

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.816 of 2015

and

M.P.No.1 of 2015

M.Ashok Kumar

...Appellant/Plaintiff

Vs.

K.Kokila

...Respondent/Defendant

Prayer:- This Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 18.09.2014 made in A.S.No.16 of 2014 on the file of the Subordinate Judge, Tiruttani confirming the judgment and decree dated 30.01.2014 made in O.S.No.125 of 2010 on the file of the District Munsif, Tiruttani.

For Appellant : P.B.Balaji

J U D G M E N T

The plaintiff who had filed the suit against the defendant, seeking the relief not to evict him unless by due process of law. Being aggrieved by the unanimous decisions of the Courts below, the plaintiff has filed the above Second Appeal.

3. The relationship between the landlady and tenant is admitted by both the parties. The landlady also has initiated proceedings as per law by filing RCOP.No.2 of 2009 against the plaintiff/tenant for eviction on the ground of her own use and occupation.

4. Now, the dispute is with respect to the terrace of the suit property to be used by the plaintiff or not.

5. The contention of the respondent / landlady is that the plaintiff was making nuisance, which resulted in locking of the terrace portion. This was the cause of action for filing the suit. Even without the right to use the terrace, the plaintiff can continue to enjoy the suit property as he has got separate balcony for drying clothes. Hence, the Courts below had held that even though the tenant may be entitled to use the terrace, he cannot claim it as a matter of right. However, it is seen from the evidence that initially, the plaintiff was allowed to use the terrace. Subsequently, it was locked by the defendant /landlady, because, the plaintiff had created some nuisance. Admittedly, eviction proceedings initiated by the landlord is still pending. If the plaintiff is aggrieved by the withdrawal of any amenity by the landlord, appropriate proceedings may be initiated. Such relief cannot be given in the present suit. Hence, there is no question of law arises for consideration in this Second Appeal so as to warrant interference in the judgments of the Courts below. Hence, the same is liable to be dismissed.

6. Accordingly, the Second Appeal is dismissed, confirming the judgments and decrees of the Courts below, thereby the suit is dismissed. 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-II)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

srn

To

1.The Subordinate Judge,
Tiruttani.

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2.The District Munsif,
Tiruttani.

1 CC to Mr.P.B. Ramanujam, Advocate SR.No. 53217

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SV (CO)
PSI (27.10.2015)



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