IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.03.2019
CORAM
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
SECOND APPEAL No.330 of 2019 and
C.M.P.No.5026 of 2019

P.Rajkumar ... Appellant

..Vs..

1. Mr.K.Sundersan Rao

2. The Royal Consultants Pvt Ltd,
Rep. by its Managing Director,
Le Royal Consultations,
South Usman Road,
T.Nagar, Chennai-600 017. ... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and decree dated 25.10.2018 passed in A.S.No.8/2017 on the file of the V Additional City Civil Court, confirming the decree and judgment dated 02.08.2016 passed in O.S.No.573 of 2012 by the XII Assistant Judge, City Civil Court, Chennai.

For Appellant ... Mr.P.M.Bakthavatsalam

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J U D G M E N T

The suit in O.S.No.573 of 2012, was filed by the Appellant/Plaintiff, seeking for permanent injunction, which was dismissed by the Trial Court vide Judgment and decree dated 02.08.2016, and the said Judgment and decree was also confirmed by the First Appellate Court in A.S.No.8 of 2017 on 25.10.2018. Challenging the same, the present Second Appeal has been filed.

2. The case of the Appellant/Plaintiff is that, one Poopathy Ammal is the original owner of the suit schedule property. Her son and his wife are related to the Plaintiff. They have filed suit in O.S.No.1432 of 2002, against a land grabber, which is pending. It is further stated that the Appellant/Plaintiff is the physically challenged person and he is in possession of the suit property for more than 9 years. While so, during the month of January 2011, the respondents/defendants tried to interfere with his possession. Hence, the suit.

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3.The first respondent/first defendant, filed a written statement stating that the suit property belongs to him, since there was a dispute between the first and second defendant, taking advantage the same, the Appellant/Plaintiff claiming right over the suit property, filed the above suit.

4. The second respondent/ defendant filed a written statement stating that he is the owner of the property. The Plaintiff is the tenant under him, earlier he has filed an Eviction Petition, in R.C.O.P.No.1843 of 2012 and the Eviction Petition was allowed and the eviction of the Appellant/Plaintiff was ordered,at this stage, the present suit has been filed seeking for permanent injunction.

5. Considering the above pleading and evidence, the Trial Court dismissed the suit, holding that since already the second respondent/ second defendant initiated the eviction proceedings and that was also allowed by the learned Rent Controller and eviction was ordered and the Plaintiff cannot maintain the present suit.

6. The First Appellate Court, confirmed the Judgment and decree passed by the Trial Court. Aggrieved by the same, the Present Second Appeal has been filed by the Appellant.

7. Mr.P.M.Bakthavatsalam, learned counsel for the appellant would submit that admittedly the Eviction Petition has been filed against the Appellant/Plaintiff by the second respondent/second defendant and same has also been ordered. Further, the learned counsel for the appellant would submit that as against the Eviction order passed, an appeal is pending before the Rent control Appellate Authority and the Rent Control Appellate Authority also stayed the said eviction order.

8. Considering the above said circumstances, when the Rent Control proceedings are pending before the parties and admittedly the order of eviction has been stayed by the Rent Control Appellate Authority, the Appellant/Plaintiff cannot maintain the present suit. Hence, there is no perversity or illegality in the Judgment and decree passed by the Courts below.

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9. In the light of the above facts, in the absence of any question of law, much less substantial questions of law arises for consideration, there is no reason to interfere with the Judgments of the Courts below.

10. In the result, this Second Appeal is dismissed, confirming the Judgments of the Courts below. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

arr
To

1. The XII Assistant Judge, City Civil Court, Chennai.
2. The V Additional City Civil Court, Chennai.

copy to:

The Section Officer
VR Section High Court,
Madras

+1 cc to Mr.P.M.Bhakthavatsalam Advocate sr21041

S.A.No.330 of 2019

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