

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.12.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1568 of 2008
and M.P.No.1 of 2008

S.Saleem

... Appellant/Plaintiff

-Vs-

1. Ismail

2. S.A.Mohamed Yasin

... Respondents/Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree of the learned IV Additional Judge, City Civil Court, Chennai made in A.S.No.442 of 2007 dated 24.01.2008 confirming the judgment and decree of the I Assistant Judge, City Civil Court, Chennai made in O.S.SR.No.24624 of 2007 dated 18.07.2007.

For Appellant : Mr.G.Saravanan

For Respondents : Mr.K.V.Sundararajan

J U D G M E N T

The appellant herein filed a suit before the learned I Assistant Judge, City Civil Court, Chennai for declaration that the decree of the XII Small Causes Court, Chennai passed in RCOP.No.693 of 1997 dated 11.04.2000 as confirmed by the Rent Control Appellate Authority (VII Small Causes Court, Chennai) passed in RCA.No.452 of 2000 dated 17.08.2006 is null and void and for a direction to the defendants to put the plaintiff in possession of the premises bearing No.4, Periar Street, Park Town, Chennai-3 and also for permanent injunction to restrain the defendants from letting out the premises to any third party. The learned I Assistant Judge, City Civil Court, Chennai rejected the plaint by an order dated 18.07.2007 on the ground that the same is not maintainable. As against the same, the

appellant filed an appeal in A.S.No.442 of 2007 before the learned IV Additional Judge, City Civil Court, Chennai. By decree and judgment dated 24.01.2008, the lower appellate court dismissed the appeal thereby confirming the order of rejection passed by the trial court. As against the same, the appellant is before this Court with this Second Appeal.

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

The plaintiff claims that he was the tenant of the suit premises and the landlord was one Mrs.M.E.Ummul Hussaina Beevi. Mrs.M.E.Ummul Hussaina Beevi, the landlord filed RCOP.No.693 of 1997 before the XII Small Causes Court, Chennai for eviction of the plaintiff herein. During the pendency of the same, the 2nd defendant entered appearance claiming himself to be the power agent of Mrs.M.E.Ummul Hussaina Beevi. The Rent Controller allowed the petition and ordered for eviction. As against the same, the plaintiff filed an appeal in RCA.No.452 of 2000 before the Rent Control Appellate Authority (VII Small Causes Court, Chennai). The Rent Control Appellate Authority/VII Small Causes Court, Chennai by order dated 17.08.2006 dismissed the appeal thereby confirming the order of eviction passed by the trial court. As against the same, in execution of the said order in RCOP.No.693 of 1997, possession was later on delivered through court to the 2nd defendant herein.

3. Thereafter, the plaintiff filed the present suit alleging that the 2nd defendant cannot be the power agent of Mrs.M.E.Ummul Hussaina Beevi as Mrs.M.E.Ummul Hussaina Beevi has not been seen alive from the year 1985 onwards. Further, according to the plaintiff, the 2nd defendant had conducted the cases in RCOP.No.693 of 1997 and RCA.No.452 of 2000 and also took delivery of the property as prayed for. Thus, according to the plaintiff, the suit is maintainable.

4. But the trial court took the view that the suit is not maintainable because the eviction order was passed in RCOP.No.693 of 1997 and the same was also confirmed by the Rent Control Appellate Authority. The trial court is of the view that the present suit is an attempt to thwart the eviction proceedings. As it is noticed, the actual foundation for the present suit is on the footing that Mrs.M.E.Ummul Hussaina Beevi is not seen alive, today, the learned Counsel for the respondents has filed an affidavit of the 2nd respondent, namely, Mr.S.A.H.Mohamed Yasin in which it is stated that his Principal Mrs.M.E.Ummul Hussaina Beevi is alive and she is presently

residing at Jalan Tandi Tikan-1, Block M-1-02-006, Taman University 81300-SKUDAI, Juhure Bahru, Malaysia. He has also produced a copy of the passport of Mrs.M.E.Ummul Hussaina Beevi which shows that she visited India frequently and lastly, she visited India during December, 2014.

5. In view of the said affidavit, in my considered view, nothing survives in the Second Appeal as the whole foundation for the suit itself collapses. Therefore, no purpose would be served in allowing the trial court to go ahead with the proceedings by setting aside the impugned decree and judgment. In such view of the matter, I find no merit in the Second Appeal.

6. In the result, the Second Appeal fails and the same is accordingly dismissed. The decree and judgment of the lower appellate court is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The I Assistant Judge,
City Civil Court,
Chennai.

2. The IV Additional Judge,
City Civil Court,
Chennai.

+1cc to Mr.K.V.Sundararajan, Advocate, S.R.No.68039

S.A.No.1568 of 2008

TEJ(CO)
CA(29/01/2016)