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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2019

PRONOUNCED ON : 05.07.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No. 711 of 2019

and

CMP No.13607 of 2019

D.S.Dayalan ... Appellant/Defendant

Vs.

Masjid - E - Makkahpur and
Madrasae Bilal Wakf Committee
Rep by its President/Mutawalli,
Mohammed Amjed Hussain,
Having office at No.11, Makkapur 1st street,
Lloyds Road/Avvai Shanmugham Salai,
Triplicane, Chennai - 5. ... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 05.04.2019 and made in A.S.No.187/18 on the file of XVI Additional City Civil Court Chennai dismissing the appeal and confirming the judgment and decree dated 18/9/17 and made in O.S. No.5342/14 on the file of I Assistant City Civil Court Chennai.

For Appellant : Mr.N.A.Nissar Ahmed

For Respondent : Mr.T.Velumani
Caveator

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 05.04.2019, passed in A.S.No.187/18, on the file of the XVI Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 18.09.2017, passed in O.S. No.5342/14, on the file of the I Assistant Judge, City Civil Court, Chennai.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The suit has come to be laid by the plaintiff against the defendant for evicting him and obtaining the vacant possession and also for arrears of rent, on the footing that the



defendant has failed to pay the admitted rent for several months despite requests and furthermore, the defendant had high handedly altered the superstructure belonging to the plaintiff, accordingly, he is liable to be evicted.

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4. The defendant resisted the plaintiff's suit by filing a written statement contending that he had been regular in the payment of rent and also put forth the case that the notice sent for evicting him is invalid and accordingly sought for the dismissal of the plaintiff's suit.

5. Based on the materials placed on record and the submissions made by the respective parties, the Courts below were pleased to accept the plaintiff's case and accordingly, granted the reliefs in favour of the plaintiff as prayed for. Impugning the same, the present second appeal has been laid.

6. As could be seen from the materials placed on record and the reasonings and conclusions of the Courts below, with reference to the case projected by the respective parties, it is found that the plaintiff is the owner of the suit property and the same has not been disputed by the defendant in the written statement. It is also found that the plaintiff and the defendant had entered into a lease deed dated 01.03.2008 and therefore, the defendant has admitted that he is the tenant under the plaintiff and furthermore, the materials placed on record go to show that the defendant, without the permission of the plaintiff, had put up the construction and also it is seen that the defendant has not paid the rent for several months and on the abovesaid reasonings, the plaintiff had been necessitated to lay the suit against the defendant for evicting him and obtaining the vacant possession and also for the recovery of the arrears of rent.

7. In the light of the abovesaid position, when the materials placed on record go to clearly point out that the plaintiff is entitled to evict the defendant from the suit property for the reasons adduced by it and the defendant has also not disputed the plaintiff's title in any manner in the written statement and also, the reasons projected by the plaintiff for seeking his eviction from the suit property having been established, it is found that only to resist the plaintiff's case, the defendant, for the first time, during the course of the first appeal, is found to have projected a new case that the suit property belongs to the Tamil Nadu Slum Clearance Board and that it had executed a sale deed in his favour and therefore, put forth the contention that the plaintiff is not entitled to maintain the suit and with reference to the same, projected the additional evidence in the first appellate Court. The same has come to be rejected by the first appellate Court, on the basis that the documents projected by the defendant are unfounded and baseless and cannot be



received at a belated stage and accordingly, dismissed the appeal preferred by the defendant.

8. Considering the reasonings and conclusions of the Courts below, it is found that the Courts below have assessed and analysed the materials placed on record in the right perspective and noting that the plaintiff is the owner of the suit property and that it had determined the tenancy of the defendant as per law and the defendant is liable to be evicted on the grounds set out by the plaintiff and the same also having been established by the plaintiff beyond any reasonable doubt, it is seen that the Courts below are wholly justified in accepting the plaintiff's case and rejecting the defence version. In such view of the matter, there is no reason warranting interference in the concurrent judgment and decree of the Courts below upholding the plaintiff's case. Accordingly, no substantial question of law is found to be involved in the second appeal.

9. The counsel for the defendant, during the course of arguments at the stage of admission, placed reliance upon the decisions reported in CDJ 2018 MHC 4965 (P.Balakrishnan Vs. Kailasammal & Others) and CDJ 2009 MHC 1812 (T.Nithyananthan Vs. V.Chandra). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

10. In conclusion, the second appeal fails and is accordingly dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

1. The XVI Additional Judge,
City Civil Court, Chennai.

2. The I Assistant Judge,
City Civil Court, Chennai.



+1cc to Mr.N.A.Nissar Ahmed, Advocate SR.No.56454

+1cc to Mr.T.Velumani, Advocate SR.No.56323

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NRJK (CO)
GMY (19/11/2019)