



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.06.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Second Appeal (MD) No.157 of 2018
and
C.M.P. (MD) No.4148 of 2018

P.Mathiazhagan : Appellant/Appellant/Plaintiff

-Vs-

T.M.M.T.N.U.Dhanush Rajavel : Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure, against the judgment and decree passed in A.S.No.11 of 2015, dated 18.10.2016 on the file of the Subordinate Court, Virudhunagar, by confirming the judgment and decree passed in unnumbered U.F.O.S. of 2014, dated 19.01.2015 on the file of the District Munsif, Virudhunagar.

For Appellant : Ms.S.Mahalakshmi
For Respondent : Mr.S.Parthasarathy

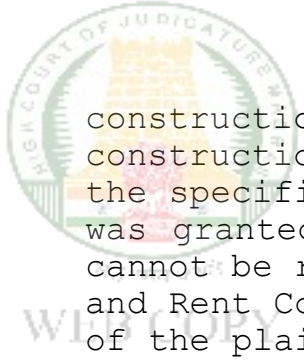
JUDGMENT

This second appeal is filed against the judgment and decree passed in A.S.No.11 of 2015, dated 18.10.2016 on the file of the Subordinate Court, Virudhunagar, by confirming the judgment and decree passed in U.F.O.S. of 2014, dated 19.01.2015 on the file of the District Munsif, Virudhunagar.

2.The brief facts that are necessary for the purpose of disposing of this appeal are as follows:

2.1.The appellant as plaintiff filed a plaint before the District Munsif Court, Virudhunagar with a prayer directing the defendant to accept the rent for a period of eight months and to permit the appellant to deposit the rent in Court and for other consequential relief. The appellant has admitted that he is a tenant under the defendant and further admitted that he is carrying on business in the demised premises.

2.2.It is the case of the plaintiff that in the vacant land, he put up some construction for his business and that the permanent

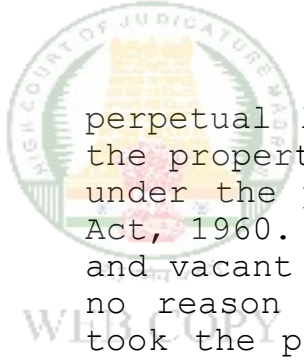


construction put up by him was never objected and that the construction was therefore, with the consent of the defendant. It is the specific case of the plaintiff in the plaint that the lease that was granted in favour of the plaintiff is a perpetual lease, which cannot be revoked and that therefore the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, has no application. It is also the case of the plaintiff that a suit in O.S.No.128 of 2012 was filed earlier by the plaintiff for permanent injunction restraining the defendant from interfering with the peaceful possession of the plaintiff as tenant otherwise than by due process of law.

2.3.It is also admitted that the defendant has filed a petition for eviction in R.C.O.P.No.12 of 2012 before the Rent Controller and that the said petition is also pending. Since the plaintiff has filed the suit with a prayer, which is expected to be filed before the Rent Controller, under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, and the exemption pleaded by the plaintiff that the lease is perpetual is also an issue in the eviction petition, the trial Court rejected the plaint on the ground that the plaintiff, who claimed that the lease is perpetual, is not entitled to any relief without a declaration that the plaintiff is a licensee or that his lease is perpetual. When actually, the plea of plaintiff is also the subject matter of the petition, which is pending before the Rent Controller, the trial Court has further observed that the plaintiff is not entitled to invoke the jurisdiction of Civil Court without any cause of action. The rejection of plaint by the learned District Magistrate, Virudhunagar was challenged by the appellant before the Sub Court, Virudhunagar in A.S.No.11 of 2015. The learned Sub Judge, Virudhunagar has also confirmed the order of District Munsif, Virudhunagar holding that the plaint is liable to be rejected, as separate suit is not necessary for depositing the rent. Aggrieved by the findings of the Courts below, the appellant has preferred the above second appeal.

3.The learned Counsel for the appellant submitted that the Courts below have rejected the plaint without even numbering the suit and that the Courts have exceeded their jurisdiction beyond the scope and power under Order VII Rule 11 of CPC. The learned Counsel for the appellant further submitted that the lease is a perpetual lease and that Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, has no application insofar as the lease in question is concerned. It is further stated by the learned Counsel for the appellant that the trial Court ought not to have rejected the plaint, without issuing notice to the defendant. The learned Counsel for the appellant produced the deed of lease, dated 01.08.2010, filed along with the plaint.

4.Having regard to the admitted facts and nature of lease, this Court is able to see that the appellant / plaintiff has come forward with a vexatious litigation for no useful purpose. First of all, the lease deed would show that the lease is in respect of a land and building. The lease deed does not indicate that the lease is a



perpetual lease or there is scope for the plaintiff to plead that the property, for which the plaint has been presented, will not come under the purview of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. When the document clearly indicates that it is a building and vacant land that was leased out to the appellant, this Court has no reason to take a different view especially when the plaintiff took the property on lease under document dated 01.08.2010 and has only relied on the lease deed as a cause of action. This Court find that the suit cannot be entertained by the Civil Court, particularly, when the relief is only for permitting the plaintiff to deposit the rent. This Court does not find any substantial questions of law involved in this appeal. Order VII Rule 11 CPC enables the Court to reject the plaint, if it is a vexatious plaint without disclosing a cause of action or if barred by law.

5.As a result, this second appeal is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Virudhunagar.
2. The District Munsif, Virudhunagar.

Copy To:-

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.S.PARTHASARATHY, ADVOCATE IN SR No. 66709

CMR
TE/SV/SAR-3 : 29/06/2018 : 3P/6C

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