

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

SA.No.289 of 2015 and
MP.No.1 of 2015

M.Vilvanathan

..Appellant

Vs.

Anusuya Ammal

..Respondent

PRAYER:

The Second Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 27.02.2015 made in Civil A.S.No.6 of 2014 on the file of the learned Subordinate Judge, Vellore, Vellore District reversing the Judgment and Decree dated 20.12.2013 made in O.S.No.528 of 2003 on the file of the learned Additional District Munsif Court, Vellore, Vellore District.

For petitioner : Mr.T.Dhanyakumar
For respondent : Mr.S.William

ORDER:

The respondent / plaintiff filed a suit for permanent injunction against the appellant / defendant in O.S.No.528 of 2003 before the learned Additional District Munsif, Vellore. The suit property is the vacant site being the part of S.No.182/8-F and other properties in the year 1970. Subsequently, she had executed a settlement in favour of the plaintiff on 03.11.1988. From the date of settlement in favour of the plaintiff, the plaintiff is in possession and enjoying of the suit property. Patta also stands in the name of the plaintiff. Plaintiff constructed a RCC roofed building in 6 cents of the schedule property. Since plaintiff required money, she approached the defendant for loan of Rs.1,00,000/- The defendant asked plaintiff to execute conditional sale deed. The respondent / plaintiff claimed that she executed a conditional sale deed in favour of the appellant / defendant with a right of re-conveyance in her favour within a period of three years from the date of the sale deed dated 10.09.2001. The defendant sent

lawyer's notice dated 23.08.2003 stating that the plaintiff took the plaint schedule property for monthly rent of Rs.100/- under a registered deed dated 10.09.2001 and demanded the respondent / plaintiff has to vacate the suit schedule mentioned property and deliver the same to the respondent on 10.09.2003. Hence, the respondent / plaintiff filed the above suit for permanent injunction against the appellant / defendant. Upon hearing the oral and documentary evidence, the trial court dismissed the suit by Judgment and Decree dated 20.12.2013. Challenging the Judgment and Decree, the respondent / plaintiff filed an appeal in A.S.No.6 of 2014 before the Sub Court, Vellore. The Appellate court set aside the Judgment and Decree of the trial court holding that the plaintiff is in lawful possession and the trial court had decided the issues properly and allowed the appeal filed by the respondent / plaintiff. Challenging the reversal Judgment and Decree, the defendant / appellant has preferred this Second Appeal before this Court.

2. The learned counsel for the appellant / defendant would submit that the respondent / plaintiff filed a suit in O.S.No.528 of 2003. At that time, the appellant / defendant had issued a lawyer's notice to vacate the suit premises. The said suit was dismissed by the trial court and subsequently, an appeal suit was filed by the respondent / plaintiff. The Appellate court has held that once possession is being admitted by the defendant / appellant, the plaintiff/respondent herein is entitled for the relief of injunction. It has also been observed by the appellate court that the defendant has filed a separate suit in O.S.No.550 of 2003 and the same is pending before the Appellate court. In view of the pendency of the suit, plaintiff cannot be evicted and thus the appellate court has set aside the Judgment and Decree passed by the trial Court and allowed the appeal.

3. At the time of admission of this second appeal, this court has framed the following substantial questions of law.

a. Whether the decision of the Lower Appellate Court is vitiated by granting decree for injunction against the defendant from interfering with the possession of the suit property contrary to the decree for possession obtained by the defendant in O.S.No.550 of 2003 dated 22.08.2012 on the file of the Additional District Munsif Court, Vellore against the plaintiff.

b. Whether in any event the plaintiff is entitled to the equitable relief of injunction since she has not disclosed the facts correctly and also suppressed material facts relating to various suits pending between the parties and also registered Lease deed dated 10.09.2001 executed by the plaintiff in favour of the defendant.

4. The learned counsel for the appellant / defendant would submit that the appellant / defendant had filed a suit in O.S.No.550 of 2003 and obtained the decree for recovery of possession against the respondent / plaintiff. According to the learned counsel for the appellant / defendant, subsequent to the decree, the appellant / defendant filed E.P.No.35 of 2016 before the Additional District Munsif Court, Vellore for executing the decree and the same is pending. The appellate court reversed the Judgment and Decree of the trial court without considering the fact that the appellant / defendant has already got a decree in O.S.No.550 of 2003. Hence, the Judgment and Decree passed by the Appellate court is liable to be set aside. The present suit is only for permanent injunction on the basis of possession of the property. Admittedly, the appellant has filed the suit for eviction in O.S.No.550 of 2003 before the court below and the suit was decreed subsequent to the present suit. The Execution petition for recovery of possession has been filed in O.S.No.550 of 2003 and the same is pending before the executing court. Hence, there is no question of law is involved in the Second appeal.

5. This court also makes it clear that the dismissal of Second appeal will not stand in the way to proceed with the execution petition in E.P.No.35 of 2016 to execute the decree obtained by the appellant in O.S.No.550 of 2003. Therefore, the question of law is answered against the appellant.

6. The second appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To

1) The Sub Court, Vellore

2) The Additional District Munsif Court,
Vellore.

+1 CC to Mr.S. William, Advocate sr 53398.

+1 CC to Mr.T. Dhanyakumar, advocate sr 54073

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SVI (CO)
SP(23/10/2017)