

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.10.2015

CORAM ::

THE HON'BLE MR. JUSTICE P.R. SHIVAKUMAR

Second Appeal Nos: 1418 of 1999
and 1106 of 2001

S.A. No: 1418 of 1999

Durairaj
Door No: 127
Sridhar Road
Udumalpet.

.... Appellant/1st defendant

-vs-

1. Venkatasamy
S/o. Nachimuthu
Sengazhupudur Agraharam
Kannadipudur
Udumalaipettai.

2. Sharada
W/o. Durairaj
27, Sardar Road
Udumalaipettai.

3. Mahaganapathi Oil Mills,
by its partner,
27 Sardar Road
Udumalaipettai.

4. State Bank of India
Udumalaipettai.

... Respondents/Plaintiff
and Defendant-2 to Defendant-4

For appellants :: Ms. A. Nilophar

For 1st respondent :: Mr. P. Srinivas

Resps. 2 to 4 :: Given up

S.A. No: 1106 of 2001

Venkatesamy
S/o. Nachimuthu
Sengazhupudur Agraharam
Kannadipudur
Udumalaipettai.

... Appellant/Plaintiff

1. Durairaj
Door No: 27
Sardar Road
Udumalpet.
2. Sharada
W/o. Durairaj
27, Sardar Road
Udumalaipettai.
3. Mahaganapathi Oil Mills,
by its partner,
27 Sardar Road
Udumalaipettai.
4. State Bank of India
Udumalaipettai. ... Respondents/Defendants
... ..

Second appeals filed under Section 100 of C.P.C. against the judgment and decree dated 01.09.1998 in A.S. No: 46 of 1998 on the file of the II Additional District Court, Coimbatore, partly reversing the decree and judgment dated 26.03.1996 in O.S. No: 62 of 1994 on the file of Sub Court, Udumalpet.

For appellant(S.A.1106)
and R1 in S.A.1418/1999 :: Mr. P. Srinivas

For 1st & 2nd respondents
S.A.1106/2001 and
Appellant in S.A.1418/99 :: Ms. A. Nilophar
for Mr.R. Subramanian

Resps. 2 to 4 in
S.A.1418/1999 :: Given up

R3&R4 in S.A.1106/2001 :: No appearance

COMMON JUDGMENT

Second Appeal No: 1418 of 1999 has been filed by the tenant against the decree directing payment of arrears of rent and future damages for use of occupation. Second Appeal No: 1106 of 2001 has been filed by the landlord, who was the plaintiff in the original suit, against the dismissal of the suit in respect of the prayer for recovery of possession.

2. The learned counsel appearing for the parties submit that before ever the judgment of the trial Court granting the relief of recovery of possession was set aside by the lower appellate Court, the decree of the trial Court was executed

and the tenant was evicted from the suit property and that hence, the appeal filed by the landlord in S.A. No: 1106 of 2001 has become infructuous. There is no difference of opinion as to the fact that Second Appeal No: 1106 of 2001 filed by the landlord has become infructuous, especially in the light of the fact that the tenant has come forward with a plea that he is not going to seek restoration based on the decree of the lower appellate Court.

3. So far as Second Appeal No: 1418 of 1999 filed by the tenant is concerned, the tenant made a proposal that the machineries of the tenant which were dismantled and handed over to the landlord at the time of eviction in execution proceedings can be adjusted towards arrears of rent and mesne profits as decreed by the Courts below, if the landlord agrees to be satisfied with the machineries of the tenant entrusted to him while evicting the tenant from the suit property in the execution proceedings. The tenant also undertakes not to make any claim in respect of the machineries which were removed and entrusted to the landlord in the execution proceedings.

4. In view of the same, both the landlord and the tenant have come forward to withdraw the second appeals respectively filed by them. A memo dated 07.10.2015 has been filed. The joint memo is taken on file and recorded. Second Appeal Nos: 1418 of 1999 and 1106 of 2001 are dismissed as withdrawn. The appellant in S.A. No: 1106 of 2001 shall submit a full satisfaction memo to the trial Court to be recorded in the suit.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gp
To

1. The II Additional District Judge, Coimbatore.
2. The Sub Judge, Udumalpet.
3. The Section Officer, VR Section, High Court, Chennai.

+ 1 cc to Mr.P. Srinivas, Advocate Sr.54876
+ 1 cc to Mr.R. Subramanian, Advocate Sr.54781

S.A. Nos: 1418 of 1999
and 1106 of 2001

CA(CO)
EU 30.10.15