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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.(MD)No.891 of 2013

and

M.P.(MD)No.1 of 2013

R.Raghavan

.... Appellant/Appellant/2nd Defendant

-Vs-

1.Church of South India,
Trichy, Tanjore Diocese,
Represented by Power Agents,
having office at Puthur,
Trichy-17.

.. 1st Respondent/1st Respondent/Plaintiff

2.Latha Raghavan

.. 2nd Respondent/2nd Respondent/1st Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree of the Lower Appellate Court dated 08.03.2013 passed in A.S.No.275 of 2011 on the file of the learned II-Additional District and Sessions Judge, Tiruchirappalli, confirming the Judgment and Decree of the Trial Court dated 20.04.2011 passed in O.S.No.257 of 2007 on the file of the learned I-Additional Sub Judge, Tiruchirappalli.

For Appellant	: Mr.K.Gokul
For Respondent No.1	: Mr.D.Balamurugapandi
For Respondent No.2	: No appearance

JUDGMENT

The second defendant in the suit in O.S.No.257 of 2007 on the file of the I-Additional Sub Judge, Tiruchirappalli is the appellant in this second appeal.

2. The first respondent in this appeal as plaintiff filed the suit in O.S.No.257 of 2007 before the I-Additional Sub Judge, Tiruchirappalli for directing the defendants to deliver the possession of the suit property after removal of the existing superstructure and for mandatory injunction directing the defendant to remove the existing constructions in the suit property. The suit is also for recovery of a sum of Rs.10,000/- towards damages caused by the defendants to the plaintiff and for cause of mesne profits.

3. The case of the plaintiff as set out in the plaint in O.S.No.257 of 2007 is as follows:

3.1. The suit property originally belonged to the first respondent herein/plaintiff and the first defendant was a tenant under the plaintiff in respect of Shop No.106 in the Super Bajar



Commercial Complex, Singarathopu, Trichy for a monthly rent of Rs.696/-. The second defendant is the husband of the first defendant.

3.2. Though the first defendant as a tenant is not entitled to make any structural alterations or demolish any portion of Shop No.106, the building which was let out to the first defendant, the first defendant was attempting to make some alterations in the suit property with the help of the second defendant. The plaintiff filed the earlier suit in O.S.No.2062 of 1996 on the file of the learned District Munsif, Trichy for permanent injunction restraining the defendants from making any structural alterations and put up further constructions above the building which was let out by the plaintiff to the first defendant. In the said suit an interim application was filed by the plaintiff in I.A.No.628 of 1996 and interim injunction was granted restraining the defendants from putting up any constructions. However, quite contrary to the order of injunction, the defendants proceeded with the constructions in the suit property in the first week of August, 1996 illegally. However, in the earlier suit filed by the plaintiff against the defendants, it was contended by the defendants that the construction alleged was prior to the filing of earlier suit. After hearing the objections raised by the defendants, the earlier suit was decreed rejecting the contention of the defendants that the suit property was constructed prior to the filing of suit in O.S.No.2062 of 1996. Though the defendants filed an appeal in A.S.No.159 of 2009 in O.S.No.2062 of 1996 on the file of the Sub Court, Trichy, the same was also dismissed on 12.01.2007 with cost. The second defendant in the earlier suit further contended that he was also a tenant in respect of the suit property, namely, the upstairs portion in the building, originally let out by the plaintiff to the first defendant. Even the said contention was negatived by the trial Court. Since the defendants put up constructions and claimed exclusive ownership over the additional building, despite the decree in the earlier suit filed by the plaintiff, the plaintiff is constrained to file the suit in O.S.No.257 of 2007 on the file of the learned I-Additional Sub Judge, Tiruchirappalli.

3.3. The suit in O.S.No.257 of 2007 was also contested on the same ground that the same was pleaded by the defendants in the earlier suit filed by the plaintiff in O.S.No.2062 of 1996. It is the specific case of the second defendant/appellant that the Secretary of the plaintiff permitted the appellant to put up construction after receiving a sum of Rs.10,000/- as donation. It is also stated by the appellant / second defendant that the plaintiff is fully aware of the creation of tenancy with the first defendant in respect of the additional construction in the first floor. Since the defendants were running the business in the premises of the plaintiff, it is also stated that at the instruction of the plaintiff that they have to pay Rs.300/- per month for the additional building, the defendants put up additional building and the suit filed without disclosing the true facts of the case is

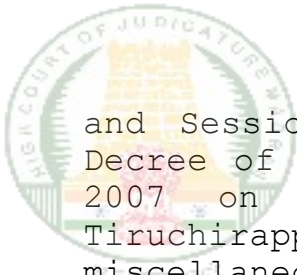


unsustainable in law. The Trial Court, after framing necessary issues, decreed the suit as prayed for and the Court below also granted a decree for mesne profits and a direction was issued to initiate separate proceedings for mesne profits.

3.4. Thereafter, the second defendant in the suit filed an appeal in A.S.No.275 of 2011 on the file of the II-Additional District and Sessions Judge, Trichy. The Appellate Court further found that the appellant has not established any tenancy in respect of the newly constructed additional building over the portion of the property let out to the first defendant. Regarding the sum of Rs.10,000/- that is said to have been paid by the second defendant to the plaintiff, the trial Court find that the Court cannot presume that by receiving a sum of Rs.10,000/-, the second defendant/appellant was given permission. After hearing the arguments of the appellant, the appellate court came to the conclusion that the construction put up by the defendants is unauthorised and confirmed the findings of the trial Court. Aggrieved by the judgment and decree of the lower appellate court, in A.S.No.275 of 2011, the present second appeal has been preferred by the appellant.

4. The learned counsel for the appellant admitted that the Courts below have categorically found that the construction of superstructure in the first floor is unauthorised and in violation of the interim order of injunction granted by the Court in the suit which was filed in the year 1996. Hence, the Courts below are right in decreeing the suit after considering the fact that the appellant has put up illegal construction fraudulently without the authority of law, in violation of the decree of the Civil Court. The learned counsel for the appellant submitted that by virtue of Section 51 of the Transfer of Property Act, the plaintiff is entitled only to get the value of the building put up by the defendants. This argument has no substance as Section 51 of the Transfer of Property Act is based on Doctrine of Acquiescence. It is based on equity. The person, who has put up a construction in utter disregard and in violation of the Court order, cannot plead acquiescence as a ground to justify the construction. Hence, surely, there is no scope for invoking Section 51 of the Transfer of Property Act. Having regard to the concurrent findings that the appellant is not proved his lawful enjoyment of the suit property as a tenant under the plaintiff, this Court can never come to a conclusion that the appellant is in lawful possession. The findings of the lower Courts on the question of possession and the rights of parties on the basis of material documents and evidences are well founded. Since the findings of the court below are unassailable having regard to the facts narrated above, this Court has no reason to entertain this second appeal as there is no other question of law raised.

5. In the result, the Second Appeal is dismissed. The judgment and decree of the lower Appellate Court, dated 08.03.2013 in A.S.No.275 of 2011 on the file of the learned II-Additional District



and Sessions Judge, Tiruchirappalli, confirming the Judgment and Decree of the Trial Court dated 20.04.2011 passed in O.S.No.257 of 2007 on the file of the learned I-Additional Sub Judge, Tiruchirappalli is confirmed. No Costs. Consequently, connected miscellaneous petition is dismissed.

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Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The II-Additional District and Sessions Judge,
Tiruchirappalli.
2. The I-Additional Sub Judge,
Tiruchirappalli.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

+1CC to Mr.K.Gokul, Advocate, SR.No.72302

+1CC to Mr.D.Balamurugapandi, Advocate, SR.No.72087

S.A. (MD) No.891 of 2013

09.07.2018

PJL

ES/PN/SAR 4/30.07.2018/4P/7C