

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.339 of 2015

Samurai Electronics,
Proprietary Concern,
Rep. By its Proprietor,
Mr.S.K.A.Syed Ibrahim,
Carrying on business at
26, Narasingapuram Street,
Chennai 600 002.

... Appellant/Appellant/Plaintiff

vs.

Sudhir Batra,
son of Harbanslal Batra,
Carrying on Business
as Managing Director,
Appollo Surgical Instruments Company,
851, Anna Salai,
Chennai 600 002.

...Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed by the learned VII Additional Judge, City Civil Court, Chennai dated 03.04.2014 in A.S.No.127 of 2013 confirming the judgment and decree passed by the learned XIV Assistant Judge, City Civil Court, Chennai, in O.S.No.11538 of 2009 dated 17.12.2012.

For Appellant : Mr.P.K.Sivasubramaniam
For Respondent : Mr.G.Rajkumar

J U D G M E N T

The appellant is the plaintiff who lost before both the courts below in a suit for bare injunction.

2.The case of the plaintiff is that he is the tenant under the defendant in respect of ground floor of the premises at Door No.26, Narasingapuram Street, Chennai-2 on a monthly rent and such ground floor portion consists of an electronic shop and a briyani shop. In other words, the case of the plaintiff is that the ground floor consisting of two portions are let out to him by the defendant wherein the plaintiff is running the electronic

shop in one portion and briyani shop in another portion. Admittedly, the portion in which the briyani shop is claimed to be run by the plaintiff is situated under the stair case leading to the first floor and lying adjacent to the ground floor portion. The plaintiff filed the present suit for injunction by contending that the defendant is trying to disturb his possession and enjoyment of those two shops without following due process of law.

3.The defendant contested the suit by specifically contending that only one portion which is in the ground floor was let out to the plaintiff wherein he is running the electronic shop and that they have not let out any portion lying adjacent to the ground floor portion and situated below the stair case leading to the first floor to the plaintiff. In other words, it is the specific case of the defendant that the portion in which the plaintiff is claiming to run a briyani shop, has not been let out to him.

4.The trial court on appreciation of the respective pleadings of the parties and the evidence let in by them dismissed the suit. On appeal, the First Appellate Court concurring with the findings rendered by the trial court dismissed the appeal. Hence, the present second appeal is filed challenging the concurrent findings rendered by the courts below.

5.This Court while admitting the second appeal, framed the following substantial questions of law:

"a) Whether the settled possession of a shop let out to the appellant as a statutory tenant can be disturbed or dispossessed by a true owner without due process of law, without considering possession before suit for a period of 12 years?

b) Whether the appellant is entitled to a decree for permanent injunction when attempt is made to dispossess the tenant or a trespasser and interfere with his possession under Sec.9 of Specific Relief Act in view of the decision of Supreme Court reported in AIR 1968 Supreme Court Page 702?

c) Whether the lower Court ignored the admission of DW1 with regard to the occupation of suit property even before the filing of the suit which requires to be protected by permanent injunction?"

6.Today, the matter is taken up for final disposal. I heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

7.It is the contention of the learned counsel for the appellant that when the plaintiff is in occupation of the portion below the stair case as well, he cannot be evicted by the defendant except by following due process of law. On the other hand, the learned counsel for the respondent contended

that when the plaintiff has not been let out the disputed portion viz., the portion lying adjacent to the ground floor and situated below the stair case, the plaintiff cannot seek the discretionary relief of injunction without establishing his tenancy in respect of the said portion. Learned counsel for the respondent also submitted that in so far as the portion let out to the plaintiff wherein the electronic shop is being run, already the defendant has taken steps to evict the plaintiff by filing appropriate eviction petition before the competent Rent Controller and the same is still pending.

8. It is seen that now the dispute is only with regard to the portion lying adjacent to the ground floor portion and situated below the stair case. Though it is claimed by the plaintiff as though the said portion was let out to him by describing the schedule of the suit property as though two shops viz., electronic and briyani shops were let out to the plaintiff by the defendant, the fact remains as found by both the courts that the ground floor consisting of only one portion alone has been let out to the plaintiff and not the other one. In so far as the other portion viz., the portion in which briyani shop is said to be run is concerned, there is absolute no evidence let in by the plaintiff to show that the same was let out to him by the defendant. Therefore, the plaintiff has not proved the tenancy in respect of the said portion. Needless to say that the relief of injunction, cannot be granted as a matter of course or as a matter of right, unless the person who seeks such relief establishes his case with concrete and material evidence showing that he has some semblance of right to retain such possession. Court is not there to protect such an illegal possession or give its seal of approval of a trespass, by way of grant of injunction merely because such possession is pleaded. If such kind of relief is granted to persons holding such illegal possession, it would rather encourage unlawful attempts in respect of immovable properties, which in my considered view has to be nipped at the bud. It is well settled that the relief of injunction being an equitable one as well as discretionary, cannot be granted at the instance of a person who himself is guilty of inequitable conduct, as held by the Apex Court in a decision reported in AIR 2005 Supreme Court 2010, Kanchusthabam Satyanarayana vs. Namuduri Atchutaramayya, as follows:

"The grant of discretionary relief such as injunction being in the nature of equitable relief must be granted inter alia on considerations of equity and justice and the appellant who is himself guilty of inequitable conduct cannot claim such relief."

Therefore, I find that the concurrent finding rendered by both courts below on appreciation of facts and circumstances and respective pleadings need not be interfered with. Thus, the substantial questions of law are answered against the plaintiff/appellant. Accordingly, the second appeal is dismissed. No costs. The connected miscellaneous petition is also dismissed.

Sd/-
Asst.Registrar (J)

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Sub Asst. Registrar

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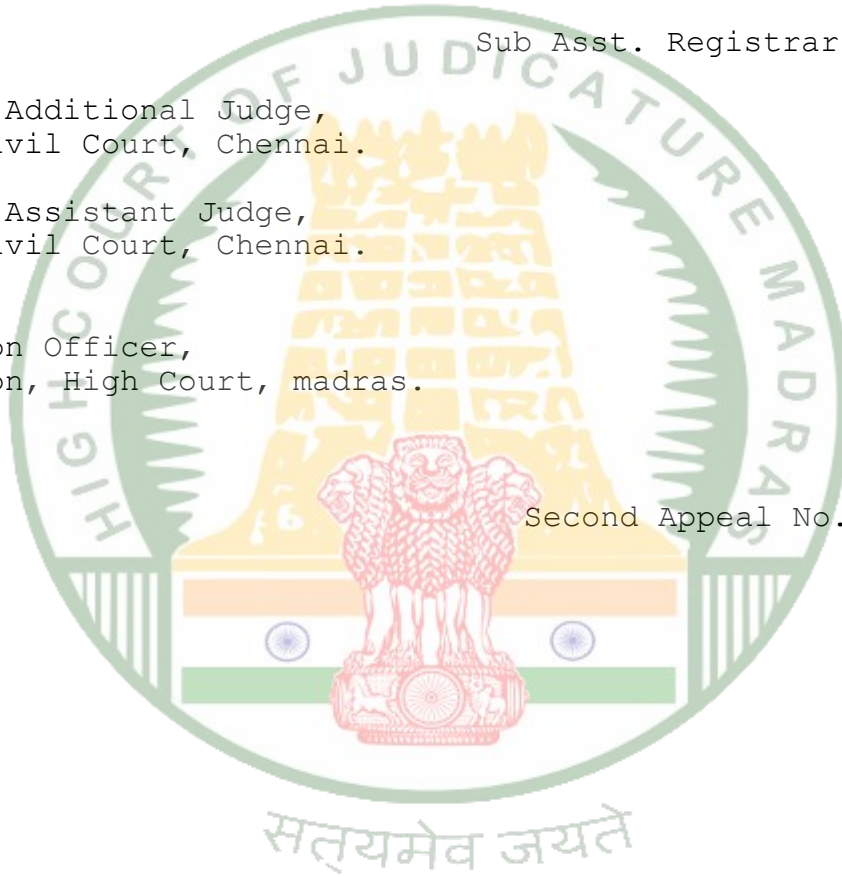
1.The VII Additional Judge,
City Civil Court, Chennai.

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

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