



SA(MD)No.80 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 07/04/2025

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

SA(MD)No.80 of 2004

1.Mohan (Died) : 1st Appellant/
Respondent/Defendant
2.A.Swarna
3.M.V.Priya
4.M.Vignesh : Appellants 2 to 4/
LR.s of the deceased
Sole Appellant

(Appellants 2 to 4 are brought
on record as LR.s of the deceased
Sole Appellant, vide Court order,
dated 30/09/2024 made in CMP(MD)
Nos.12787, 12789, 12791 of 2024
in SA(MD)No.80 of 2004,)

Vs.

Incorporated & Unincorporated
Devaswom, Suchindrum,
represented by its Executive Officer/
Deputy Commissioner,
Suchindrum, Suchindrum Village,
Agasteeswaram Taluk,
Kanyakumari District : Respondent/Appellant/
Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree made in AS No.119 of 2003, dated 10/02/2004 on the file of the District Court of Kanyakumari District at Nagercoil, reversing the judgment and decree made in OS No.151 of 1999, dated 10/03/2003 on the file of the 1st Additional Sub Court, Nagercoil.



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For Appellants : Mr.M.Dennis Joe

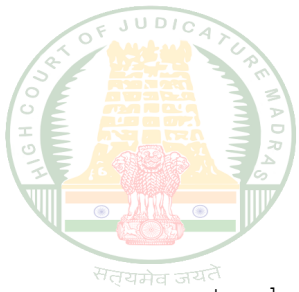
For Respondent : Mr.H.Thayumanswamy
for Mr.D.Hari

J U D G M E N T

This second appeal is filed against the judgment and decree passed in AS No.119 of 2003, dated 10/02/2004 passed by the District Court, Kanyakumari District at Nagercoil, reversing the judgment and decree passed in OS No.151 of 1999, dated 10/03/2003 by the 1st Additional Sub Court, Nagercoil.

2.The plaint averments:-

The plaintiff is the owner of the property mentioned in the plaint. The agricultural land yielding two paddy crops per year. The defendant came into possession of the property by oral lease and agreed to pay 4,700 Liters of paddy per year. Later, it was reduced to 25:75. As per that calculation, the defendant is bound to pay 2,625 Liters of paddy per year. The defendant was not regular in the payment of rent. The total arrear comes to 35,840 Liters of paddy between Fasli 1390 and 1407. The market value of the paddy is calculated at the rate of Rs.350/-. For 150 Liters, the total amount comes around Rs.83,627/-. Notice was issued to the defendant demanding payment of the lease amount. But the defendant failed to pay the same. Hence, the suit.



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3.**The statement**:-Originally, the defendant's husband took the plaint schedule items I and II on lease. He was continuing as lessee. After the death of her husband, she inherited the leasehold right and continuing as a tenant. The Schedule 3rd item is not in the possession of the defendant. The defendant was liable to pay the rent of Rs.687.50/- at the rate of 25%. Till the Fasali year 1407, she paid. The calculation of the market value of per liter paddy is wrong. The Schedule 3rd item of the property is in possession of Parameswaran Pilli. In the written statement itself, the payment of lease is mentioned. According to the statement, she has paid 16,650/- liters in excess of the agreed paddy. Apart from that, it is also stated that the suit is barred by limitation.

4.On the pleadings of the parties, the following issues were framed by the trial court:-

(1)Whether the plaintiff is entitled to recover the amount from the defendant as prayed in the plaint?

(2)To what other relief, the plaintiff is entitled to?

5.On the side of the plaintiff, one witness was examined and 2 documents marked. On the side of the



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defendant, one witness was examined and 38 documents were marked.

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6.At the conclusion of the trial process, the trial court dismissed the suit with cost. Against which, appeal was preferred by the plaintiff before the appellate court namely the District Judge, Kanyakumari, in AS No.119 of 2003. The appellate court differed from the judgment and decree of the trial court finding that the defendant is bound to pay the lease amount quantifying at Rs.35,466/- with interest at the rate of 12% and decreed the suit.

7.Against which, this second appeal is preferred.

8.At the time of admission, the following substantial questions of law were framed:-

(1)Whether the judgment of the lower appellate court is in accordance with the mandatory provisions of Order 41, Rule 31 C.P.C?

(2)Is not the judgment of the lower appellate court vitiated especially when the Executive Officer was not competent person to institute the suit or appeal or any legal proceedings as he has not been assigned with the power to do so



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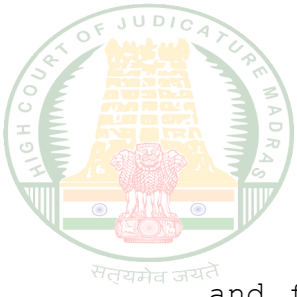
under Section 45 of the Tamil Nadu H.R & C.E. Act, 1959?

(3)Whether the lower appellate court is right in holding that the suit is not barred by limitation relying upon Section 109 of the Tamil Nadu H.R. & C.E. Act 1959 especially when the suit properties are admittedly of Devaswom properties covered under Schedule II of Section 2(IX) of the Act 22 of 1959 and the income there on are Devaswom Funds governed by the provisions of Tamil Nadu (Transferred) Incorporation and Unincorporated Devaswoms Act, 1959?

(4)Has not the lower appellate court erred in granting interest at the rate of 12% p.a. on the principal amount even after the decree till realization which is contrary to Section 34 C.P.C?

9.Heard both sides.

10.A simple suit on the basis of the arrears of payment of lease amount by the defendant. As per the plaint averments, the total quantified rupee value of the lease is **Rs.83,627/-**. The total due was estimated as **Rs.35,466/-** by the appellate Court.



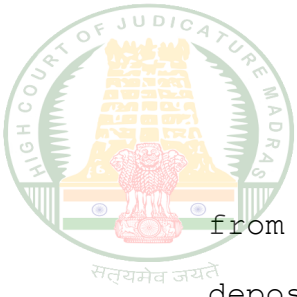
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11. That plea was rejected by the trial court stating and finding that the defendant is liable to pay only 25% (பாட்டத்தொகை), that was entirely paid by him in view of the receipts under Exs.B1 to B23. Apart from that, the trial court has also taken into account the reply notice sent by the defendant, by which she undertook to pay the balance amount if any. On that account, it was decided that the defendant was not liable to pay any arrears amount as mentioned in the plaint.

12. But the appellate court recorded a contra finding regarding the arrears and accepted the plea of the plaintiff that Exs.B1 to B23 were taken into account from the claim amount. The balance amount on the date of appeal was quantified at Rs.35,466/- and accepting that plea, the appellate court granted decree for Rs.35,466/- and imposed 12% interest from the date of the plaint and till the date of realization.

13. A detailed report was called for from the trial court, wherein it was submitted before this court that periodically the amounts are being deposited in the Court. Those amounts were deposited in the fixed deposit scheme. The date of decree by the appellate court is 10/02/2004. The defendant started depositing the amount

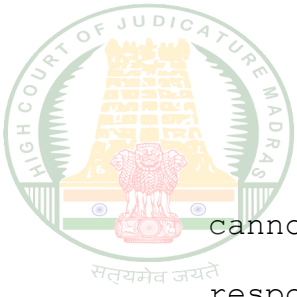


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from 09/03/2005. As on 07/04/2024, the total amount deposited was Rs.2,47,890/-. The earned interest as per the statement on it is Rs.4,44,879/-. So, this clearly shows that the defendant is continuously depositing the rent. The plaintiff can deduct those amounts. Since the decreed amount itself has been completely satisfied by way of deposit, now the appeal becomes infructuous. Since the deposits earned interest, the appellant are not liable to pay the interest for the arrear amount of Rs.35,466/-. More-over, the appellate court has also committed an error in granting decree of interest at the rate of 12% from the date of plaint, till the date of realization. If at all, it can grant from the date of decree at the rate of 6% per annum as per section 34 of C.P.C. To that extent only, the appellate court judgment requires to be modified. But, as stated above, the claim amount in the plaint itself is exceeds the deposited amount with the accrued interest.

14.But the learned counsel appearing for the respondent has filed a calculation memo stating that for 25 years and 11 months, the total amount of interest comes to Rs.1,10,623/- between the period 30/04/1999 and 30/03/2025. He calculated the total arrears amount as Rs.8,54,243/- from 01/07/1999 till 30/06/2025. But this



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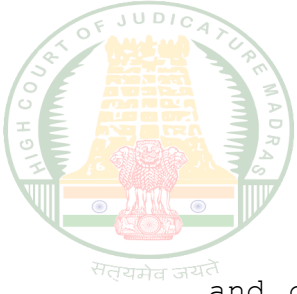
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cannot be taken into account at this stage. It is for the respondent to take steps in this regard, but of course, subject to the deposit made by the appellants.

15.As mentioned above, the deceased 1st appellant started depositing the amount from 09/03/2005. On that date, he deposited Rs.25,000/-. Then on 28/03/2005, he deposited Rs.23,687/-. The lodgement schedule is not available and it is upto the parties to verify the lodgement schedule. But, as mentioned above, the appellants are not liable to pay the interest at the rate of 12% p.a from the date of decree. It is reduced to 6% as mentioned above.

16.To that extent, the second appeal is liable to be allowed modifying the decree and judgment of the appellate court.

17.So, the substantial questions of law need not be answered in the light of the above said development. Since the appellants herein admitting the right of the plaintiff to initiate proceedings in the civil court for the realization of such arrears, started depositing the lease amount. So, the substantial questions of law do not arise and answered accordingly.



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18.With the above said modification of the judgment and decree of the appellate court, this second appeal is **partly allowed**. No costs.

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Index:Yes/No
Internet:Yes/No
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To,

- 1.The District Judge,
Kanyakumari District at
Nagercoil.
- 2.The 1st Additional Sub Judge,
Nagercoil.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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