

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.01.2015

CORAM :

THE HON'BLE MS. JUSTICE K.B.K.VASUKI

Second Appeal No.1393 of 1998

Anbazhagan .. Appellant/Defendant
Vs
Pandian @ Ramesh .. Respondent/Plaintiff

Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 23.12.1997 made in A.S.No.30 of 1997 on the file of the Additional District Judge, Pondicherry confirming the Judgment and Decree dated 24.04.1997 made in O.S.No.655 of 1996 on the file of the Principal District Munsif, Karaikal.

For Appellants : M/s.R.Subramaniam
For Respondent : M/s.A.B.Rachana Begum
for T.R.Rajaraman

J U D G M E N T

The unsuccessful defendant is the appellant herein. The suit relief sought for in the suit is for permanent injunction restraining the defendant, his men, agents, servants etc., from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property till the plaintiff is evicted under due process of law.

2.Though the suit is filed in respect of two items bearing Old Door No.44 and 45 with New Door No.220 and 220/1 with specific measurements having tea stall by name and style "Bharatham Snacks" in Door No.220/1. The learned counsel for the plaintiff would in the course of his argument admit that the suit relief sought for is only in respect of tea stall by name Bharatham Snacks situated in Door No.220/1, measuring 7x5 feet on the southern side.

3.According to the plaintiff, the defendant was originally principal lessee of the suit property and during 1985 he sub let the same to the plaintiff for daily rent and thereafter the defendant purchased the suit property during 1995 and attempted to dispossess the plaintiff from the suit property during May 1996 and also issued legal notice during November 1996.

4.Both the Courts below having found that the plaintiff has been in possession and enjoyment of the suit property bearing D.No.220/1 by running a tea stall by name and style "Bharatham Snacks" as

admitted by the plaintiff in the counter filed in CMP.No.5221 of 1999 and having accepted his further case that the defendant being the owner, had been making all attempts to dispossess the plaintiff from the suit premises, granted the relief as sought for in the plaint. Hence, this second appeal before this Court thereby seeking to question the judgment and decree of the Courts below on the ground that no permanent injunction can be granted in favour of the occupier against the true owner.

5.The Second Appeal is admitted on the following substantial questions of law :

(i)Whether the Courts below are right in granting the relief of permanent injunction as against the true owner, giving a go-by to the well settled legal principle laid down in the decision reported in 1962 (1) MLJ 3837?

(ii)Whether the Courts below are right in granting the relief of permanent injunction in respect of the entire suit properties, when admittedly the respondent/plaintiff is in possession only in Door.No.220?

(iii)Whether the Courts below are right in law in declaring the suit on mere pleadings which are not supported by any evidence?

6.In my considered view, the relief sought for by the plaintiff and granted by the Courts below is not permanent in nature and only restricted relief against the owner from dispossessing the occupier of the property in question except under due process of law, which is permissible in law. Both the Courts below have on the basis of the oral and documentary evidence clearly arrived at conclusion that the defendant is the owner of the property and the plaintiff has been running tea stall in the demised premises as tenant under the defendant. Such factual findings are based on sufficient materials and supported by proper reasonings and no ground much less valid ground is hence raised by the appellant against the reliefs granted by the Courts below based on such findings and no substantial questions of law also arises warranting interference into the same.

7.In the result, the second appeal is dismissed by confirming the relief granted by the courts below in respect of the property measuring 7 x 5 feet on the southern side in Door No.220/1 wherein the tea stall under the name and style of "Bharatham Snacks" is being carried on. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

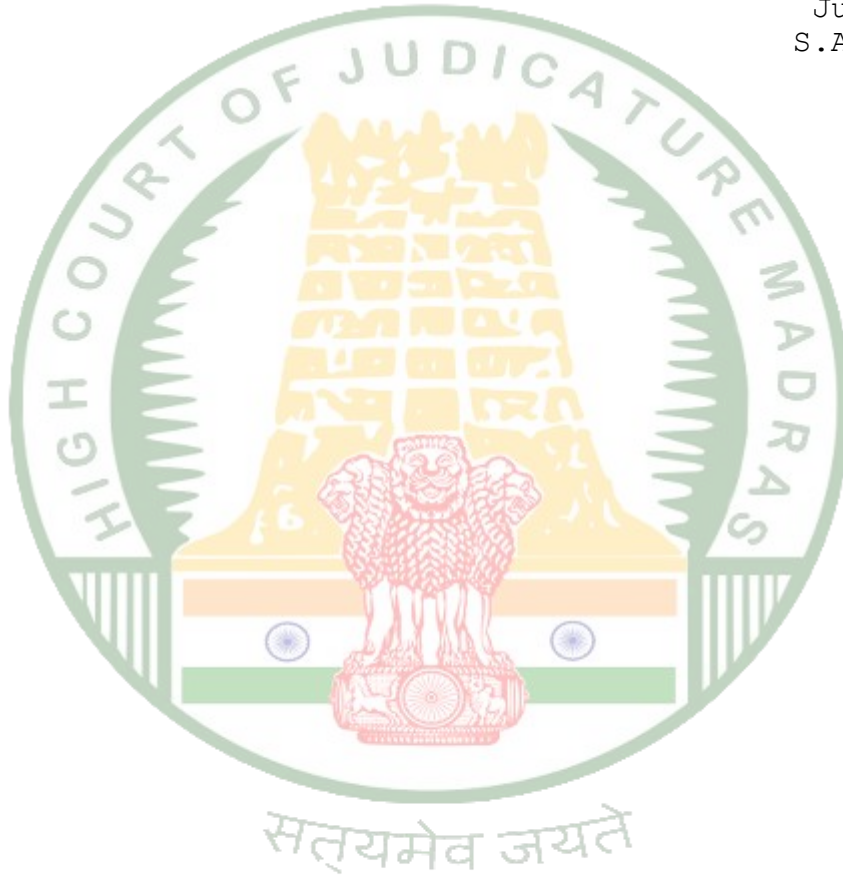
1. The Additional District Judge, Pondicherry.
2. The Principal District Munsif, Karaikal

+1 cc to Mr.R.Subramanian, Advocate, SR.3135

+1 cc to Mr.T.R.Rajaraman, Advocate, SR.3126.

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Judgment in
S.A.No.1393 of 1998



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