

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

S.A.No.425 of 2008

and

M.P.No.1 of 2008

K.Veluswamy

... Appellant/Plaintiff

Vs.

1. The Commissioner
Ootacomund Municipality
Ootacomund.

2. Ramkumar,
The Superintendent
Market in Charge,
Ootacomund Municipality
Ootacomund.

3. Sasidharan,
The Bill Collector,
Ootacomund Municipality
Ootacomund

... Respondents/Defendants

Second Appeal has been filed against the Judgment and Decree dated 12.12.2007 made in A.S.No.35 of 2007 on the file of Sub Court, Udagamandalam, confirming the Judgment and decree dated 31.01.2007 made in O.S.No.394 of 2004 on the file of the District Munsif, Udhagamandalam .

For Appellant : Dr.R.Gowri

For Respondents : Mrs.V.Bhavani Subburayan

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J U D G M E N T

The appellant is the plaintiff. He filed the suit for permanent injunction restraining the defendants from auctioning the premises without evicting the plaintiff and also for restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property except by due process of law.

2. Both the Courts below concurrently found against the plaintiff and dismissed the suit. Challenging such concurrent finding, this present Second Appeal is filed before this Court.

3. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials placed before this Court.

4. This matter is listed before this Court at the notice of motion stage. Therefore, this Court has to see as to whether any substantial question of law arises for consideration in this appeal for hearing the same on such question of law further.

5. Admittedly, the plaintiff is the tenant under the defendant-Municipality and there was a default in making the periodical rent to the Municipality. Such arrears of rent payable by the plaintiff accrued to the tune of Rs.2,99,393/-. The said suit filed by the plaintiff was contested by the defendants vehemently on the reason that the plaintiff, being the defaulter in making the payment of rent, is not entitled to the relief of the injunction. Both the Courts below have gone into the respective pleadings of the parties as well as the evidence let in by them and came to the conclusion that the plaintiff, being the defaulter is not entitled to the relief.

6. When the matter was listed before this Court on the last occasion, the learned counsel for the appellant submitted that there is a dispute with regard to quantum of arrears and however, sought time to pay the admitted arrears of rent. Accordingly, the matter was adjourned on several occasions. Thereafter, when it was taken up on 15.09.2016, it was informed by the learned counsel for the Municipality that a sum of Rs.2,10,000/- was paid by the plaintiff as against the claim of Rs.2,99,393/-. Therefore, with regard to the quantum of arrears is concerned, it appears that there is a dispute between the parties. Whatever, the case may be, the plaintiff who was in arrears of rent payable to the Municipality, that too, for a long time, is not entitled to the relief of injunction, which the Courts below have rightly rejected. Therefore, I do not find any ground to interfere with such concurrent findings as I also do not see any substantial questions of law arises for consideration in this Second Appeal.

7. The learned counsel for the appellant submitted that since the appellant has paid the admitted arrears, he is entitled to continue in the property by paying the enhanced rent periodically. Such contention cannot be accepted as it is for the Municipality to decide as per the prevailing G.Os., as to how the property has to be let out for the purpose of augmenting more revenue out of such lease. But, at the same time, considering the fact that the appellant has paid Rs.2,10,000/- as against the arrears of Rs.2,99,393/- as claimed by the Municipality, and also considering the fact that the appellant is in possession and enjoyment of the

property for a long time, it is open to the appellant to take part in the public auction to be conducted by the Municipality in respect of the present shop and such participation cannot be prevented by the Municipality. Needless to say that, if the appellant becomes the successful bidder, it is for the Municipality to consider the bid and let out the same to the appellant based on the auction amount found to be the highest. In any event, with regard to the balance amount of Rs.89,393/-, it is open to the Municipality to take appropriate proceeding against the appellant in accordance with law to recover such amount. If any such proceeding is initiated, it is open to the appellant to contest the same on merits and in accordance with law.

8. With the above observations, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi/rm

To

1. The Subordinate Judge,
Udagamandalam.
2. The District Munsif,
Udhagamandalam.

+1cc to M/s.R.Gouri, Advocate, S.R.No.55382

+1cc to Mrs.V.Bhavani Subburayan, Advocate, S.R.No.54944

Second Appeal No.425 of 2008

RSI(CO)
CA(21/12/2016)

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