



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.11.2019

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.1337 of 2003

Ishwar Hemnani

... Appellant/Defendant

Vs.

1.P. Vasanthkumari

2. Minor B. Rajalakshmi

Rep. By Mother and Natural Guardian

B. Vasanthakumari

... Respondents/Plaintiffs

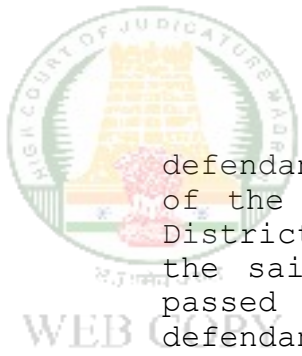
PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree passed in A.S.No.6 of 2003 on the file of District Judge, Udhagamandalam dated 24.04.2003 confirming the judgment and decree made in O.S.No.115 of 1997 on the file of District Munsif, Udhagamandalam dated 27.12.2002.

For Appellant	: M/s.S.T. Bharath Gowtham for T.R. Rajaraman
For Respondents	: Mr.K. Govi Ganesan

J U D G M E N T

This second appeal has been filed by the defendant against the judgment and decree passed by the District Judge, Udhagamandalam in A.S.No.6 of 2002 dated 24.04.2003 confirming the judgment and decree passed by the District Munsif, Udhagamandalam in O.S.No.115 of 1997 dated 27.12.2002.

2. The Respondents herein had filed a suit in O.S.No.115 of 1997 on the file of the District Munsif, Udhagamandalam, for the relief of declaration that the lease agreement dated 31.08.1996 executed between the plaintiffs and the defendant is void and terminated duly by the notice dated 09.01.1997 and for delivery of possession and also for damages for use and occupation. The learned District Munsif, Udhagamandalam by the judgment dated 12.12.2002 had decreed the suit as prayed for and directed the defendant to deliver vacant possession of the suit property to the plaintiffs within two months from the date of judgment and also directed the defendants to pay damages at the rate of Rs.400/- per month from the date of termination notice till the date of delivery of possession. Aggrieved by the same, the



defendants had filed an appeal in A.S.No.6 of 2003 on the file of the District Judge of Nilgiris, Udthagamandalam. The learned District Judge by the judgment dated 24.04.2003 had dismissed the said appeal and thereby confirmed the judgment and decree passed by the trial court. Feeling further aggrieved, the defendant has filed the present second appeal.

3. On 01.11.2019, when this matter came up for hearing, the learned counsel for the respondents/plaintiffs has submitted that after dismissal of the first appeal, the respondents / plaintiffs had filed an execution petition before the trial court and took delivery of possession through court. Hence, nothing survives in this second appeal. The learned counsel for the appellant took time for ascertaining the fact whether the possession was taken by the respondents. Hence, the matter was adjourned to 18.11.2019. On 18.11.2019 also, the learned counsel for the appellants sought adjournment by saying that he already sent a letter to the appellant to ascertain whether the possession was taken by the respondents but he has not received any instructions from the appellant and hence he requests to post the matter on some other day. Considering the said submission, the case has been posted today with a specific direction that the appellant should report either settlement or argue the matter, failing which, the appeal will be dismissed.

4. Today also, the learned counsel for the appellant has submitted that so far he has not received any instructions from the appellant and hence, he requests to grant some more time.

5. Learned counsel for the respondents has submitted that already the appellant himself, admitting the fact that the possession was taken by the respondents, filed CMP.No.11778 of 2003 to appoint an Advocate Commissioner to take possession of the property and keep it under the lock and key till the disposal of the second appeal. He further submitted that when the said petition came up for hearing on 27.10.2003, the learned counsel for the appellant has submitted that instead of appointing an Advocate Commissioner as prayed for, in that petition, it is sufficient to direct the learned District Munsif, Udthagamandalam, to return all the movable properties to the appellant which was removed from the suit property and accordingly, the said petition was disposed of and hence nothing survives in this second appeal.

6. A perusal of the order passed in CMP.No.11778 of 2003 dated 27.10.2003 shows that the appellant herein had filed the aforesaid petition for appointment of an Advocate Commissioner to take possession of the property which is the subject matter of the suit in O.S.No.115 of 1997 on the file of the District Munsif, Udthagamandalam and to keep it under lock and key till



the disposal of the second appeal. When the said petition came up for hearing on 27.10.2003, the learned counsel for the appellant has submitted that instead of appointing an Advocate Commissioner, it is sufficient to direct the learned District Munsif, Udhagamandalam to return all the movable properties to the appellant which were removed from the suit property and for that, the learned counsel for the respondents said no objection. Accordingly, this court directed the District Munsif, Udhagamandalam, to release the movable properties to the appellant in the presence of Court Bailiff forthwith.

7. Taking into consideration of the aforesaid facts and also in view of the order passed by this court on 18.11.2019, since the learned counsel for the appellant has not come forward either to report settlement or to argue this second appeal, this second appeal is dismissed for non-prosecution. No costs.

Sd/-
Assistant Registrar (CS-VIII)

// True Copy//

Sub Assistant Registrar

Gv

To

1. The District Judge, Udhagamandalam.
2. The District Munsif, Udhagamandalam
3. The Section Officer,
V.R. Section,
High Court, Madras.

S.A.No.1337 of 2003

RK(CO)
CSR: 08.01.2020