible to hand over vacant possession. Therefore, the 1st substantial question of law also held against the defendant.

15. At this juncture the learned Counsel appearing for the defendant / appellant submitted that the defendant may be absolved of the rental arrears and the advance amount may be adjusted for the arrears of rent. It is seen that the defendant had not paid the rent from 01.03.1998 onwards until 10.12.2000, the date Pitchai was inducted as tenant. The Trial Court had rendered a finding that the



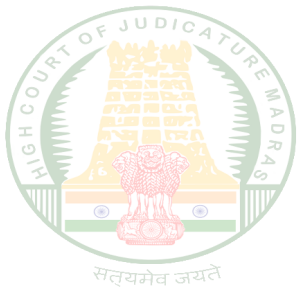
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defendant had claimed he had paid Rs.40,000/- as initial advance and subsequently an additional amount of Rs.30,000/- paid as advance, but while deposing the defendant had admitted that the defendant had paid only Rs.40,000/- as advance. Therefore, Rs.40,000/- is the advance amount and the same shall be adjusted for the rental arrears. If there is any balance amount payable, then the defendant shall pay the same.

16. As far as the balance rental arrears is concerned, for the period from 10.12.2000 onwards till the date of vacating the premises, the same shall be paid jointly by the defendant Sakthivel, the sub-lessees Pitchai and * **PalKani**. The defendant is permitted to collect the said arrears of rent from the said Pitchai and the * **PalKani** and pay the same to the plaintiffs or else the defendant Sakthivel shall pay the arrears and then collect it from the sub-lessees.

17. The defendant Sakthivel, the said Pitchai and the said * **PalKani** are directed to vacate the premises forthwith. For sub-letting the premises, this Court is imposing cost of Rs.1,000/- on the defendant payable to the plaintiffs.



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18. With the above said directions, the second appeal is dismissed with cost of Rs.1,000/- payable by the appellant herein to the respondents herein.

Sd/-

Assistant Registrar

(*)Corrected as per order of this Court dated 21/08/2024 made in S.A.(MD)No. 434 of 2012

Sd/-

Assistant Registrar(CS III)

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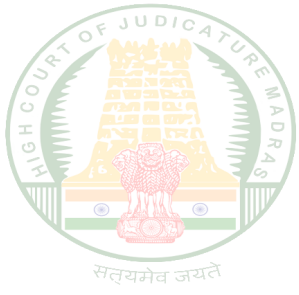
/08/2025

Sub Assistant Registrar
(CS- I/ II / III / IV)

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TO:

(*) To be substituted to the order already despatched on 19/03/2025



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- 1.The Subordinate Judge, Dindigul.
- 2.The Principal District Munsif ,
Dindigul.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-946[F] dated 07/01/2025)

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MGJ(24.02.2025) 15P 6C

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CT(21.08.2025) 15P 6C

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