

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated: 25.01.2017****CORAM****The HONOURABLE MR.JUSTICE M.DURAI SWAMY**

S.A(MD)No.28 of 2017
and C.M.P(MD)No.644 of 2017

K.S.Palanisamy

.. Appellant/Plaintiff

Vs.

1.Renganath
2.R.K.Srikanth
3.Mohan
4.R.Prabhakar
5.Giri

6.The Executive Officer,
A/m.Appala Renganathasamy Thirukoil,
Kovilady Village,
Thiruvaiyaru Taluk and Munsif. .. Respondents/Defendants

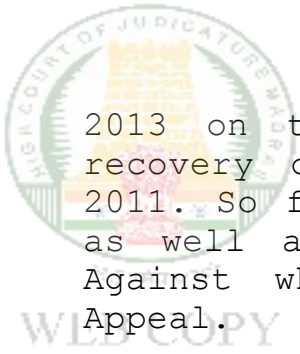
Prayer:- Second Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 21.09.2016 made in A.S.No.22 of 2016 on the file of the II-Additional District and Sessions Court, Thanjavur, confirming the Judgment and Decree, dated 11.03.2016 made in O.S.No.270 of 2011 on the file of the Principal Sub Court, Thanjavur.

For Appellant : Mr.M.Muthugeethayan
For RR 1 to 5 : Mr.G.Karnan

JUDGMENT

Challenging the Judgment and Decree, dated 21.09.2016 passed in A.S.No.22 of 2016 on the file of the II-Additional District and Sessions Court, Thanjavur, confirming the Judgment and Decree, dated 11.03.2016 passed in O.S.No.270 of 2011 on the file of the Principal Sub Court, Thanjavur, the plaintiff has filed the above Second Appeal.

2.The plaintiff filed the suit in O.S.No.270 of 2011 on the file of the Principal Sub Court, Thanjavur, for injunction restraining the defendants 1 to 5 from evicting him to unlawful means without due process of law. Subsequent to the filing of the present suit, the defendants 2 to 4 filed a suit in O.S.No.123 of



2013 on the file of the Principal Sub Court, Thanjavur, for recovery of possession against the plaintiff in O.S.No.270 of 2011. So far as O.S.No.270 of 2011 is concerned, the trial Court as well as the lower Appellate Court had dismissed the suit. Against which, the plaintiff has preferred the above Second Appeal.

3.The relief sought in the suit ie, for injunction restraining the defendants 1 to 5 from evicting the plaintiff to unlawful means without due process of law has become infructuous for the reason that the defendants 2 to 4 in O.S.No.270 of 2011 have filed the suit in O.S.No.123 of 2013 for recovery of possession. Therefore, the defendants have followed the due process of law in evicting the appellant. The trial Court as well as the lower Appellate Court took into consideration the decree passed in O.S.No.123 of 2013 and dismissed the suit in O.S.No.270 of 2011. Since the defendants have followed the due process of law, the relief sought for by the plaintiff in O.S.No.270 of 2011 has become infructuous.

4.In these circumstances, I do not find any ground much less any substantial questions of law to interfere with the concurrent findings of the Courts below and the Second Appeal is liable to be dismissed. Accordingly, the second appeal is dismissed. Since the remedy open to the appellant/plaintiff is to prosecute the Second Appeal in S.A(MD)No.29 of 2017, the findings given in this Judgment shall not stand in the way of the appellant/plaintiff to prosecute the Second Appeal in S.A(MD)No.29 of 2017. However there shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar

ps

To

1.The II-Additional District and Sessions Judge,
Thanjavur.

2.The Principal Sub Judge, Thanjavur.

+1cc to Mr.M.MUTHUGEETHAYAN Advocate Sr.No. 4095

+1cc to Mr.G.KARNAN Advocate Sr.No. 4211

JAM/09.02.17/CM-MSA/ 2P-5C