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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 15.07.2025

CORAM

**THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

S.A.(MD)Nos.359 & 360 of 2013

and

M.P.(MD).No.1 of 2013

S.A.(MD)No.359 of 2013

1.K.Sundararaj

2.A.Sundararaj

... Appellants/Appellants /  
Defendants

Vs.

Subbulakshmi

... Respondent/Respondent/  
Plaintiff

**PRAYER:-** Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 21.12.2012 made in A.S.No.203 of 2011 on the file of the II Additional Sub Judge, Madurai, (Camp Sub Judge, Thirumangalam), confirming the judgment and decree dated 12.07.2011 made in O.S.No.125 of 2007 on the file of the District Munsif Court, Thirumangalam, and to set aside the .

For Appellants : Mr.K.Hemakarthikaeyan

For Respondent : Mr.M.Ponnambalam



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S.A.(MD)No.360 of 2013

1.K.Sundararaj

2.A.Sundararaj

... Appellants/Appellants /  
Plaintiffs

Vs.

1.Subbulakshmi

2.Nallappan

... Respondents/Respondents/  
Defendants

**PRAYER:-** Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 21.12.2012 made in A.S.No.204 of 2011 on the file of the II Additional Sub Judge, Madurai, (Camp Sub Judge, Thirumangalam), confirming the judgment and decree dated 12.07.2011 made in O.S.No.344 of 2006 on the file of the District Munsif Court, Thirumangalam, and to set aside the same.

For Appellants : Mr.K.Hemakarthikaeyan

For Respondents : Mr.M.Ponnambalam

### **COMMON JUDGMENT**

Appeal in SA(MD)No.359 of 2013 has been filed by the original defendants in O.S.No.125 of 2007 on the file of the District Munsif, Thirumangalam, challenging the judgment and decree passed in A.S.No. 203 of 2011 on the file of the II Additional Sub Judge, Madurai, (Camp Sub Judge, Thirumangalam), confirming the judgment and decree passed in O.S.No.344 of 2006.



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2. Appeal in SA(MD)No.360 of 2013 has been filed by the original plaintiffs in O.S.No.344 of 2006 on the file of the learned District Munsif, Thirumangalam, challenging the judgment and decree passed in in A.S.No.204 of 2011 on the file of the II Additional Sub Judge, Madurai, (Camp Sub Judge, Thirumangalam), confirming the judgment and decree passed in O.S.No.344 of 2006.

3. Since these two appeals are arising out of the same cause of action, these two appeals are taken up together for hearing and disposed of by way of this common judgment.

4. For the sake of convenience and brevity, the parties herein after shall be referred to as per their status/ranking before the trial Court in O.S.No.125 of 2007.

**5.1. The brief averments made in the plaint in O.S.No.125 of 2007 are as follows:-**

The plaintiff is the absolute owner of the property through the Gift Settlement Deed dated 22.03.2004. The suit schedule property was leased out to the father of the first defendant in the year 1971 by the



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mother of the plaintiff namely, Vellachiammal for running a Tea stall cum hotel. In the year 1996, the tenancy was attorned in favour of the defendants by the agreement deed dated 18.11.2004 and monthly rent was fixed as Rs.180/- and the defendants also agreed to vacate the premises within the time prescribed in the agreement. The defendants committed wilful default in paying the monthly rent and filed a suit in O.S.No.344 of 2006 before this Court for the relief of permanent injunction with false allegations. Hence, the plaintiff terminated the tenancy of the defendants and issued a legal notice to the defendants to vacate the suit schedule property on 22.01.2007. The defendants received the same and gave a reply with false averments. Hence, the plaintiff filed the present suit with the above said prayer. Hence, prayed to allow the suit.

**5.2. The brief averments made in the written statement in O.S.No.125 of 2007 by the second defendant are as follows:-**

The second defendant filed written statement denying the agreement dated 18.11.2004 and his father leased out the suit schedule property in the year 1951 for a monthly rent of Rs.3/- and constructed a



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superstructure for running a Tea stall. As on date, the monthly rent was Rs.180/- and there was no wilful default in paying the rent. The same was paid without any default. The plaintiff tried to interfere with the defendant's peaceful possession and enjoyment of the property. Hence, they filed a suit in O.S.No.344 of 2006 against the plaintiff for the relief of permanent injunction. As a counter blast, present suit has been filed against them. Hence, prayed for dismissal of the suit.

**6.1. The brief averments made in the plaint in O.S.No.344 of 2006 are as follows:-**

The defendants in O.S.No.125 of 2007 has filed a suit in O.S.No. 344 of 2006 on the file of the District Munsif. Thirumangalam, seeking a relief of decree for permanent injunction restraining the defendants, their men and agents from interfering with their peaceful possession and enjoyment of the suit schedule property till their lawful eviction under due process of law with the pleading that the father of the first plaintiff got the suit schedule property from the first defendant's mother by way of lease deed in the year 1971 and constructed a Tea stall cum Hotel and thereafter, the same has been attorned in favour of the plaintiffs through



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the written instrument dated 18.11.2004. As per the agreement dated 18.11.2004, monthly rent was fixed as Rs.180/-. Thereafter, the defendants refused to receive the rent and requested them to pay the advance amount of Rs.1 lakh and further, enhanced the monthly rent as Rs.1,000/- and caused disturbance to the plaintiffs' possession and enjoyment of the suit schedule property through rowdy elements. Therefore, the plaintiffs filed a suit for the above said relief.

**6.2. The brief averments made in the written statement in O.S.No.344 of 2006 by the first defendant are as follows:-**

The respondents/defendants disputed the said allegation made in O.S.No.344 of 2006. According to her, there was no payment of rent and hence, they demanded the same. Without making the payment of rent, the plaintiffs have filed the present suit. Subsequently, she filed a suit in O.S.No.125 of 2007 for recovery of possession with damages and mesne profit. Hence, she prayed for dismissal of the suit.



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**7. Based on the above said pleading, the trial Court has framed the following issues:-**

*1. Whether it is true that the defendants have committed willful default?*

*2. Whether the notice issued by the plaintiff is not in accordance with law?*

*3. Whether the plaintiff is entitled to the relief of recovery of vacant possession as prayed for?*

*4. Whether the plaintiff is entitled to the relief of recovery of rent arrears as claimed in the plaint?*

*5. Whether the plaintiff is entitled to the relief of future mesne profits?*

*6. Whether the plaintiff in O.S.No.344/2006 is entitled for the relief of permanent injunction as prayed for?*

*7. To what other relief, the parties are entitled to?*

8. Before the trial Court on the side of the plaintiff in O.S.No.125 of 2007, the plaintiff examined herself as P.W.1 and Exs.A1 to A5 were marked. On the side of the defendants, the first defendant was examined as D.W.1 and other two witnesses were examined as D.W.3 and D.W.4 and Ex.B.1 to Ex.B.10 were marked.



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9. After analyzing the evidence adduced on both sides, the trial Court has allowed the suit filed by the plaintiff in O.S.No.125 of 2007 and dismissed the suit filed by the plaintiffs in O.S.No.344 of 2006. Aggrieved over the said judgment and decree, the plaintiffs in O.S.No. 344 of 2006 filed the Appeal Suit before the II Additional Sub Judge, Madurai, (Camp Sub Judge, Thirumangalam), in A.S.Nos.203 and 204 of 2011. The learned First Appellate Judge also dismissed the appeal by confirming the judgment and decree passed by the trial Court.

10. Challenging the same, the present appeal has been preferred by the appellants.

11. These Second Appeals have not been admitted and by order dated 05.06.2013 and 20.06.2013 respectively, this Court had only issued notice to the respondents.

12. Heard the learned counsel for the appellants and the learned counsel for the respondents.



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13. The learned trial Judge decreed the suit filed by the plaintiff in O.S.No.125 of 2007 and dismissed the suit filed by the plaintiffs in O.S.No.344 of 2006. Aggrieved over the same, the plaintiffs in O.S.No. 344 of 2006 filed the appeal suits in A.S.No.203 &f 204 of 2011 on the file of the II Additional Sub Judge, Madurai, (Camp Sub Judge, Thirumangalam), and the same were also dismissed. Challenging the same, present second appeals have been filed. This Court granted stay in the execution of decree in O.S.No.125 of 2007 and the same has not been further extended. Therefore, the Execution Court proceeded the EP and ordered delivery and had taken on file the Interlocutory Application to break open and for police protection.

14. At this stage, the second appellant in both appeals has filed an undertaking affidavit before this Court, expressing his willingness to vacate the premises on or before 30.09.2025 and the said undertaking affidavit reads as follows:-

*“1. I am the 2<sup>nd</sup> appellant in the above said appeal and as such I am well acquainted with the facts of the case. I am swearing this affidavit on my behalf and on behalf of the 1<sup>st</sup> appellant herein.*



2. I submit that we have filed a suit in O.S.No. 344 of 2006 on the file of the District Munsif Court, Tirumangalam, for bare injunction restraining the respondent herein from interfering with the peaceful possession and enjoyment of the suit property till they are lawfully evicted under due process of law. Likewise the respondent herein has filed a suit in O.S.No.125/2007 before the District Munsif Court, Tirumangalam for direction directing as to vacate and hand over and deliver the vacant possession of the suit property after removing the existing super structure without any let or hindrance or in default through court and to pay arrears of rent due from Avani Viya year to Thai Viya year amounting to a sum of Rs.1080/- and continue to pay damages for use of occupation and to pay future mesne profit.

3.I submit that both the suits were clubbed together and joint trial has been conducted. I submit that the evidence were marked in O.S.No.125/2007 and the respondent herein/plaintiff was examined as P.W.1 and marked the documents as Ex.A1 to Ex.A5 and and the 1<sup>st</sup> appellant herein/1<sup>st</sup> defendant was examined as D.S.1 and one Seeni Naicker and one Seeniraj were examined as D.W.2 & D.W.3 respectively and marked the documents as Ex.B1 to Ex.B.10.



4. I submit that after considering the oral and documentary evidence, the trial court has decreed the suit filed by the respondent herein and directed us to vacate the suit property and dismissed our suit. Being aggrieved by the same, we have preferred two appeals before the Camp Sub Judge, Tirumangalam, in A.S.No.203 & 204/2011. After considering the facts and circumstances of the case, the over Appellate Court has erroneously confirmed the judgment and decree of the trial Court. Being aggrieved by the same, we have filed above second appeals before this Hon'ble Court and the same is pending for adjudication.

5. I submit that pending the above appeal, this Hon'ble Court was pleased to grant interim stay on 03.06.2013 and periodically extended from some times and thereafter, the above said second appeal was not listed for hearing. In the meantime, the respondent herein has filed an execution petition in Ex.P.No.56 of 2011 on the file of the District Munsif Court, Tirumangalam, for eviction and the learned Trial Judge was pleased to order for delivery on 05.06.2025 and now the respondent has filed an application for Police Protection. In view of the above situation, I undertake to vacate the suit property within a period of three months or on or



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*before 30.09.2025, since I am running a hotel cum tea stall and I have to identify a place and to shift the same I submit that based on my undertaking, the above said second appeals may be disposed off.*

*In the foregoing circumstances it is prayed that this Hon'ble Court may be pleased to dispose of the above appeals by recording the above undertaking and thus render Justice.”*

15. The learned counsel for the respondents agreed for the same. But, seeks to observe in the event of any failure on the part of the appellants to hand over the possession on or before 30.09.2025, the respondent is permitted to proceed the EP from the stage of order to break open and police protection.

16. Recording the above submission of the learned counsel for the respondent and on the basis of the undertaking affidavit filed by the appellants before this Court, this Court is inclined to dismiss the Second Appeals granting time to the appellants to vacate the premises upto 30.09.2025.



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17. Both the Courts below have concurrently found that the sole respondent in SA(MD)No.359 of 2013 and the first respondent in SA(MD)No.360 of 2013 has established her title to the suit schedule property and directed the appellants to hand over the possession of the suit scheduled property to her. The appellants have not made out any case to interfere with the concurrent finding of both the Courts below. Hence, no question of law, much less a substantial question of law arises for consideration in the Second Appeals.

18. Accordingly, the Second Appeals are dismissed by granting time to the appellants to vacate the premises upto 30.09.2025. In the event of failure on the part of the appellants to vacate the premises, the Execution Court shall continue the execution proceedings from the stage of order to break open and police protection to deliver the property. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

**15.07.2025**

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

dss

**Note : Issue order copy on 16.07.2025**



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**K.K.RAMAKRISHNAN, J.**

*dss*

**To**

- 1.The II Additional Sub Judge, Madurai,  
(Camp Sub Judge, Thirumangalam).
2. The District Munsif Court,  
Thirumangalam.
- 3.The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.

S.A.(MD)Nos.359 & 360 of 2013  
and  
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