

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20 - 07 - 2015

CORAM:

THE HON'BLE TMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. No. 446 of 2015

and

M.P. No.1 of 2015

B. Sundaram ... Appellant/Plaintiff

Vs.

1. M.G. Subramaniam
2. S. Dhamodhara Mudhaliyar
3. D. Mohan
4. Sandrakulam Sakthi Vinayagar Koil
Managing Director
HRNC Office, Arni

... Respondents/Defendants

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 19.09.2014 passed by the Subordinate Judge, Arni, in A.S. No. 10 of 2014 confirming the judgment and decree passed by the District Munsif, Arni, in O.S. No. 69 of 2008 on 23.08.2013.

For Appellant : Mr. A. Panneerchelvam

JUDGMENT

The plaintiff, who had lost before the Courts below in a suit for recovery of money and permanent injunction, challenges the same by way of the present Second Appeal.

2. The trial Court, on consideration of the evidence adduced by the parties and the submissions made by the learned counsels, by judgment and decree dated 23.08.2013, dismissed the suit for permanent injunction. The appeal filed by them in A.S. No. 10 of 2014 before the Lower Appellate Court / Subordinate Judge, Arni, also met the same fate by judgment and decree dated 19.09.2014. Aggrieved by the same, the plaintiff has filed the instant Second Appeal before this Court.

3. Heard the learned counsel appearing for the appellant / plaintiff and perused the records.

4. It is the case of the plaintiff that the third defendant borrowed a sum of Rs.60,000/- from him and gave possession of the suit property as security stating that the property belonged to the second defendant. The third defendant is the son of the second defendant. Hence, the plaintiff agreed for the same and executed a consent deed on 11.4.2002 for adjustment of interest on rent. The second defendant also had executed a sale deed in favour of the first defendant and attorned the tenancy of the plaintiff. Admittedly, the suit property belonged to the fourth defendant temple over which none of the defendants / respondents have right, title or interest. The defendants 2 and 3 contended that the plaintiff was not a tenant but only a licensee.

5. The fourth defendant, who is the actual owner of the property, contended that the plaintiff is only a trespasser as there is no privity of contract between the fourth defendant and the plaintiff. The plaintiff is liable to be evicted after the payment of Rs. 60,000/-. However, admittedly, the plaintiff claims to have received Rs. 30,000/- from the first defendant, who is the brother-in-law of second defendant. Exs. A.1 and A.2 are the licence deed and consent deed respectively. Admittedly, the appellant / plaintiff is in possession of the suit property and his possession is that of a licensee. As per Ex. A.1, the permission is given to use the premises for manufacturing of eatables only for a period of three years, which expired long prior to the suit.

6. First of all, the plaintiff / appellant has to prove the payment of Rs. 60,000/- to the third defendant. Admittedly, there is no evidence for the same. If the fourth defendant is the owner of the property, the plaintiff, who is only a licensee, cannot continue to be in possession after the expiry of the period.

7. In the absence of any evidence for payment of Rs.60,000/- and when the possession of the plaintiff is held to be that of a trespasser, the Courts below have rightly dismissed the suit. As such, I do not find any reason to differ from the concurrent finding warranting interference of this Court as no question of law arises for consideration.

In the result, the judgments and decrees of the Courts below are confirmed and the Second Appeal is dismissed. However, there will be

no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CS II)

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Sub Asst. Registrar

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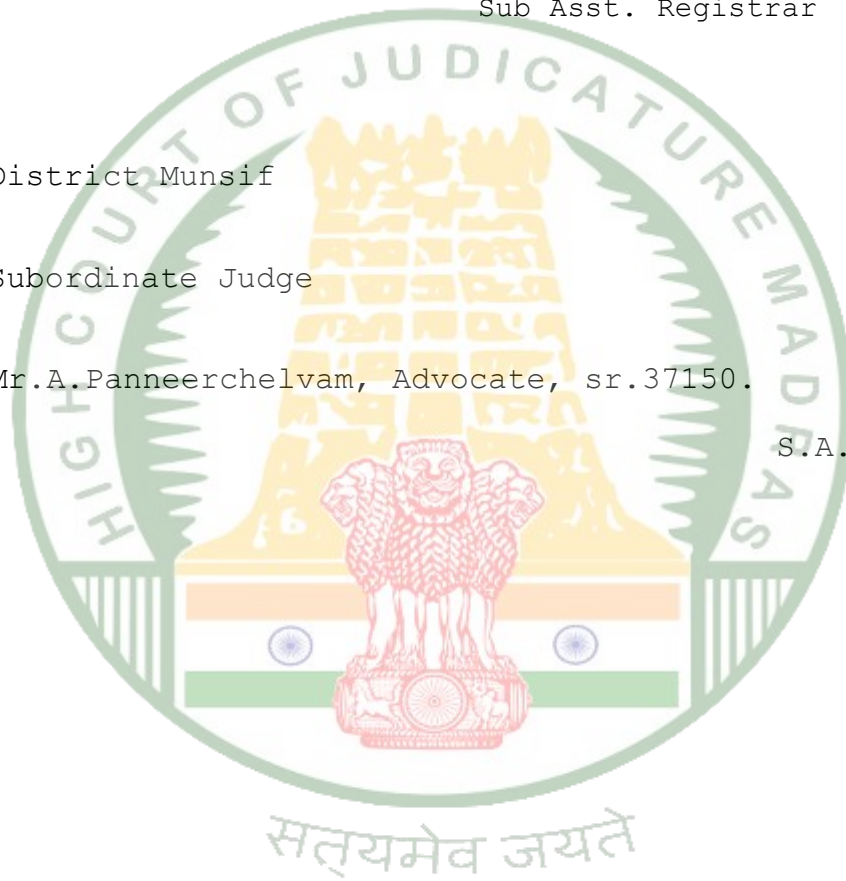
To

1. The District Munsif
Arni
2. The Subordinate Judge
Arni

+1 cc to Mr.A.Panneerchelvam, Advocate, sr.37150.

msm(co),
kra,13/08

S.A. No. 446 of 2015



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