



S.A.(MD)No.132 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 03.06.2025

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.(MD)No.132 of 2025

and

C.M.P.(MD)No.4657 of 2025

P.Ramachandran

... Appellant

vs

A.Azan Mohammed Rowther

...Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.28 of 2016, dated 17.12.2024 on the file of the Additional Subordinate Court, Pudukottai confirming the judgment and decree made in O.S.No.49 of 2011, dated 07.04.2016 on the file of the District Munsif Court, Pudukottai.

For Appellant :Mr.B.Jameelarasu

JUDGMENT

This Second Appeal has been filed challenging the judgment and decree, dated 17.12.2024 in A.S.No.28 of 2016 on the file of the Additional Subordinate Court, Pudukottai confirming the judgment and decree made in



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O.S.No.49 of 2011, dated 07.04.2016 on the file of the District Munsif Court, Pudukottai.

2.The defendant in the suit is before this Court on appeal. The parties are referred as per their status before the trial Court.

3.According to the plaintiff, he is the absolute owner of the suit schedule property having been purchased on 07.06.2006 in Ex-A1 and thereafter, had let out the suit property to the defendant for rent on 01.12.2007. A rental agreement in Ex-A3 was executed, whereby, an advance of Rs.40,000/- was fixed and a monthly rent of Rs.1,500/- was fixed for the suit property. The property was let out for commercial purpose for running a book stall and a period of 11 months was fixed for the tenancy. The defendant, who was paying the rents till 31.08.2008, had stopped paying the rent from 01.09.2008 and till the month of January 2011, there had been arrears of rent of a sum of Rs.43,500/-. Further, as the defendant was making stocks of the material causing also damage to the suit property, the plaintiff issued a notice to the defendant calling upon him to vacate the suit property. Since the same was not acted upon, the plaintiff has



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come with the suit for recovery of possession.

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4.The defendant resisted the suit by filing a written statement admitting the title of the plaintiff and also the tenancy. The defendant only denies that there is a rental arrears of Rs.43,500/- and it is his claim that only since the plaintiff demanded for increasing the rent from Rs.1,500/- to Rs.2,500/- and the defendant was not inclined for the same, the plaintiff has come with the suit for eviction.

5.During trial, the plaintiff examined himself as PW-1 and marked Ex-A1 to Ex-A6 and on the side of the defendant, he examined himself as DW-1 and one Selvaraj was examined as DW-2 and Ex-B1 and Ex-B2 were marked.

6.The trial Court, after analysing the evidences, came to the conclusion that the defendant had wilfully not paid the rent for the period from 01.09.2008 to January 2011, thereby, there was an arrear of Rs.43,500/-. Further, the trial Court found that the plaintiff had properly issued a notice under Section 106 of the Transfer of Property Act, 1882, in



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Ex-A4 and since the defendant had not vacated, the plaintiff had validly laid the suit for eviction. Aggrieved against the judgment and decree of the trial Court ordering for eviction, the defendant had preferred an appeal suit.

7.The appellate Court, after re-apprising the evidences, found that the claim made by the defendant that he had made the payment of rent for the alleged period is not substantiated by any materials and even the witness, DW-2, brought in by the defendant, did not support case of the defendant and therefore, found that there has been default in the payment of the rents for the alleged period. The appellate Court also found that the notice under Section 106 of the Transfer of Property Act, 1882, had been validly issued and therefore, confirmed the judgment and decree passed by the trial Court. Assailing the same, the defendant had preferred the above appeal.

8.Mr.B.Jameelarasu, learned Counsel for the appellant argued that the defendant that been regularly paying the rent and there had been no default and further, the advance was available with the plaintiff, which could have been adjusted towards the payment of rent. It is his vehement contention that the suit itself is not maintainable, as the civil Court has no jurisdiction



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to try the suit in respect of the eviction for the landlord and tenant dispute, as the property is situated in Alangulam Municipality and that therefore, the plaintiff could have initiated a Rent Control Proceedings under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

9.However, at this juncture, the learned Counsel for the appellant also fairly admits that the defendant has not raised any pleadings in this regard and only in this appeal, he is putting forth his argument that the trial Court does not have any jurisdiction. It is his further assertion that the defendant is running a book stall for all along and there has been no damage to the property and he is inclined to make good the arrears of rent and continue to make the payment.

10.Heard the learned Counsel for the appellant and perused the materials available on record.

11.The title of the plaintiff for the suit property is admitted. The plaintiff has purchased the suit property through a sale deed, dated 07.06.2006 in Ex-A1. Based on the said sale deed, the property tax has



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been mutated in favour of the plaintiff in Ex-A2. The plaintiff had entered into a tenancy with the defendant on 01.12.2007 in Ex-A3, rental agreement. As per the rental agreement in Ex-A3, the tenancy is for a period of 11 months, wherein, an advance amount of Rs.40,000/- was fixed and the monthly rent of Rs.1,500/- was fixed for the suit property. The defendant admits both the title and the tenancy.

12.It is the case of the plaintiff that even though the defendant paid the rents till 31.08.2008, he committed default in paying the rents from 01.09.2008 to January 2011, whereby, there was arrears of Rs.43,500/- towards payment of rent. As there were defaults and also it is the claim of the plaintiff that the suit property was not maintained properly and it got damaged due to the stock of the materials, the plaintiff issued a notice under Section 106 of the Transfer of Property Act, 1882, and has come with the present suit for eviction.

13.In the instant case, even though originally an agreement was entered into in Ex-A3 on 01.12.2007, the tenancy was only for a period of 11 months and the tenancy period came to an end on 31.10.2008. After that,



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no fresh tenancy has been entered into and admittedly, the parties are not governed by any rental agreement. At this juncture, when the parties are not specifically governed by any rental agreement, it is only open for the plaintiff to take appropriate proceedings by issuing a notice under Section 106 of the Transfer of Property Act ,1882.

14.As per Section 106 of the Transfer of Property Act, 1882, when the property is not let out for agricultural or manufacturing process, then it would be construed as a monthly tenancy and it was suffice to issue a notice for a period of 15 days calling upon the tenant to vacate the property within a period of 15 days. In the instant case, the plaintiff has validly resorted to by issuing a notice in Ex-A4 under Section 106 of the Transfer of Property Act, 1882. As such, the argument raised by the learned Counsel for the appellant that the proceedings initiated by the appellant for eviction is not maintainable, cannot be sustained.

15.The suit has been decreed as early as on 07.04.2016, wherein, a period of two months was granted to the defendant to vacate and hand over possession and the defendant was directed to pay a rent of Rs.1,500/- till the



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property is handed over to the plaintiff. The appeal suit has been filed in the year 2016, which has been disposed of on 17.12.2024. The appellate Court specifically recorded that inspite of the decree of the trial Court, the defendant has not chosen to deposit the rents including the arrears even during the pendency of the appeal suit. This conduct of the defendant makes it evident that the defendant is not inclined to pay the rents towards the property, which he has been in possession from the year 2008 and admittedly, when the tenancy entered into in Ex-A3 expired on 31.10.2008, the defendant has been squatting over the property without paying any rent only alleging that there is an advance of Rs.40,000/-. Further, as rightly found by the Courts below, even though the defendant claims that for the alleged period, he has paid the rents, the defendant has not come forward to produce any evidence in this regard evidencing the payment of rent. In such circumstances, the Courts below have rightly arrived at a finding of fact that the defendant has committed default and a valid notice has been issued for eviction and has decreed the suit ordering for eviction by granting a period of two months to the defendant to vacate the property.



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16.This Court does not find any illegality or infirmity in the findings of fact arrived at by the Courts below, as the findings are based on materials available on record and it is not perverse. There is no substantial of questions of law that arises for the consideration of this Court in the Second Appeal.

17.Accordingly, **the Second Appeal stands dismissed.** No costs. Considering the fact that the defendant had been in possession of the suit property from 2008, a period of two months is granted to the defendant to vacate and hand over the possession of the suit property to the plaintiff. Consequently, connected miscellaneous petition is closed.

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Internet :Yes/No
Index :Yes/No
NCC :Yes/No

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To

- 1.The Additional Subordinate Judge, Pudukottai.
- 2.The District Munsif, Pudukottai.

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G.ARUL MURUGAN, J.

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Judgment made in
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