

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.998 of 2016  
and  
C.M.P.No.20508 of 2016

B.N.S.Technical Institute a sole proprietrix  
concern A. Devaki  
rep. By Power Agent K.Sureshkumar ... Appellant/Respondent/  
(in IA.233/2014)

Vs

Shevvapettai Main Road Telungu  
Viswa Brahmana Shri Siddhi  
Vinayagar Devasthanam rep. By its  
Managing Trustee K.Sundaram ... Respondent/Petitioner/  
Salem 9 (in IA 233/2014 Defendant)

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 16.02.2016 passed in A.S.No.30 of 2015 on the file of the Principal Subordinate Court, Salem, confirming the fair and decretal order dated 09.10.2014 passed in I.A.No.233 of 2014 in O.S.No.382 of 2013 on the file of the I Additional District Munsif Court, Salem.

For Appellant ... Mr.R.Ezhilarasan

JUDGMENT

The plaintiff is the appellant. The suit has been filed by the plaintiff during the pendency of the proceedings inter se parties viz., O.S.No.135 of 2013. The above said suit has been filed seeking the relief of mandatory injunction by directing the respondent to issue receipt for the rent deposited by the appellant for the period from June, 2010 to July, 2011. The Courts below rejected the suit complying the principle under Order 2 Rule 2 C.P.C.

2.Learned counsel appearing for the appellant submits that the cause of action in both the suits are different. Therefore, the judgment and decree rendered by the Courts below will have to be set aside and the matter will have to be remitted back to be tried along with the pending suit in O.S.No.135 of 2013 before the I Additional District Munsif, Salem.

3.As rightly found by the Courts below, the present suit is totally unnecessary. The prayer in the present suit is for mandatory injunction seeking receipt for the rent deposited by the appellant for the period from June, 2010 to July, 2011. It is a settled position of law that for the subsequent event also, the relief can be sought for in the pending suit inter se parties. Therefore, the appellant ought to have filed an appropriate application seeking additional relief in view of the subsequent development in the pending suit.

4.Accordingly, the second appeal stands dismissed, giving liberty to the appellant to file appropriate application in O.S.No.135 of 2013, seeking the relief sought for in the present suit by way of amendment. As and when such an application is filed, the trial Court is directed to decide the same on its own merits, without being influenced by any of the observations made in the present suit. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi

To

1.The Principal Subordinate Judge,  
Salem.

2.The I Additional District Munsif,  
Salem.

+1cc to Mr.R. Ezhilarasen, Advocate, S.R.No.624

vd(CO)

md(21/02/2017)

S.A.No.998 of 2016