

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.186 of 2016
and
C.M.P.No.3724 of 2016

1.Amirthammal
Kamala(died)
2.Sarala Bharathi
3.Minor Thusaliraman
4.Minor Durgadevi
(Minors 3 & 4 are rep by
their Mother & Natural
Guardian 2nd Respondent) ... Appellants/Defendants

Vs.

P.Subramani ... Respondent/Plaintiff

(cause title accepted vide order of Court dated 20.03.2015 made
in M.P.No.1 of 2015 in S.A.S.R.No.105777 of 2014)..

Prayer:- This Memorandum of Second Appeal is filed under Section
100 of Civil Procedure Code against the Judgment and decree
dated 29.10.2013 and made in the appeal in A.S.No.241 of 2012 on
the file of the XV Additional City Civil Court, Chennai,
confirming the judgment and decree dated 20.10.2009 and made in
the suit in O.S.No.7445 of 2007 on the file of the XIII
Assistant City Civil Court, Chennai.

For Appellants : Mr.S.Sarath Chandran for
M/s.K.M.Vijayan Associates.

For Respondent : Mr.M.Balasubramanian

J U D G M E N T

This Memorandum of Second Appeal has been directed against
the Judgment and decree dated 29.10.2013 and made in the appeal
in A.S.No.241 of 2012 on the file of the XV Additional City
Civil Court, Chennai, confirming the judgment and decree dated
20.10.2009 and made in the suit in O.S.No.7445 of 2007 on the
file of the XIII Assistant City Civil Court, Chennai.

2. The defendants in the suit in O.S.No.7445 of 2007 are the appellants herein and the respondent is the plaintiff.

3. The respondent has filed the above suit as against the appellants/defendants, seeking the relief of recovery of vacant possession of the suit property. This suit was resisted by the appellants by filing their written statement. However, the Trial Court on evaluating evidences both oral and documentary had proceeded to decree the suit on 20.10.2009.

4. Having been aggrieved by the judgment and decree dated 20.10.2009, the appellants have preferred the appeal in A.S.No.241 of 2012 on the file of the XV Additional City Civil Court, Chennai. After hearing both sides, the first Appellate Judge had endorsed the view taken by the Trial Court and in consequence thereof, the appeal was dismissed, confirming the judgment and decree of the Trial Court, against which, the present second appeal is filed.

5. Heard Mr.S.Sarath Chandran, learned counsel appearing for the appellants and Mr.M.Balasubramanian, learned counsel, who takes notice on behalf of the respondent.

6. The respondent/plaintiff has filed a caveat petition, which is still in force.

7. When the matter came up for admission today, Mr.M.Balasubramanian, learned counsel appearing for the respondent has brought to the notice of this Court that pursuant to the judgment and decree passed in the appeal, confirming the judgment and decree of the Trial Court, the respondent/plaintiff had taken out the execution proceedings in E.P.No.2061 of 2010. The appellants have also participated in the execution proceedings. Ultimately delivery was ordered and in fact physical possession of the suit property was delivered to the respondent/deedee holder and hence, nothing survives to prosecute the second appeal. This fact has not been specifically denied by the learned counsel appearing for the appellants.

8. In view of the above fact, this Court finds that the appeal has become infructuous and therefore, appeal is liable to be dismissed. Accordingly, the second appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

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

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

+1cc to M/s.K.M.Vijayan Association, Advocate sr.15520
+1cc to Mr.M.Balasubramanian, Advocate sr.15443

S.A.No.186 of 2016
and

C.M.P.No.3724 of 2016

ksj (CO)
srg (23/03/2016)

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