

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.136 of 2015 and
M.P.No.1 of 2015

Roji ... Appellant/Plaintiff

Vs.

The Executive Officer,
Kabaleeswarar Temple,
Mylapore, Chennai - 4 ... Respondent/defendant

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree of the learned Judge of XVIII Additional City Civil Court, Chennai dated 26.03.2014 passed in A.S.No.338 of 2013 confirming the decree and judgement of learned III Assistant Judge, City Civil Court, Chennai, in O.S.No.3886 of 2011 dated 25.07.2013.

For Appellants : Mr. G.Appavu

JUDGEMENT

The plaintiff in O.S.No.3886 of 2011 on the file of the learned III Assistant Judge, City Civil Court, Chennai, is the appellant herein. The respondent herein is the defendant in the suit. The said suit was filed for permanent injunction to restrain the defendant from in any manner interfering with the peaceful possession and enjoyment of the suit property. The trial Court by decree and judgement dated 25.07.2013, dismissed the suit. As against the same, the appellant filed an appeal in A.S.No.338 of 2013, on the file of the learned XVIII Additional Judge, City Civil Court, Chennai. By decree and judgement dated 26.03.2014, the First Appellate Court dismissed the appeal, thereby confirming the decree and judgement of the trial Court. As against the same, the plaintiff/appellant is before this Court with this second appeal.

2.This second appeal has come up today for admission. I have heard the learned counsel for the appellant and I have also perused the records carefully.

3.The case of the plaintiff is that he was inducted into possession by one Mr.Udhayakumar in the month of June 2009. But, admittedly, the respondent/defendant is the owner of the suit property. The appellant has given an application to the Joint Commissioner, Hindu Religious & Charitable Endowment agreeing to pay rent for his occupation over the suit property. But, so far, no such order has been passed. In those circumstances, the respondent herein is trying to disturb her possession. With these allegations, the appellant filed the suit.

4. In the written statement, the respondent/defendant contended that the suit property absolutely, belongs to the defendant temple. One Mr. P.Govindasamy was the employee of the temple and he was therefore, permitted to occupy the suit house. During the year 2006, at his request, he was allotted yet another property and therefore, this suit house was vacated by him and it was kept under lock and key from 01.12.2006 onwards, by the defendant. During the month of November 2010, without the knowledge of the defendant, the plaintiff had broke open the lock and trespassed into the suit house. Thus, according to the defendant, the plaintiff is only a trespasser.

5. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, two witnesses were examined including the plaintiff and on the side of the defendant, one Mr.S.V.Palani was examined as D.W.1. As many as 3 documents were exhibited on the side of the plaintiff. No document was exhibited on the side of the defendant.

6. Having considered all the above evidences, the trial Court dismissed the suit, which was confirmed by the First Appellate Court. That is how the appellant/plaintiff is before this Court with this second appeal.

7. In this Second Appeal, the learned counsel for the Appellant would submit that the appellant is in settled possession of the property and therefore, the respondent/defendant has got no right to disturb his peaceful possession and enjoyment of the suit property except without following the due process of law.

8. This argument, in my considered opinion does not hold good for the simple reason that even according to the plaintiff, she is not the true owner of the suit property and she is only a trespasser. A trespasser cannot have an order of injunction or decree for injunction against the true owner. A reading of the plaint would go to show that, it is not at all the case of the plaintiff that the defendant ever inducted her in to a lawful possession of the suit property. It is on this ground, the First Appellate Court has dismissed the suit. In the said conclusion arrived at by the First Appellate Court, I do not find any infirmity at all.

9. Above all, there is no question of law much less a substantial question of law involved in this second appeal so as to admit this second appeal. Thus, I hold that there is no merit in this second appeal and the same is liable to be dismissed.

10. In the result, the second appeal fails and accordingly, the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

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Sub Assistant Registrar

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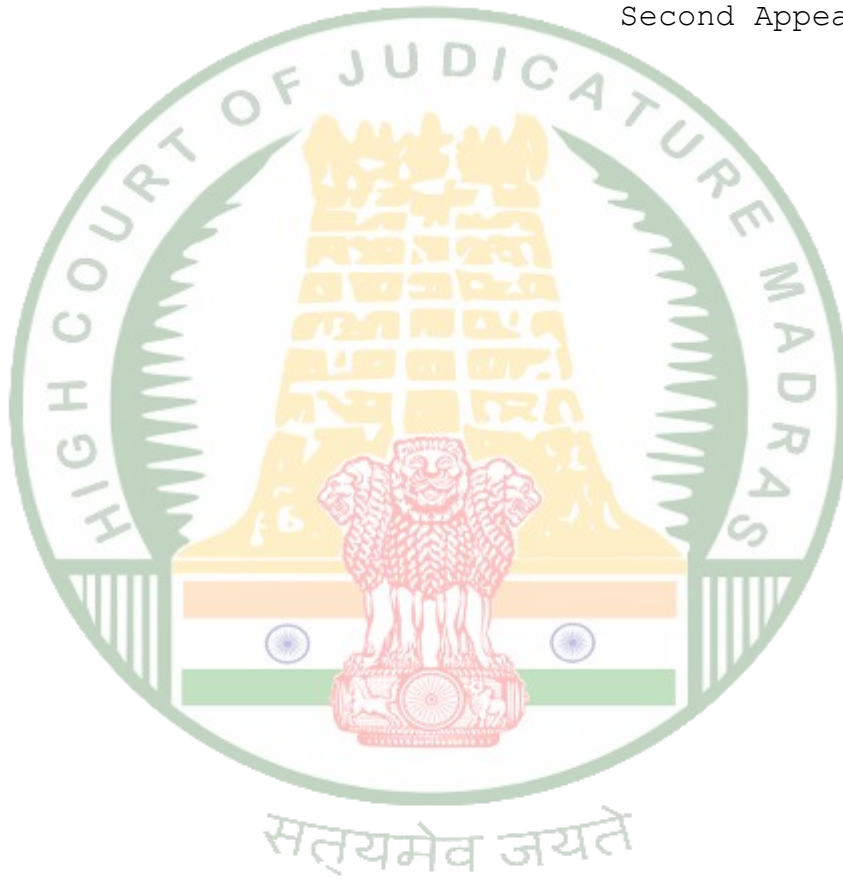
To

1.The XVIII Additional City Civil Court,
Chennai.

2.The III Assistant Judge,
City Civil Court, Chennai.

TEJ(CO)
EU 16.04.2015

Second Appeal No.136 of 2015



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