

A.S(MD)No.242 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.04.2026

Pronounced on : 07.07.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

A.S(MD)No.242 of 2023

and

C.M.P(MD)No.13479 of 2023

S.Karuppasamy,
S/o.Sanjeevi
Door No.1/53, North Street,
Pattakulam Village,
Viluppanur Post,
Srivilliputtur Taluk,
Virudhunagar District.

...Appellant/Defendant

Vs.

G.Vethanayagi,
W/o.R.Gunasekaran,
Door No.4-2-23A,
Peraiyur Mathankovil Street,
Peraiyur Town & Taluk,
Madurai District.
Represented through her father and
Power of Attorney
S.Sethuramasubramanian,
S/o.Late.A.S.Sankaranarayanan Chettiar,
Srivilliputtur North,
Srivilliputtur Town & Taluk,
Virudhunagar District.

...Respondent/Plaintiff



A.S(MD)No.242 of 2023

PRAYER:- This Appeal Suit is filed under Order 41 Rule 1 r/w Section 96 of the Civil Procedure Code, to set aside the judgment and decree passed in O.S.No.104 of 2021 on the file of the Additional District and Sessions Court, Srivilliputtur, dated 10.04.2023.

For Appellant : Mr.M.Ashok Kumar
For Respondent : Mr.V.R.Shanmuganathan

JUDGMENT

This Appeal Suit is directed against the judgment and decree, dated 10.04.2023 passed in O.S.No.104 of 2021 on the file of the Additional District and Sessions Court, Srivilliputtur.

2.The appellant is the defendant in O.S.No.104 of 2021 on the file of the Additional District and Sessions Court, Srivilliputtur. The respondent is the plaintiff in that suit.

3.The respondent/plaintiff, through her power agent, filed the suit for declaration and recovery of possession in respect of the suit property and for mesne profits.



A.S(MD)No.242 of 2023

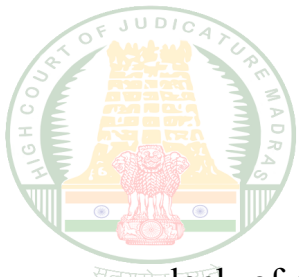
WEB COPY

4.For the sake of convenience, the parties are referred to as per their rank before the trial Court.

5.The brief facts are as below:

(a) The case of the plaintiff (respondent herein):-

The plaintiff has purchased the suit property from one S.Shanmugam by virtue of a registered sale deed dated 18.02.2008. The plaintiff let out the suit property to one Praveenkumar and Amaravathi by executing an othi deed for Rs.3,00,000/-. As there was a dispute between them, the plaintiff filed a suit in O.S.No.32 of 2015 before the Principal Sub Court, Srivilliputhur, for redemption. On compromise, the said Praveenkumar and Amaravathi vacated and handed over possession of the suit property to the plaintiff on 21.06.2016. While the facts being so, the defendant created a forged rental agreement, dated 02.05.2016 and filed a false case in O.S.No.178 of 2016 for an injunction not to vacate the defendant except through due process of law. The said suit was dismissed as 'no instruction'. In fact, after getting possession on 21.06.2016, the plaintiff let out the suit property to one Kaleeswaran, who vacated the premises on 21.02.2018. On 21.02.2018, the plaintiff found the



A.S(MD)No.242 of 2023

WEB COPY

lock of the door was broken down and on enquiry, the defendant, being an advocate, trespassed into the suit premises. So, the plaintiff lodged a police complaint, then she sent a complaint to the Special Cell of the Chief Minister and higher police officials. As there was no proper action, the plaintiff filed CrI.O.P(MD)No.3698 of 2018 before the Madurai Bench of Madras High Court, in which direction was issued for action. The defendant influenced the officials and managed not to take further action. Thereafter, the plaintiff lodged a complaint before the Bar Council of Tamilnadu in D.C.C.No.450 of 2018. The Bar Council enquired and passed an order dated 13.01.2020, debarring the defendant from practicing for two years and also directed the defendant to hand over possession of the suit property within six weeks. The defendant has also filed a suit in O.S.No.255 of 2017 before the Principal District Munsif Court, Srivilliputhur as against one Athinarayananpillai and his son for an injunction not to vacate him from the house in VIP Sathuragiri Nagar, as if the defendant is residing as a tenant thereat. There are a number of police complaints pending against the defendant in various police stations. The defendant is not a law-abiding man. The defendant is a trespasser on the suit property. The plaintiff issued a legal notice, but there has been no reply from the defendant. Therefore, the plaintiff, through her power agent, has filed the suit.



A.S(MD)No.242 of 2023

WEB COPY

(b)The case of the defendant:-

The plaintiff made false averments in the plaint. The defendant is a tenant under a rental agreement, dated 02.05.2016, and he has been paying monthly rent without any default. The plaintiff and the said Praveenkumar and Amaravathi collusively filed the suit in O.S.No.32 of 2015 and alleged that possession of the suit property was handed over on 21.06.2016 upon compromise. The defendant filed a suit in O.S.No.178 of 2016 for injunction to not evict except under due process of law. In that suit, the plaintiff filed a petition to send the document to a handwriting expert in respect of the defendant's signature; later, the petition was not pressed. So, the rental agreement is not a created one. The defendant is residing in the suit property as a tenant without giving any trouble to anybody. The defendant is not a trespasser. On the basis of ill advice, the plaintiff's father, as the power agent, has filed this vexatious suit. So, the suit is to be dismissed.

6.The trial Court framed the following issues upon the pleadings of both parties.

(1)Whether the suit property belonged to the plaintiff?



WEB COPY



A.S(MD)No.242 of 2023

(2) Whether the plaintiff is entitled to get the decree of declaration and recovery of possession as asked for in the suit?

(3) Whether the plaintiff is entitled to get the decree for damages as asked for in the suit?

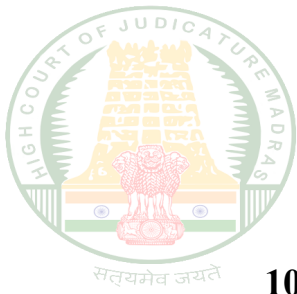
(4) Whether the plaintiff is entitled to get the decree for mesne profits as asked for in the suit?

(5) To what relief the plaintiff is asked for?

7. During the trial, the plaintiff's power of attorney was examined as P.W.1 and marked exhibits as Ex.A.1 to Ex.A.39. On the defendant's side, the defendant was examined as D.W.1 and Ex.B.1 to Ex.B.3 were marked.

8. On appreciation of evidence and the submissions made on behalf of the parties, the trial Court has held that the defendant is not a tenant and he is a trespasser, thereby decreeing the suit in favour of the plaintiff by its judgment and decree, dated 10.04.2023.

9. Aggrieved by the judgment and decree of the trial Court, dated 10.04.2023, the defendant has preferred this present appeal.



A.S(MD)No.242 of 2023

WEB COPY

10. Heard both side arguments and perused the records in this appeal suit.

11. The points for consideration in this appeal are:

1. Whether the defendant is a tenant or trespasser?

2. Whether the judgment and decree of the trial Court is sustainable or not?

12. Points 1 and 2:

The learned counsel for the appellant/defendant has submitted that the plaintiff had colluded with Praveenkumar and Amaravathi and filed O.S.No.32 of 2025 based on an alleged Othi and later stated the suit was compromised. The defendant is a tenant of the suit property and a rental agreement dated 02.05.2016 was executed between the parties. The alleged Kaleeswaran was not residing in the suit property. The plaintiff has not produced any rental agreement between the plaintiff and the said Kaleeswaran. The defendant is running an advocate's office in the suit property. There is no complaint against the defendant. The trial Court has decreed mainly on the basis of the order of the Bar Council marked as Ex.A.23. The defendant is not a trespasser and the plaintiff has not proved the same. The defendant produced a



A.S(MD)No.242 of 2023

WEB COPY

rental agreement as Ex.B.1 and produced electricity board receipts. Though the plaintiff alleged that the said rental agreement was created one, the plaintiff filed a petition for expert opinion and withdrew the same. The defendant has marked the said petition and affidavit in I.A.No.632 of 2018 in O.S.No.178 of 2016 as Ex.B.2. So, the rental agreement is not created and it is genuine one. The trial Court has not properly appreciated the evidence and erred in granting decree. The appeal may be allowed.

13.Per contra, the learned counsel for the respondent/plaintiff argued that the defendant has admitted the title of the plaintiff over the suit property and also proved possession of the same by producing Ex.A.29 - Compromise Order, which is dated 21.06.2016. Whereas the defendant stated that there was a rental agreement which was executed on 02.05.2016. When the possession of the suit property was handed over only on 21.06.2016, there is no possibility of executing the rental agreement on 02.05.2016. The defendant has not produced the original of the same, he has marked only a photocopy of the rental agreement. Moreover, within 9 days, i.e., on 13.05.2016, the defendant filed suit for an injunction against the plaintiff for not evicting except under due process of law. The defendant has not paid any rent and has not proved the

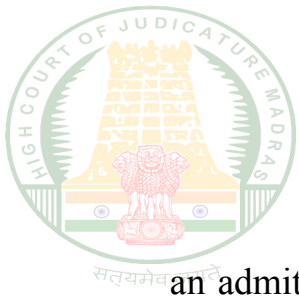


A.S(MD)No.242 of 2023

WEB COPY

payment of rent to the plaintiff upon the alleged rental agreement dated 02.05.2016. Since the defendant indulged in illegal acts, the plaintiff lodged a complaint before the police and Chief Minister Cell and also filed Crl.O.P(MD) No.3698 of 2018 before the Madurai Bench of Madras High Court. In spite of the order, the defendant has not corrected himself and so, the plaintiff filed a complaint before the Bar Council of Tamil Nadu in D.C.C.No.450 of 2018, in which an enquiry was conducted and lastly order, dated 13.01.2020 was passed holding that the defendant is not a tenant and directing the defendant to vacate the suit property and also debarred him from practice. The defendant has not challenged the said order. These are all admitted by the defendant. So, the defendant is an encroacher on the suit property. The plaintiff clearly proved her case that the defendant is a trespasser. The trial Court has properly appreciated the evidence and has correctly decreed the suit and therefore, there is no need for interference with the decision of the trial Court, and the appeal may be dismissed.

14.On perusal of appeal records, trial Court records and on consideration of arguments advanced by both sides, the suit property belongs to the plaintiff and there is no dispute that she is the title holder of the suit property. It is also

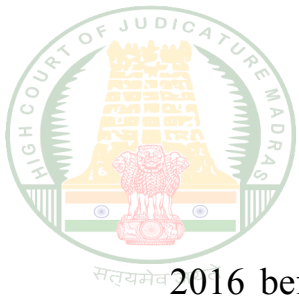


A.S(MD)No.242 of 2023

WEB COPY

an admitted fact that the defendant is an advocate. The defendant claims that he is a tenant of the suit property under the plaintiff and produced Ex.B.1 copy of the rental agreement. Whereas the plaintiff denies that the defendant is not a tenant and contends that he is a trespasser by contending that on the date of the alleged Ex.B.1, dated 02.05.2016, there was litigation between the plaintiff and her lessees, Praveenkumar and Amaravathi, in O.S.No.32 of 2015 on the file of Principal Sub Court, Srivilliputhur and the case was settled before the Lok Adalat on 21.06.2016. The plaintiff has produced a copy of the plaint as Ex.A.28 and a copy of the Lok Adalat award as Ex.A.29.

15.On perusal of records, it is clear that the defendant has not produced the original rental agreement and also has not produced any document to show payment of rent. The defendant, being an advocate, ought to have proven payment of the rent regularly and in case of refusal by the landlord, he has to deposit the rent before the appropriate Forum or at least into a bank account to show his genuineness. But, in the case on hand, the defendant has not pleaded so and also has not shown any payment of rent by any mode. The copy of the alleged rental agreement dated 02.05.2016 is marked as Ex.A.7 and Ex.B.1. From the records, it is clear that the defendant filed a suit in O.S.No.178 of



A.S(MD)No.242 of 2023

WEB COPY

2016 before the District Munsif-cum-Judicial Magistrate No.1, Srivilliputhur and the suit ended in dismissal as 'No instruction'. The copy of judgment and decree was marked as Ex.A.36 and Ex.A.37. From Ex.A.37 decree copy, it is very clear that the suit was filed by the defendant on 13.05.2016 against the plaintiff seeking an injunction not to be evicted except through due process of law, based on an alleged rental agreement dated 02.05.2016. Within 13 days, the defendant filed the suit. No prudent man would file a suit within 13 days from the date of the rental agreement, that too without any payment of rent or alleging any reason for eviction. The plaintiff's contention that the Ex.B.1 rental agreement is a fabricated one could not be brushed as there is no reason. Because on the date of Ex.B.1 - 02.05.2016, there was litigation in O.S.No.32 of 2015 between the plaintiff and her lessees and the suit came to an end only on 21.06.2016 and thus possession was not with the plaintiff as on 02.05.2016. If so, there is no possibility of execution of the rental agreement and also the defendant has falsely laid his suit in O.S.No.178 of 2016 on 13.05.2016 (before Vacation Court as O.S.No.39 of 2016). The defendant has not produced any other evidence to show that Ex.B.1 is a genuine one, except for electricity receipts.



WEB COPY

16.The contention of the defendant that since the plaintiff filed a petition in I.A.No.632 of 2018 in O.S.No.178 of 2016 for a handwriting expert and later, withdrew the same, so Ex.B.1 is proven to be a genuine one cannot be accepted. Because, the alleged Ex.B.1 came to be made during the pendency of a suit in O.S.No.32 of 2015 between the plaintiff and her lessee. The defendant has not disproved by adducing sufficient evidence except for his version of collusion. Moreover, when it is alleged that Ex.B.1 is said to have been fabricated, it is the duty of the defendant to prove the same as genuine one. A perusal of Ex.B.1, it is found that there is no witness signature, even though it is claimed to be an agreement between two parties. The defendant as D.W.1 has deposed in his cross examination that “இந்த தாவா வழக்கு சொத்திற்கு வாடகை ஒப்புந்தம் 02.05.2016ல் போட்டேன். இந்த வாடகை ஒப்புந்தம் யாரால் தட்டச்சு செய்யப்பட்டது என்ற விபரம் இல்லை என்றால் சரிதான். அந்த ஒப்புந்தத்தை வாதிதான் தட்டச்சு செய்து கொண்டு வந்தார். வாதி தான் தட்டச்சுசெய்து கொண்டு வந்தார் என்ற விபரத்தை எதிரீவழக்குரை மற்றும் முதல் விசாரணையில் குறிப்பிட்டு சொல்லவில்லை என்றால் சரிதான்... அந்த ஒப்புந்தத்தில் சாட்சிகள் யாரும் கையொப்பம் போடவில்லை காரணம் வாதி சாட்சிகள் வேண்டாம் என்று சொன்னார்.....வாதியிடம் வாடகை செலுத்தியதை காட்ட ஆவணங்கள் தாக்கல் செய்யவில்லை என்றால் சரிதான்...”. From the above evidence, it is clear that no witness signed the

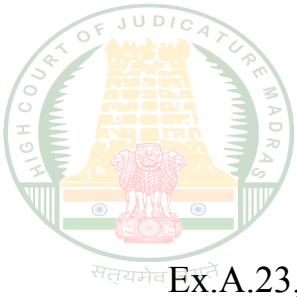


A.S(MD)No.242 of 2023

WEB COPY

agreement and there is no document to show the payment of rent to the plaintiff. The defendant has not produced any sufficient evidence to prove that Ex.B.1 is a genuine one.

17.Further perusal of records, it is averred by the plaintiff that since the defendant encroached upon the suit property by illegal means, she lodged a police complaint, sent a petition to the Special Cell of the Chief Minister and to higher police officials and lastly filed Crl.O.P(MD)No.3698 of 2018 before the Madurai Bench of Madras High Court. Since the defendant, is an advocate, the plaintiff could not get immediate relief, so she lodged a complaint before the Disciplinary Committee of the Tamil Nadu Bar Council for the illegal trespassing of the defendant over the suit property. The complaint was taken for enquiry as D.C.C.No.450 of 2018 and an enquiry was conducted against the defendant. After enquiry, the Disciplinary Committee has passed an order, dated 13.01.2020, debarring the defendant from practice for two years and directing him to vacate the suit property. The said order copy is marked as Ex.A.23. It is the case of the plaintiff that the defendant has not challenged the said order before the appropriate Forum according to law. This was not objected to by the defendant. So, Ex.A.23 became final. From perusal of



A.S(MD)No.242 of 2023

Ex.A.23, it is clear that the defendant, who is the respondent there in D.C.C.No.450 of 2018, has deposed as R.W.1 and he admitted that he had not resided in the suit property when a suit notice for dishonor of his cheque was sent to him in case No.29 of 2017. So, the plaintiff's case that the defendant is not a tenant and is a trespasser has some force.

18.From the perusal of records, it is very clear that the plaintiff sent a legal notice to the defendant and it was received by the defendant. Copy of legal notice and acknowledgement cards are marked as Ex.A.33 and Ex.A.34. It is a clear admission of the defendant that he has not sent any reply notice to the plaintiff against the Ex.A.33 legal notice. A perusal of evidence of D.W.1 it is clear admission that “எனக்கு அனுப்பப்பட்ட வழக்கு அறிவிப்பில் நான் ஆக்கிரமிப்பாளர் என்று சொல்லி அதனால் வீட்டை காலி செய்யவேண்டும் என்றும் குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான். ஆக்கிரமிப்பாளர் என்று சொன்னதால் தான் நான் பதில் அறிவிப்பு அனுப்பவில்லை.” So, it is proved that the defendant has not sent any reply notice. The defendant is an advocate, so he has to comply with all the requirements of provisions of law. It is a settled position by the Hon'ble Supreme Court and this Court that the non-sending of a reply legal notice by the defendant is fatal to his defense.



A.S(MD)No.242 of 2023

WEB COPY

19.The Division Bench of Principal Seat of this Court has held in its order, dated 06.12.2023 in A.S.No.693 of 2018 in the case of **T.Mohankumar /v/ Ashok Kumar** that “therefore, a reading of the cross-examination of P.W.1, in our opinion, would show that not even a single utterance of him in his proof affidavit and the plaint is true. Undoubtedly, the conduct of the defendant in not lodging a police complaint and not sending a reply to the legal notice militates against him.” The senior brother Judge of the principal Seat of this Court held in his judgment, dated 19.01.2021 passed in **S.A.No.967 of 2008 in Sundaram /v/ Gowri Shankar** case clearly held that “the non-sending of the reply by the defendant to the legal notice sent by the plaintiff is fatal to the defence set out by the defendant”. So, this Court is of the considered view that the defendant is not a tenant and he is an encroacher on the suit property.

20.As discussed above, the plaintiff has clearly proved her case that the defendant is not a tenant and he is a trespasser and the trial Court has properly appreciated the evidence of both sides and correctly passed a decree. Considering the above facts and circumstances, the judgment and decree of the



A.S(MD)No.242 of 2023

WEB COPY

trial court need not warrant interference. The points are answered accordingly against the appellant. Thus, this appeal suit fails.

21. In the result,

(i) This Appeal Suit is dismissed with costs.

(ii) The judgment and decree dated 10.04.2023 passed in O.S.No.104 of 2021 on the file of the Additional District and Sessions Court, Srivilliputtur are confirmed.

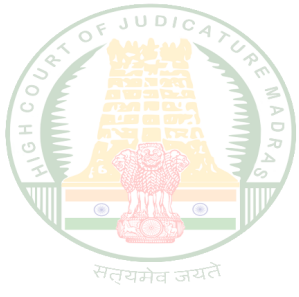
(iii) Consequently, the connected Civil Miscellaneous Petition is closed.

07.07.2026

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

To

1. The Additional District and Sessions Court,
Srivilliputtur.
2. The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S(MD)No.242 of 2023

P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
A.S(MD)No.242 of 2023
and
C.M.P(MD)No.13479 of 2023**

07.07.2026