

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Second Appeal No.281 of 2018
and C.M.P.No.7237 of 2018

K.Sakthivel

.. Appellant/Plaintiff

Vs.

L.Balachandar

.. Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C to set aside the judgment and decree dated 03.10.2017 made in A.S.No.34 of 2011 on the file of the IV Additional City Civil Court, Chennai, reversing the judgment and decree dated 02.09.2010 made in O.S.No.6974 of 2007 on the file of the VIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.C.Prabakaran

J U D G M E N T

This Second Appeal has been filed to set aside the judgment and decree dated 03.10.2017 made in A.S.No.34 of 2011 on the file of the IV Additional City Civil Court, Chennai, reversing the judgment and decree dated 02.09.2010 made in O.S.No.6974 of 2007 on the file of the VIII Assistant City Civil Court, Chennai.

2.The appellant is the plaintiff and respondent is the defendant in O.S.No.6974 of 2007 on the file of the VIII Assistant City Civil Court, Chennai. The appellant filed the said suit for permanent injunction restraining the respondent from interfering with his peaceful possession and enjoyment of the suit shops and directing the respondent to pay a sum of Rs.1,00,527/- to the appellant towards loss suffered by him together with interest and also to direct the respondent to pay a sum of Rs.50,000/- towards damages for causing hardship and mental agony to the appellant.

3.According to the appellant, he is in occupation of three shops described in the plaint schedule and is running provision stores. During 13.06.2007 to 19.06.2007, he closed his shops and went to Tirupathi Temple. When he came back, he saw that the roof of his shops were damaged and things inside the shops were also damaged. On enquiry, he came to know that the respondent under the influence of alcohol, claimed over the roof and damaged the shop by making holes in several

places. Due to rain during that time, the provisions kept in the shop got damaged. The appellant also stated that earlier, father of the respondent filed O.S.No.10832 of 1988 on the file of the VI Assistant City Civil Court, Chennai for declaration of title in respect of the suit shops against the respondent. After the death of his father, the respondent and his sisters prosecuted the above suit and the same was decreed.

4. Against the said judgment and decree dated 02.03.1998, the appellant has filed A.S.No.124 of 1998 on the file of the Fast Track Court, Chennai. The said appeal was dismissed on 29.08.2002. Aggrieved by the judgment and decree, the appellant filed S.A.No.2013 of 2002 and the same is pending before this Court. This Court granted interim stay. In the circumstances, the petitioner has issued notice and filed the present suit.

5. The respondent filed written statement and denied all the averments and contended that the suit filed by the appellant is vexatious one, there is no cause of action and appellant has suppressed the material facts. The appellant has filed the suit only to squat in the property for long time without paying any rent. The appellant has suppressed the material fact and there is multiplicity of proceedings. The suit has to be dismissed on the ground of no cause of action and suppression of material facts. The respondent also contended that appellant is only a tenant. The Second Appeal filed by the appellant in S.A.No.2013 of 2002 is pending. The appellant filed O.S.No.8686 of 1995 against the respondent and one Tilagavathi on the file of the VI Assistant City Civil Court, Chennai claiming title to the shops mentioned to the schedule to the plaint in the present suit. The said suit was dismissed by the judgment and decree dated 27.11.2002. The appellant filed First Appeal, A.S.No.231 of 2003 on the file of the IV Additional City Civil Court, Chennai. This Court in Tr.C.M.P.Nos.20640 and 20641 of 2003, transferred the First Appeal to be heard before this Court and the same is pending in this Court.

5(a). The appellant instigated one Tilagavathi to file O.S.No.336 of 1998 on the file of the XVIII Assistant City Civil Court for partition. The respondent further stated that he will not damage his own property. During that period, the respondent was working at Pondicherry and Sriperumbadur Branches and was not present at the suit premises. The suit property and the house in which the respondent resides with his family is very old structure, aged 80 years. Taking advantage of the absence of the respondent and helplessness of his wife, the appellant with the help of hooligans, with an ulterior motive to intimidate the respondent and also to weaken the entire structure damaged the property. The appellant by filing multiplicity of proceedings, prolonging from 1998 and is in possession of the shops without paying any

rent. Based on these pleadings, the learned Trial Judge framed necessary issues and additional issues were also framed.

6. Before the learned Trial Judge, the appellant examined himself as P.W.1 and three other witnesses as P.Ws 2 to 4 and marked 13 documents as Exs.A1 to A13. The respondent examined himself as D.W.1 and five other witnesses as D.Ws 2 to 6 and marked 25 documents as Exs.B1 to B25.

7. The learned Trial Judge considering the pleadings, oral and documentary evidence, held that the appellant failed to prove the damages alleged to have been suffered by him and granted decree of injunction alone and dismissed the claim of the appellant for damages.

8. Against the said judgment and decree dated 02.09.2010, the respondent filed A.S.No.34 of 2011 on the file of the IV Additional City Civil Court, Chennai. The learned First Appellate Judge framed necessary points for consideration. Considering the points for consideration, the pleadings and oral evidence, the judgment of the Trial Court partly decreeing the suit in O.S.No.6974 of 2007, allowed the appeal by the judgment and decree dated 03.10.2017.

9. Against the said judgment and decree dated 03.10.2017 made in A.S.No.34 of 2011, the appellant has come out with the present Second Appeal.

10. The learned counsel for the appellant contended that appellant has proved by acceptable evidence that respondent has damaged the roof of the building. The appellant has examined P.Ws 2 to 4, who are the independent witnesses who deposed that respondent only damaged the roof. In view of the damages caused by the respondent to the roof and the provisions kept in the shops were damaged due to rain, the First Appellate Judge without proper appreciation, rejected the evidences of P.Ws. 2 to 4 and has not given any reason for reversing the judgment of the Trial Court. In a suit for injunction, it is fresh cause of action and First Appellate Judge erred in law in holding that suit is hit by Section 11 of C.P.C. The present suit filed by the appellant is on independent cause of action. The cause of action and the relief sought for are different from earlier suits. The Courts below erred in holding that the claim of the appellant is an after thought.

11. Heard the learned counsel for the appellant and perused the materials available on record.

12. As far as the claim of the appellant for damages is concerned, according to the appellant, the respondent damaged the roof. Due to that, the provisions in shops got damaged and appellant only spent money for repairing the damages caused to the roof by the respondent. The appellant examined P.Ws 2 to 4

to substantiate his case that it is the respondent who damaged shops. The Courts below considering the evidences of D.Ws.2 to 6, rejected the evidence of P.Ws 2 to 4 and held that appellant has not proved his contention that respondent only damaged the roof. This is the finding of the facts. Appreciating the oral evidence and witness, the Courts below have given reason for such conclusion. Further the appellant did not file any appeal against the dismissal of the suit in respect of damages.

12(a).The Courts below have also considered the notice issued by the appellant, wherein he has stated that he will be initiating contempt proceedings for violation of the order of the stay granted by this Court. In the said notice, the appellant claimed a sum of Rs.25,00,000/- as damages. But in the suit, he has claimed to the tune of Rs.1,00,527/-. The appellant has produced receipts for repairing the roof only and has not produced any evidence to prove that provisions in the shop were damaged due to rain.

12(b).On the other hand, the witness examined on behalf of the respondent who is running tea shop next to the shops of the appellant has stated that there was no rain during that time and no rain water seeped which went into the shop. The said witness further deposed that the appellant has not closed the shop during the period 13.06.2007 to 19.06.2007, but was carrying on business on these days also. Further P.W.3, S.Palani, examined by the appellant claimed to be a residence of the locality where the suit shops are situated and he has alleged to have seen the respondent damaging the roof. The respondent let in evidence to prove that P.W.3, S.Palani is not a resident of that locality and he is not an Auto driver or his wife is not selling flower as deposed by him. The Courts below, appreciating the oral evidences let in by both the appellant and respondent, rejected the claim of the appellant.

13.As far as the injunction is concerned, already two suits have been filed; one by father of the respondent, which after conclusion of trial and appeal is now pending. The appellant filed O.S.No.8686 of 1995 for declaration of title to the suit shops as well as injunction against the respondent and one Tilagavathi. The said suit was dismissed and First Appeal is pending now. In both the suits, the relief of injunction sought for by the respective parties is rejected and the First Appeal is pending. The appellant has not stated in the plaint that respondent is trying to interfere with his possession and is trying to dispossess him by illegal means.

13(a).The only allegation made by the appellant against the respondent is that respondent damaged the roof of the shops. The appellant failed to prove the cause of action for the decree of injunction and has suppressed the fact that he filed O.S.No.8686 of 1995 for declaration and injunction. The

said suit was dismissed and First Appeal, A.S.No.231 of 2003 filed by the appellant is pending. The Trial Court failed to appreciate the facts properly and erroneously granted the relief of injunction. On the other hand, the First Appellate Court considered all the facts in proper perspective and allowed the First Appeal and dismissed the suit.

14. There is no error of law in the judgment of First Appellate Court and finding of the Trial Court for rejecting the claim of the appellant for damages which was confirmed by the Appellate Court, warranting interference by this Court.

15. In the result, this Second Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa
To

1. The Judge,
IV Additional City Civil Court,
Chennai.
2. The Judge,
VIII Assistant City Civil Court,
Chennai.

+1cc to M/s.C.Prabakaran, Advocate Sr.No.30903

NRI (CO)
sm:22.6.2018

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