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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.06.2016

Coram:

THE HONOURABLE MS.JUSTICE R.MALA

S.A(MD)No.775 of 2015

and

M.P(MD)No.1 of 2015

Nagarajan

.. Appellant/Appellant/Defendant

vs.

L.Sundarraaj, S/o.Lakshmanan,
No.C-5A, Durgai Amman Kovil Street,
Kamarajar Salai, Mylapore, Chennai - 600 004,
Rep. By his power agent,
Premela Regin

.. Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgement and Decree made in A.S.No.202 of 2011, dated 15.06.2015 on the file of the I Additional Sub Court, Madurai, upholding the Judgment and Decree made in O.S.No.13 of 2008 dated 29.06.2011 on the file of the District Munsif Court, Madurai Taluk, Madurai.

For Appellant

: Mr.S.Manoharan

For Respondent

: Mr.J.Barathan

JUDGMENT

The defendant, who lost his legal battle in both the Courts as a tenant, has come forward with the Second Appeal challenging the Decree and Judgment passed in A.S.No.202 of 2011, dated 15.06.2015 by the I Additional Sub Court, Madurai, by upholding the Decree and Judgment made in O.S.No.13 of 2008, dated 29.06.2011 by the District Munsif Court, Madurai Taluk, Madurai.

2. Heard the learned counsel for the appellant and the learned counsel for the respondent.

3. The respondent/plaintiff has filed the suit stating that through his power agent, he filed a suit for recovery of possession, after terminating tenancy notice, dated 09.08.2007 and also sought for rental arrears. The trial Court had dismissed the claim of rental arrears, but granted decree for recovery of possession and permitted to work out for future damages for use and occupation under Order 20 Rule 12 of the Code of Civil Procedure Code. Against which, the defendant has preferred an appeal in A.S.No.202 of 2011 on the file of the first Appellate Court.

<https://hcservices.courts.gov.in/hcservices> The first Appellate Court has confirmed the Decree and Judgment passed by the trial Court and dismissed the appeal suit. Against which, the present Second Appeal has been preferred.



5. The learned counsel appearing for the appellant/defendant would submit the first point is that Ex.A.2 is not a valid notice of termination, as per Section 106 of the Transfer of Property Act. The second point is that power deed is not a registered one.

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6. The suit has been filed only through the power of attorney. Admittedly, the appellant is a tenant. Notice of termination under Section 106 of the Transfer of Property Act has been issued on 09.08.2007, in which, it was specifically mentioned to vacate the premises at the end of August, 2007. 15 days clear notice has been issued. Hence, I am of the view that Ex.A.2 is a valid notice under Section 106 of the Transfer of Property Act. It is also pertinent to note that in the written statement, he has not challenged the validity of the notice. Furthermore, he has not challenged the status of power of attorney. Without raising the plea during the trial Court and the first Appellate Court, now at the time of filing the appeal, he has come forward with such a new plea.

7. Hence, I am of the view that instead of handing over the possession, with a view to drag on the proceedings, the defendant has come forward with the appeal.

8. The learned counsel appearing for the appellant/defendant relied on the decision of the Apex Court in *Janki Vashdeo Bhojwani and another Vs. Indusind Bank Limited and others* reported in AIR 2005 SCC 430, wherein it was held that the power of attorney has no right to depose evidence in the place of principal, which he was not personally aware of the facts. This citation was not given a helping hand to the appellant. Hence, the Second Appeal is dismissed, as there is no substantial questions of law have arisen for consideration, at the stage of admission itself. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub-Assistant Registrar

To

1. The I Additional Subordinate Judge, Madurai District.

2. The District Munsif Court, Madurai Taluk, Madurai.

Copy to:-

The Section Officer, V.R. Section,

Madurai Bench of Madras High Court, Madurai

+Ono cc to Mr. T.R. Jeyapalam, Advocate, SR.No.29322

ps

RL/5C/2P/NGM/MP/30/6/2016

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