

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.924 of 2019
and
CMP.No.19606 of 2019

D.Baskaran

..Appellant

Vs.

1.Arcot Lutheran Church Rep.
by Secretary, No.166, Broadway Road,
Chennai - 108.

2.Jayakumar Plastics,
rep. by Proprietor Sundeeep,
No.166, Broadway Road,
Chennai - 108.

..Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree in A.S.No.354 of 2019 dated 26.03.2018 on the file of III Additional City Civil Court, Chennai confirming the order and decree in E.A.No.3537 of 2018 in E.P.No.2057 of 2011 in O.S.No.711 of 2000 dated 20.08.2018 on the file of IX Assistant City Civil Court at Chennai and allow this appeal with costs.

For Appellant : Mr.G.Appavu

J U D G M E N T

The present appeal is at the instance of a third party to the suit in O.S.No.711 of 2000. The said suit in O.S.No.711 of 2000 was filed for ejectment against the tenant.

2. An exparte decree came to be passed in the said suit. Since the defendant in the suit died his legal representative was impleaded and the decree was sought to be executed. It is at that juncture, the present appellant filed an application in I.A.No.1664 of 2010 seeking to implead himself in the said suit claiming that he is the tenant. The said application was dismissed by the trial court holding that the petitioner has not proved the tenancy.

3. Thereafter, the petitioner had filed two applications, one in E.A.No.3572 of 2017 under Section 47 and another in E.A.No.3537 of 2017 under Order XXI Rule 97 of CPC for directing execution of the decree. After letting in evidence in the Section 47 application, the counsel for the appellant made an endorsement stating that he is withdrawing the Section 47 application. The trial court had taken note of it and had discussed the evidence and dismissed both the applications viz., application under Section 47 in E.A.No.3572 of 2017 as well as Order XXI Rule 97 in E.A.No.3537 of 2017.

4. As against the said dismissal of the application under Order XXI Rule 97, the appellant had filed an appeal in A.S.No.354 of 2018. The appeal was also dismissed on the conclusion that the appellant has not proved the tenancy as claimed by him. The lower appellate court also found that the appellant having not challenged the order in impleading application filed by him in the suit, he cannot be allowed to raise the issue in execution proceeding.

5. The courts below has also relied upon the judgment of this court in Gangabai Ammal Vs. Kalyanasundaram reported in 1999 AIHC 3085, wherein, this court has held that prosecution of two proceedings one under Section 47 as a representative in interest of the judgment debtor and another order XXI Rule 58 claiming as a third party would amount to abuse of process of court. I am of the considered opinion that the principles stated therein would squarely apply to the facts of this case. Both the courts below has found that the appellant has not proved the alleged tenancy. Hence, I do not find any ground to interfere with the said factual conclusion of the courts below. I do not find any question of law in order to entertain this appeal.

6. Hence, this appeal is dismissed without being admitted. There will be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

dsa

To

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

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

S.A.No.924 of 2019

CP (CO)
GMY (04/12/2019)



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