



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.330 of 2017

WEB COPY

P.Chinnadurai ... Appellant /Appellant / Plaintiff

Vs.

M.Durai ... Respondent /Respondent/ Defendant

PRAYER: Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 22.12.2014, made in A.S.No.37 of 2014 by the learned Principal Subordinate Judge, Tenkasi, confirming the judgment and decree, dated 09.01.2014, made in O.S.No.542 of 2009 by the learned Principal District Munsif, Tenkasi.

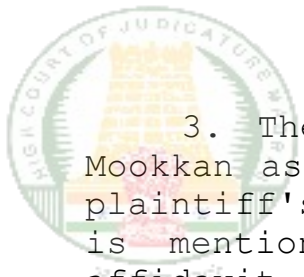
For appellant ... Mr.H.Arumugam

For respondent Mr.R.J.Karthick

JUDGMENT

The unsuccessful plaintiff is the appellant, who has contended that the building in Door No.3/2, Kavusamy Kovil Street, Kasimejarpuram Village, belonged to the defendant. The defendant approached the plaintiff to lease out the said property for a total sum of Rs.25,000/- and the interest of 12% derived from the said amount would be adjusted towards monthly rent. After three years, when the plaintiff vacates the house, the said sum would be refunded to the plaintiff. Accordingly, it is stated that the defendant had received a sum of Rs.25,000/- on 06.09.2007. However, the plaintiff was not put in possession of the house. As the defendant received the amount, but not handed over the possession of the property, the suit was filed for recovery of Rs.25,000/-.

2. Resisting the suit, the defendant contended that he has never seen the plaintiff and that he never received any amount much less a sum of Rs.25,000/- from the plaintiff. It is his case that the plaintiff mentioned house was put in possession of the plaintiff's father after receiving Rs.25,000/- from him. Later, the plaintiff's father had vacated the premises and handed over possession back to the defendant, after receiving the said sum. Thus, there is no transaction between the plaintiff and the defendant. The plaintiff, with an intention to cheat the defendant, created yadasthu under Ex.A1 and is trying to defraud the defendant.



3. The plaintiff examined himself as PW1 and examined one Mookkan as PW2 and the defendant examined himself as DW1 and the plaintiff's father was examined as DW2. The age of the plaintiff is mentioned as 53 in the plaint. Whereas, in the proof affidavit, his age is mentioned as 25. During the cross examination, he has stated that his age is 27. Whereas, DW2, who is the father of the plaintiff, has stated that his son is only 19 years old. Thus, there is lot of discrepancies with respect to the age of the plaintiff. If the age mentioned by DW2, the father of the plaintiff, has to be taken as correct, on the date of execution of Ex.A2, the age of the plaintiff would be only 14 years. So, when he was minor, he could not have executed Ex.A1. Even with respect to the other witnesses also, there are lot of contradictions in their evidences.

4. The Courts below have held that as the witnesses examined on both sides have deposed mutually contradictory to each other, the case of the plaintiff cannot be believed and with the above findings, dismissed the suit. As there is no valid reason to interfere with the concurrent judgment passed by the Courts below under Section 100 C.P.C., this second appeal is liable to be dismissed.

5. In the result, this second appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed by the Courts below. No costs.

Sd/-

Assistant Registrar (CS-I)

/Truecopy/

Sub Assistant Registrar

To

1.The Principal Subordinate Judge, Tenkasi.

2.The Principal District Munsif, Tenkasi.

3.The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.H.ARUMUGAM, Advocate SR.No.70348

+1cc to M/S.R.J.KARTHICK, Advocate SR.No.69988

gcg

MAS/GT/SAR2:24.08.2017:2P-6C

S.A. (MD) No.330 of 2017
02.08.2017