

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.11.2019
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.513 of 2008

S.V. Mathav Prasad ... Appellant/ Respondent/Plaitiff

Vs

Apollo Surgical Instrument Co.,
Rep. by its Partners

1. Mr.Sudir Batra

2. Smt.Sudir Batra ... Respondent/ Appellant/ Defendant

Second Appeal filed under Section 100 of the Code against the decree and judgment made in A.S. No.302 of 2005, dated 30.06.2006 on the file of the learned Additional District Judge, IV Fast Track Court, Chennai reversing the decree and judgment dated 02.09.2004 passed by the learned 13th Assistant Judge, City Civil Court, Chennai in O.S. No.5828 of 2002.

For appellant	:	Mr.S. Hemanand
For respondent	:	Mr.S.Subbiah, Senior Counsel for Mr.P.Raja

JUDGMENT

सत्यमेव जयते

This Second Appeal has been filed challenging the judgment and decree dated 30.06.2006 passed by the learned Additional District Judge, Fast Track Court No.IV, Chennai - 1 in A.S. No.302 of 2005, partly allowing the appeal filed by the respondent as against the judgment and decree dated 21.09.2004 passed by the learned 13th Assistant Judge, City Civil Court, Chennai in O.S. No.5828 of 2002.

Brief facts leading to the filing of the Second Appeal

2. The appellant is the plaintiff and the respondent is the defendant in the suit O.S. No.5828 of 2002 on the file of the learned 13th Assistant Judge, City Civil Court, Chennai. The

plaintiff claims to be the owner of the suit schedule property. According to the plaintiff, one Abdul Khader Buhari without any authority has let out the property to the respondent. It is also his case that the respondent is taking steps to alter the superstructure without any authority and has also illegally obtained an electricity connection. The plaintiff filed the suit for permanent injunction restraining the defendant from altering and putting up any construction in the suit schedule property and he has also sought for a permanent injunction restraining the defendant from carrying on any business whatsoever in the suit schedule property.

3. Further, it is the case of the defendant that they are a statutory tenant entitled to protection under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. It is their case that they are regularly paying the rent to the landlord and they cannot be evicted except by due procedure established under law. According to them, the suit filed against them by the appellant is not maintainable under law.

4. The Trial Court by its judgment and decree, dated 21.09.2004 decreed the suit as prayed for by the plaintiff and granted both the reliefs sought for in the plaint.

5. Aggrieved by the judgment and decree, dated 21.09.2004, the defendant in the suit, who is the respondent herein preferred an appeal before the Additional District Judge, Fast Track Court No.IV, Chennai - 1 in A.S. No.302 of 2005.

6. By judgment and decree dated 30.06.2006 in A.S. No.302 of 2005, the learned IV Additional District Judge, Fast Track Court, Chennai partly allowed the appeal by reversing the finding of the Trial Court insofar as the relief of permanent injunction restraining the defendant from carrying on any business in the suit schedule premises is concerned and vacated the permanent injunction granted in the suit. However, the Lower Appellate Court confirmed the findings of the Trial Court insofar as the relief of permanent injunction granted in favour of the plaintiff restraining the defendant from altering the superstructure.

7. Aggrieved by the judgment and decree, dated 30.06.2006 rejecting the relief of permanent injunction restraining the defendant from carrying on business in the suit schedule property, the plaintiff in the suit has filed this Second Appeal.

8. Heard Mr. Mr.S. Hemanand, learned counsel for the appellant and Mr.S.Subbiah, learned Senior Counsel appearing for the respondent.

9. The learned counsel for the appellant drew the attention of this Court to Ex.A2 and submitted that the respondent has admitted in the said letter that the appellant is the landlord. However, he failed to convince this Court as to how an injunction can be granted restraining the respondent from carrying on business in the suit schedule property. Being a landlord, the only recourse available to him is to evict the respondent by following the due process of law. He cannot prevent the respondent, who is admittedly carrying on business in the suit schedule property from carrying on its business, which will deprive its constitutional right of carrying on business for its livelihood. Even though the plaintiff in the suit had sought for two reliefs, the Trial Court ought not to have granted the relief of permanent injunction restraining the defendant from carrying on business in the suit schedule premises. The Lower Appellate Court has rightly considered the same and has rightly held that the appellant is not entitled for injunction restraining the defendant from carrying on business in the suit schedule premises.

10. The Lower Appellate Court has rightly observed that the appellant if he wants to take possession of the suit schedule property, he has to initiate appropriate legal proceedings before the appropriate forum. This Court is in agreement with the findings of the Lower Appellate Court. The appellant cannot blow hot and cold. He relies upon Ex.A2, the letter written by the respondent to the appellant recognising the appellant as the landlord. At the same time, he cannot claim that the respondent is a trespasser when he is relying upon Ex.A2. As observed earlier the right of carrying on business or trade by the respondent is a constitutional right of the respondent to earn its livelihood. Whether the respondent is a tenant under the appellant or a trespasser illegally inducted by Abdul Khader Buhari is a matter that cannot be adjudicated in a bare injunction suit that too when Abdul Khader Buhari is not a party to the present suit.

11. The appellant has raised the following substantial questions of law while filing the Second Appeal :

- a) Whether the Appellate Court was right in allowing the prayer inspite of the findings that they are trespassers?
- b) Whether the findings of the Appellate Court is warranted by the pleadings, documents and evidence relating to the nature of occupation?
- c) Whether the learned Appellate Court is right in coming to the conclusion as per the case reported in AIR 1976 ALL 362?

12. For the foregoing reasons, there is no substantial questions of law and the substantial questions of law raised by the appellant in the grounds of appeal does not deserve any merit. Accordingly, the Second Appeal is dismissed by confirming the judgment and decree dated 30.06.2006 passed by the learned Additional District Judge, Fast Track Court No.IV, Chennai - 1 in A.S. No.302 of 2005. No costs.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Additional District Judge,
IV Fast Track Court,
Chennai.

2. The 13th Assistant Judge,
City Civil Court,
Chennai.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to M/s.Elizabeth Rani, Advocate SR.No. 93128

S.A. No.513 of 2009

ppa co

A.SK(03/09/2020)

सत्यमेव जयते

WEB COPY