

S.A.(MD)No.315 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved On : 22.04.2025

Pronounced On : 29.04.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HON'BLE MR.JUSTICE M.JOTHIRAMAN**

S.A.(MD)No.315 of 2015
and
M.P.(MD)No.1 of 2015

1.D.V.Mercy

2.Caroline

3.Arul Yagappa

4.Maria Durairaj

... Appellants / Appellants /
Legal Heirs of Y.Victor who died
after the judgment and decree in original suit.

Vs.

R.Vijayalatha

... Respondent / Respondent / Plaintiff

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 25.09.2014 passed in A.S.No.24 of 2013 on the file of the Principal District Court, Thanjavur



S.A.(MD)No.315 of 2015

confirming the judgment and decree dated 22.02.2013 in O.S.No.306 of 2010 on the file of the Additional Subordinate Court, Thanjavur.

For Appellants : Mr.Raguvaran Gopalan,
for Mr.E.V.N.Siva

For Respondent : Mr.M.P.Senthil

JUDGMENT

(Judgment of this Court was delivered by **M.JOTHIRAMAN J.**)

Unsuccessful defendants have preferred the second appeal. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

2.The brief case of the plaintiff is as follows:-

The plaintiff/R.Vijayalatha is the tenant of the suit property ie., Arul Theatre with machineries belong to defendant-Victor. They have entered into an agreement, under which, the defendant leased out the suit property to the plaintiff under a lease agreement dated 25.08.2006. Prior to the lease arrangement, the theatre was not running. The plaintiff was already



S.A.(MD)No.315 of 2015

WEB COPY

running a theatre by name Yagappa theatre, which belonged to the brother of the defendant. The defendant agreed that the plaintiff may carry out the repairs and do the remodeling to convert the theatre into an air condition one. On completion of the entire process of the renovation was early in August 2006. A sum of Rs.15,00,000/- was paid as advance and monthly rent was fixed at Rs.1,12,000/-. When the plaintiff apprehended forcible eviction from the property leased to her, she had filed a suit in O.S.No.353 of 2018 on the file of the District Munsif, Thanjavur. The plaintiff spent a sum of Rs.8,30,146/- towards the repairs and renovation works. Initially, the defendant agreed to reimburse the same and later, refused to return the amount. Hence, the suit.

3.The brief case of the defendant is as follows:-

As per agreement dated 25.08.2006, the plaintiff had been licensed to use the furniture and machines of the theatre alone, not of the entire premises. The facilities which are required to the theatre were carried out by the defendant of his own. The allegations, that the defendant consented to carry out repairs and remodeling by the plaintiff and agreed to reimburse the expenses are all absolutely false. There is no such agreement



S.A.(MD)No.315 of 2015

WEB COPY

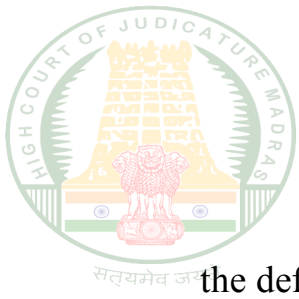
or contract between the parties at any point of time. As there is no works were carried out by the plaintiff, the defendant has no necessity to pay the amount. The plaintiff deliberately creates false documents to file the suit for which she will liable for prosecution.

4. Based on the above pleadings, the trial Court framed the following issues:-

- i) Whether the plaintiff is entitled a money decree as prayed for?
- ii) Whether the suits pending between the parties, which are mentioned in the written statement is relevant to this case?
- iii) To what other reliefs entitled?

On the side of the plaintiff, plaintiff's husband Thiru.Ramakrishnan was examined as P.W.1, one Sathishkumar examined as P.W.2 and one Selvam examined as P.W.3 and Ex.A1 to Ex.A82 were marked. On the side of the defendant, the defendant himself examined as D.W.1, one Sethuraman examined as D.W.2 and Ex.B1 to Ex.B7 were marked.

5. Upon hearing either side arguments and considering the evidences and documents, the trial Court decreed the suit on 22.02.2013 and directed



S.A.(MD)No.315 of 2015

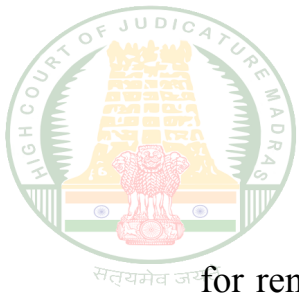
WEB COPY

the defendant to pay a sum of Rs.8,30,146/- with interest @ 7.5% from the date of plaint till the date of decree and thereafter, with interest 6% from the date of decree to till the date of realization. Aggrieved over the same, the defendant preferred an first appeal in A.S.No.24 of 2013 before the Principal District Court, Thanjavur. On re-appreciation of the entire evidence and documents, the first appellate Court confirmed the trial Court's decree and judgment and dismissed the appeal vide judgment dated 25.09.2014. The defendant died after passing of the decree and judgment in O.S.No.306 of 2010 dated 22.02.2013. The legal heirs were preferred the aforesaid first appeal. Aggrieved over the concurrent decree and judgments of the both Courts below, the present second appeal has been preferred.

6.At the time of admission, this Court has formulated the following substantial question of law:-

i)Whether the Courts below have committed an error in disregarding the fact that there was no contract between Y.Victor-deceased defendant and the plaintiff for renovation of Arul Theatre prior to 25.08.2006?

ii)Whether the Courts below have committed an error in holding that the plaintiff was entitled to recover the amount allegedly spent by him



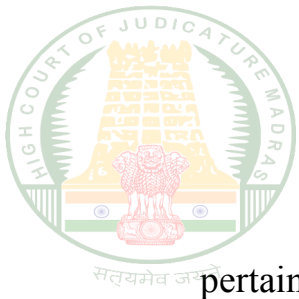
S.A.(MD)No.315 of 2015

WEB COPY

for renovation of the theatre, in the absence of any specific clause in the agreement and in the absence of any permission obtained from the theatre owner in writing?

iii)Whether the Courts below have rendered a perverse finding that the plaintiff proved her case of spending a sum of Rs.8,30,146/- prior to 25.08.2006?

7.The learned counsel appearing for the appellant/defendant would submit that after the lease agreement dated 25.08.2006 the plaintiff obtained a sum of Rs.19,00,000/- from late Y.Victor/defendant on execution of four promissory notes and the plaintiff was defaulted in payment of rent as well as the amount borrowed and had the plaintiff spent such huge amount towards renovation before 25.08.2006, definitely, the same would be only on written agreement. He would submit that when there is no such written agreements entered between the parties, the entire claim made by the plaintiff was false on the face of it. When the theatre was not handed over to the plaintiff before 25.08.2006, the question of repair and renovation by the plaintiff does not arise at all. When the plaintiff admitted that entire renovation was carried out before August 2006 whereas, most of the bills produced towards alleged expenditure



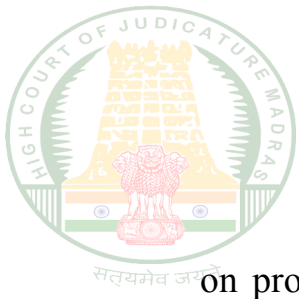
S.A.(MD)No.315 of 2015

WEB COPY

pertains to after August 2006 were not supported to the case of the plaintiff. There is no documentary proof of handing over possession of theatre prior to 25.08.2006 for renovation, the Courts below have rendered judgment based on assumption and presumption of facts.

8.Per contra, the learned counsel appearing for the plaintiff would submit that prior to the lease arrangement the theatre was not running and was kept close for a long time. The theatre building needed some repairs which needed substantial amount of investment. The defendant agreed that the plaintiff may carry out the repairs and do the remodeling to convert the theatre into an air condition one. The trial Court based on the documents and based on the evidences of witnesses come to a conclusion that the plaintiff is entitled to recover the suit amount with interest.

9.It is an admitted fact that lease agreement was entered between the parties dated 25.08.2006 and the plaintiff started running the theatre. A sum of Rs.15,00,000/- was paid as an advance by the plaintiff to the defendant and monthly rent was fixed at Rs.1,12,000/-. It is also an admitted fact that the defendant filed a suit for recovery of money based



S.A.(MD)No.315 of 2015

WEB COPY

on pro-notes in O.S.No.132 of 2008 on the file of the Principal District Judge, Thanjavur as against the plaintiff. The plaintiff had filed a suit in O.S.No.438 of 2008 on the file of the District Munsif Court, Thanjavur as against the defendant. The defendant has also filed a suit for recovery of money based on the promissory notes in O.S.No.143 of 2008 against the plaintiff. The plaintiff has also filed a suit for the relief of permanent injunction restraining the defendant from in any way interfering with the plaintiff lawful possession of the suit property ie., Arul Theatre, except by due process of law, in O.S.No.353 of 2008 on the file of the District Munsif Court, Thanjavur. Therefore, between the parties several litigations are came to be initiated.

10.In order to prove the case of the plaintiff, Ex.A2 to A7 have been relied upon to prove that the plaintiff has purchased electrical pipes and ceramic items to the tune of Rs.3,16,166/-. Ex.A18 to A20 have been relied upon to prove that shed and fall-ceiling work have been carried out for a sum of Rs.1,17,000/-. Ex.A21 to A29 have been relied upon to prove that the plaintiff had purchased timper and plywood for a sum of Rs. 1,68,427/-. Ex.A32 to A38 have been relied to prove that projector and



S.A.(MD)No.315 of 2015

WEB COPY

generator have been serviced for a sum of Rs.80,017/-. Further, to purchase cements and hardware materials for a sum of Rs.1,48,436/- to that effect, 46 vouchers have been placed and a bill for a sum of Rs. 1,04,436/- issued by the Sri Lakshmi Corporation Limited have been placed.

11.It is requisite to cite the sections 101 and 103 of the Indian Evidence Act -

Section 101 – Burden of Proof – Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Section 103 – Burden of proof as to particular fact - The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

12.The decision of the Hon'ble Supreme Court reported in ***AIR 2011 SC 2344 – Ranammal v. Kuppuswami*** wherein it has been held that



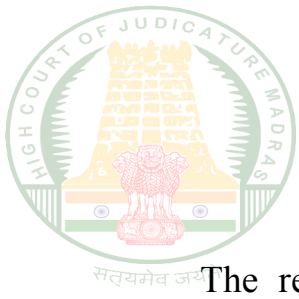
S.A.(MD)No.315 of 2015

WEB COPY

“when a person is bound to prove the existence of any fact, it is said that burden of proof lies on that person. Thus, the burden of proving fact always lies upon the person who asserts it. Unless such burden is discharged, the other party is not required to be called upon to prove his case.”

13.P.W.2 deposed that he has issued Ex.A29 receipt in the name of one Ramakrishnan(P.W.1), who is the husband of the plaintiff, for the purchase of plywood and other materials. P.W.2 in his cross examination admits that in Ex.A29 receipt there is no mention about the details of the materials sold to the P.W.1. P.W.3 Selvam deposed that he is working in a shop namely Ambika Steels and Ex.A2 and Ex.A4 vouchers were issued. From the above evidence of P.W.2 & P.W.3 and Ex.A18 to Ex.A82, it is revealed that the initial burden lies on the plaintiff has been discharged and the burden shifts on the defendant to prove his case.

14.Per contra, it is the specific case of the defendant that as per agreement dated 25.08.2006, the plaintiff had been licensed to use the furniture and machines of the theatre alone and not the entire premises.



S.A.(MD)No.315 of 2015

WEB COPY

The repair works and remodeling to convert the theatre into an air condition one and all other things were carried out by the defendant on his own. It is also the case of the defendant that the above said works were completed by availing loan from the Bank. In order to prove the aforesaid facts, D.W.2-Thiru.Sethuraman, Assistant Bank Manager, State Bank of India, Thanjavur Branch, examined. D.W.2 deposed that the defendant had borrowed a sum of Rs.30,00,000/- from his Bank for renovating and repairing the theatre and he produced Ex.B4 and Ex.B5 documents. Ex.B4 is the Bank Statement, which shows that a sum of Rs. 29,93,618.16/- is available on 26.09.2006 on the account of the defendant. Ex.B5 is the letter of arrangement dated 25.05.2006 wherein it has been stated that the defendant had submitted application dated 10.05.2006 requesting for sanction of term-loan for a sum of Rs.30,00,000/-. In Ex.B4 and B5, no where it has been mentioned that the amount has been borrowed for repairing and renovating the theatre. Further, it is not explained by the defendant as to why he had obtained loan on 26.08.2006 for a sum of Rs.30,00,000/- for renovating the theatre, since he had handed over the theatre to the plaintiff on 25.08.2006 itself.

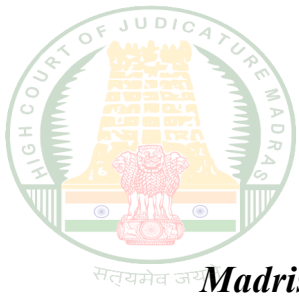


S.A.(MD)No.315 of 2015

WEB COPY

15.D.W.1-Victor in his cross examination admits that prior to the lease agreement dated 25.08.2006, the theatre was not running and kept closed for sometime. He admits that prior to the lease agreement, some repairs were carried out and renovated. He admits that the plaintiff has filed bills and vouchers in support of her case to show that expenses were incurred by the plaintiff. He admits that the renovation work was carried out between January 2006 and August 2006. He admits that during the renovation ceramic tiles have been laid down on the floor in the theatre and toilet area, plywood works, fall-ceiling works and electrical works also carried out in the theatre. He has also admitted that the theatre was remodeling and converted into the theatre into an air condition one. The defendant has failed to prove his case that all the repair works and remodeling works were carried out by him on his own.

16.The Courts below has thoroughly analysed the evidence and documents in a proper manner have rendered factual findings. It is pertinent to mention that the Hon'ble Apex Court has held in catena of judgments in (i) ***Karnataka Board of Wakf v. Anjumman-E-Ismail***



S.A.(MD)No.315 of 2015

WEB COPY

Madris-Un-Niswan- (1999)6 SCC 343 (ii) Ramanuja Naidu v. V.Kanniah Naidu -(1996) 3 SCC 392 (iii) Navaneethammal v. Arjuna Chetty - (1996) 6 SCC 166 and (iv)Secy., Taliparamba Education Society v. Moothedath Mallisseri Illath M.N. - (1997) 4 SCC 484 that “if the findings of fact of the Courts below are based on legal evidence, the same cannot be interfered by this Court while exercising power under Section 100 of the C.P.C”.

17.From the evidence of P.W.1 to P.W.3 and through documents, the claim of the plaintiff has been proved and the plaintiff is entitled the suit amount as prayed for. The findings rendered by the Courts below does not requires any warrants of interference. We are of the view that the Courts below have not committed any error in holding that the plaintiff was entitled to recover the amount spent by her for renovation of the theatre, even in the absence of any specific clause in the agreement and in the absence of written permission obtained from the defendant. The substantial questions of law are answered accordingly. There is no merit in this appeal and the same is liable to be dismissed.



S.A.(MD)No.315 of 2015

WEB COPY

18.In the result, this second appeal is dismissed and the judgment and decree dated 25.09.2014 passed in O.S.No.306 of 2010 on the file of the Additional Sub-Court, Thanjavur, upheld in A.S.No.24 of 2013 on the file of the Principal District Court, Thanjavur, dated 22.02.2013 are hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) & (M.J.R., J.)
29.04.2025

NCC : Yes / No
Index : Yes / No
gns



WEB COPY



S.A.(MD)No.315 of 2015

To

1.The Principal District Court, Thanjavur

2.The Additional Sub-Court, Thanjavur



WEB COPY



S.A.(MD)No.315 of 2015

G.R.SWAMINATHAN,J.
and
M.JOTHIRAMAN, J.

gns

Pre-Delivery Judgement made in
S.A.(MD)No.315 of 2015

29.04.2025