

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2015

C O R A M

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

S.A.No.978 of 2015

and

M.P.No.1 of 2015

K.Godavari

... Appellant/Plaintiff

vs.

V.Radhakrishnan

.. Respondent/Defendant

This second appeal has been filed as against the judgment and decree dated 19.01.2015 passed by the learned XV Additional Judge, City Civil Court in A.S.No.347 of 2013 in confirming the judgment and decree dated 06.01.2012 passed by the learned XV Assistant Judge, City Civil Court, Chennai in O.S.No.7699 of 2010.

For Appellant

:: Mr.B.Harikrishnan

JUDGMENT

The plaintiff is the appellant in this second appeal. This second appeal has been filed as against the judgment and decree dated 19.01.2015 passed by the learned XV Additional Judge, City Civil Court in A.S.No.347 of 2013 in confirming the judgment and decree dated 06.01.2012 passed by the learned XV Assistant Judge, City Civil Court, Chennai in O.S.No.7699 of 2010.

2. The parties are referred to here under according to their litigative status and ranking before the trial Court in O.S.No.7699 of 2010.

3. The short facts that are necessary for the disposal of this second appeal is as follows:

(a) The plaintiff is a tenant under the defendant in respect of a portion of the suit scheduled property and is running a fast food business. She has been paying the rent and other charges promptly. However to her shock and surprise, the defendant/landlord has enhanced the rent amount. Hence, she expressed her difficulty to the defendant in paying the enhanced rent. Being aggrieved by that, the defendant/landlord threatened the plaintiff that he will evict her from the

premises. Hence the suit seeking permanent injunction.

(b) The defendant filed the written statement denying the averments made in the plaint and resisted the suit.

(c) The trial court framed the relevant issues.

(d) During trial, on the plaintiffs' side P.Ws.1 and 2 were examined and Exs.A1 to A27 were marked and on the defendants' side D.W.1 was examined and Exs.B1 to B9 were marked.

(f) Ultimately, the trial court dismissed the suit filed by the plaintiff.

(g) As against the same, the plaintiff filed the appeal and the first appellate court confirmed the judgment and decree passed by the trial court.

(h) Aggrieved against the same, the plaintiff has filed the present second appeal.

4. When the matter is taken up for hearing at the time of admission, the learned counsel for the appellant would fairly submit that subsequent to the filing of the suit by the plaintiff/tenant, the defendant/landlord has filed two RCOPs in RCOP Nos.1657 and 1658 of 2010. Out of the same, one RCOP was dismissed by the Rent Control Authority and the other RCOP was allowed on the ground that the tenant is found to have sub-let the property. He would further submit that as against the allowing of the said RCOP, he has preferred an appeal before the Rent Control Appellate Authority and the same is pending. Therefore, he would submit that since the proper course of action is only to approach the Rent Control Authority as the matter pertains to the dispute between the tenant and landlord, the injunction suit filed by the plaintiff/appellant at this stage is not necessary.

5. Heard the learned counsel for the appellant and perused the records.

6. On a perusal of the judgment passed by the trial Court, it is seen that it has dismissed the suit on the ground that the respondent/defendant had initiated lawful steps to evict the appellant/plaintiff from the suit scheduled property by approaching the Rent Control Authority and hence the suit has become infructuous. However, the appellate Court, though confirmed the said judgment and decree has held that the conclusion arrived at by the trial court is not correct. However, it has stated that the appellant/plaintiff has not proved the cause of action to prefer the suit seeking permanent injunction when she has not been evicted by the respondent/defendant, as mere initiation of RCOP does not mean

the due execution of process of law.

7. In view of the above factual finding given by the first appellate Court and also considering the fact that already the matter is pending before the Rent Control Appellate Authority, I do not find any reason to interfere with the reasoned order passed by both the Courts below.

8. In the result, no question of law much less substantial question of law arise for consideration in this second appeal. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Asst.Registrar (CO)

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Sub Asst. Registrar

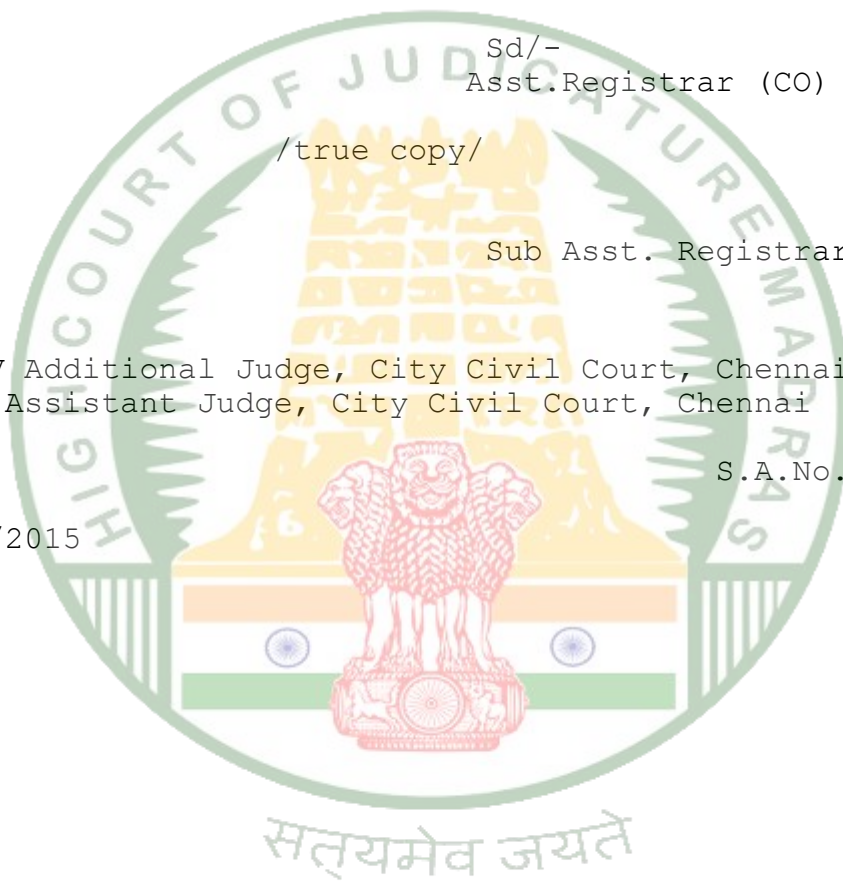
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To

1. The XV Additional Judge, City Civil Court, Chennai.
2. The XV Assistant Judge, City Civil Court, Chennai

S.A.No.978 of 2015

msm co  
kra 25/11/2015



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