

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2018

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.50 of 2018
and C.M.P.No.974 of 2018

1. R.Babu
2. Kala
3. Radha

... Appellants/Appellant/Defendants

...vs...

T.R.K.Saravanan ...Respondent/Respondent/Plaintiff
Trustee, Estate of Late T.P. Ramasamy Pillai

Second Appeal filed under Section 100 C.P.C. against the Judgment and decree dated 09.06.2017 in A.S.No.114 of 2016 on the file of the learned XIX Additional City Civil Court, Chennai dismissing the appeal and confirming the judgment and decree of the learned XVI Assistant City Civil Court at Chennai dated 28.07.2015 made in O.S.No.1870 of 2013 decreeing the suit.

For Appellants : Mr.Samir S.Shah
for M/s.Shah and Shah

For Respondent : Mr.G.Sugumaran

J U D G M E N T

The unsuccessful defendants, who are the tenants in the suit property, have preferred the above Second Appeal.

2. The suit was filed by the plaintiff for delivery of vacant possession of 'A' schedule property and 'B' schedule property and also for future damages etc.

3. The 'A' schedule property is an extent of 150 sq.ft in the ground floor of the premises bearing Door No.7/13, Avadhana Pappier Road, Choolai, Chennai 600 112. 'B' schedule property is the first floor portion in the same premises. The trial Court had partly decreed the suit granting the decree for delivery of possession with respect to 'B' schedule property and dismissed the suit with regard to prayer for delivery of vacant possession

with respect to 'A' schedule property. The plaintiff had not preferred any appeal against the said dismissal with respect to 'A' schedule property. However, the defendants had preferred the appeal.

4. The contention of the appellants is that they were inducted as tenants for the entire suit property including 'A' and 'B' schedules. However, in the cross examination, it is admitted by the first defendant that his occupation of only one room in the first floor portion was on a specific permission granted by the plaintiff's father. The appellants /defendants could not substantiate their claim that they had been paying the rent only as a lessee and not as a licensee and they have also not produced any rent receipts to prove their case. Though it is admitted by the defendants that they had been the tenants in the first floor portion for more than 25 years, they have not produced any piece of paper to prove the same. The appellate Court has clearly and categorically discussed the difference between the lease and licence and held that the possession of the appellants in the first floor is only that of a licensee, as they had occupied the same only on the specific permission given by the plaintiff's father. When the defendants denies that they are not licensee but only lessees, the burden is on them to establish the same, which has not been done in this case. Therefore, the 'B' schedule being a licensed premises, the possession reverts to the licensor and he has the right to enter upon without recourse to law once the license is terminated.

5. In the absence of jural relationship of landlord and tenant and when the license granted was already terminated, the possession of the appellants/defendants only becomes as that of a trespasser. Hence, the Courts below had concurrently found that the plaintiff is entitled to the decree for eviction of the defendants from 'B' schedule property. This Court sees no infirmity in the findings of the Courts below and no interference is warranted in the absence of any question of law, much less substantial question of law arising out of the said facts.

6. Accordingly, the Second Appeal is dismissed confirming the judgment and decree of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

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Sub-Assistant Registrar

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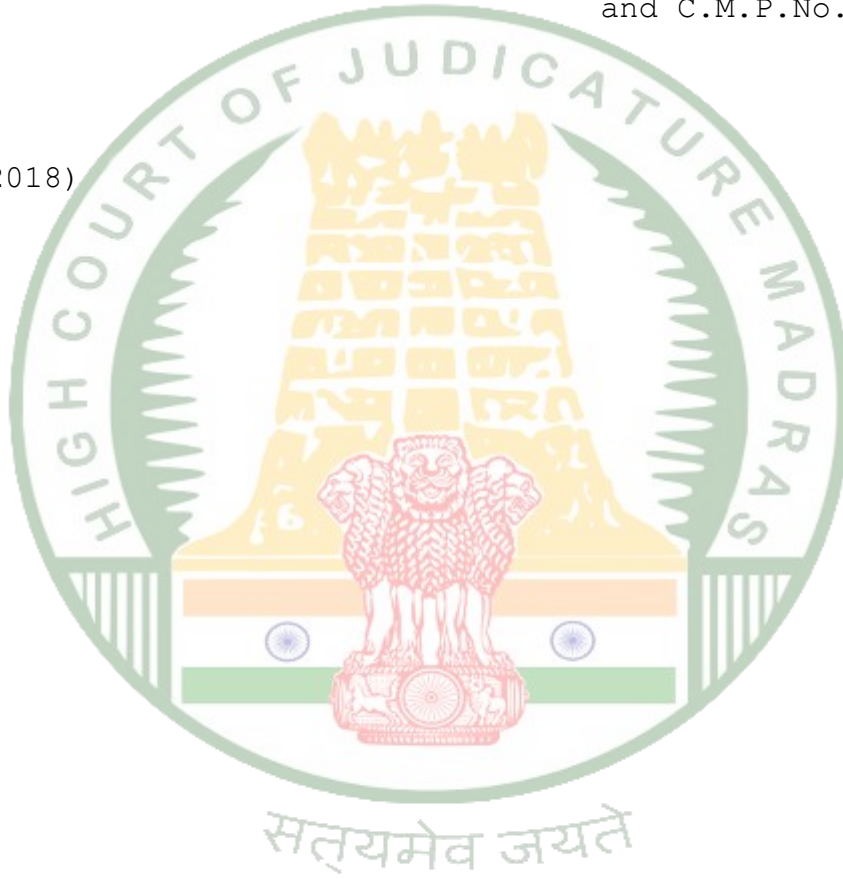
To

1. The XIX Additional City Civil Court, Chennai
2. The XVI Assistant City Civil Court, Chennai

+1 CC to M/s. Shah & Shah, Advocate sr 15639.
+2 Ccs to Mr.G. Sugumaran, Advocate sr 14826.

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CA(CO)
SP(11/04/2018)



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