

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.465 of 2009

and

M.P.No.1 of 2009

Rajasekar ...Appellant/Plaintiff

Vs.

1. Natesan (Deceased)1st Respondent/Defendant

2. Muthulakshmi

3. Karthik

4. Ramesh ...Respondents 2 to 4/
LRs of Sole Respondent

(R2 to R4 brought on record as LR's of the deceased sole respondent vide order of this Court dated 08.09.2015 made in M.P.Nos.1 to 3 of 215 in S.A.465 of 2009)

Prayer:- This Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 20.11.2008 made in A.S.No.11 of 2008 on the file of the Sub Court, Hosur, confirming the judgment and decree dated 20.12.2007 made in O.S.No.22 of 2003 on the file of the District Munsif cum Judicial Magistrate, Denkanikottai.

For Appellant : Mr.P.Mani

For Respondents 2 to 4 : Mr.Mr.D.Nellaiappan
R1 Died

J U D G M E N T

Aggrieved by the unanimous decision of the Courts below in dismissing the suit, the Second Appeal is filed by the plaintiff.

2. The suit was filed by the plaintiff for relief of injunction not to evict him unless by due process of law. Admittedly, the deceased defendant was the owner of the suit schedule property and from April 2007, the plaintiff had been inducted as a tenant in the suit property for a monthly rent of Rs.500/-, which was revised as Rs.600/- The plaintiff wanted to start an additional business by getting STD booth connection for which, the defendant expressed "no objection" to give the suit premises on rent. The further case of the plaintiff is that he had given a sum of Rs.1,00,000/- as advance for taking the premises on rent. As the defendant demanded the plaintiff to vacate the premises, the suit has been filed.

3. The defendant assailed all the averments stated in the plaint, inter-alia contending that the plaintiff had paid only a sum of Rs.10,000/- as advance, whereas, the plaintiff stated that a sum of Rs.1,00,000/- was paid as advance. The "No Objection Certificate" filed by the plaintiff for permitting him to run the STD booth was filed as Ex.A.1, in which, there is material alteration of changing the advance amount from Rs.10,000/- to Rs.1,00,000/-. As there is material alteration in the change of advance amount, the said document was rightly rejected by the Courts below. As to the payment of only Rs.10,000/- as advance, the same was spoken to D.Ws.2 to 4. P.W.3 also had admitted that only Rs.10,000/- was paid as advance and the insertion of Rs.1,00,000/- was made by the plaintiff only with a fraudulent intention to deceive the deceased defendant.

4. It is stated that another suit in O.S.No.126 of 2004 was filed by the defendant against the plaintiff, seeking delivery of possession in respect of the same suit property. The fate of the said suit is not known as both the learned counsel are not able to give the relevant information. In view of the fact that Ex.A.1 was a forged document, which is supported by the evidence of D.Ws.2 to 4, the Courts below have held that the plaintiff had approached the Court with unclean hands, only with an intention to commit fraud not only on the defendant, but also on the Court.

5. The fraud committed on anybody is described as an act of deliberate deception on another with an intention to secure something by taking unfair advantage. When admittedly, the defendant is the owner of the suit premises and when he required his premises, it was the duty of the tenant (plaintiff) to handover the same. Instead the appellant /

plaintiff had been indulging in illegal methods by forging the document (Ex.A1) with an intention to commit fraud on the Court. Hence, the plaintiff cannot have any indulgence from the Court and the Courts below have rightly dismissed the suit. As there is no merits in the case and also no substantial question of law arises for consideration in the Second Appeal, the Second Appeal has to be dismissed.

6. In the result, the Second Appeal is dismissed, thereby confirming the concurrent judgments and decrees of the Courts below. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

srn

To

1.The Sub Judge,
Hosur.

2.The District Munsif cum Judicial Magistrate,
Denkanikottai.

3. The Record Keeper,
V.R.Section,
High Court, Madras.

1 CC to Mr.P.Mani, Advocate SR.No.51754

1 CC to Mr.Mr.D.Nellaiappan, Advocate SR.No. 51585

S.A.No.465 of 2009
and
M.P.No.1 of 2009

KJI (CO)
PSI (15.10.2015)