



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A(MD)No.607 of 2015
and M.P(MD)No.1 of 2015

S.Amutha

... Appellant/Appellant/Plaintiff

Vs.

1.Lalukapuram Thaneerpanthal Arakkattalai
Through its Aktha
Esakkia Pillai

2.Esakkia Pillai

... Respondents/Respondents/Defendants

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 11.02.2015 passed in A.S.No.62 of 2014 on the file of the Court of the Additional Subordinate Court, Tirunelveli confirming the judgment and decree dated 27.11.2013 passed in O.S.No.618 of 2009 on the file of the 2nd Additional District Munsif Court, Tirunelveli.

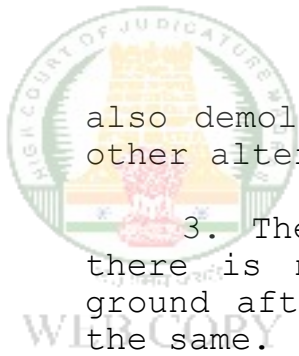
For Appellant : Mr.T.Selvan

For Respondents : No appearance

JUDGMENT

The unsuccessful plaintiff in the courts below is the appellant before this Court. The suit is filed for grant of a permanent injunction restraining the defendants from interfering with the plaintiff's enjoyment of the rice mill constructed on the suit property.

2.It is the case of the plaintiff that the land on which the superstructure is put up belongs to the first defendant/Trust and that her husband has taken the superstructure on lease to run a Rice Mill. After his demise, she had been continuing in possession. Thereafter, due to various reasons, she was not able to continue to run the business and the Rice Mill was kept closed. In fact, the plaintiff wanted to resume the business and she had collected sand, bricks, etc. to spruce up the superstructure. When the plaintiff had once again gone to the suit property, she was informed by the defendants to hand over possession of the suit property, which she refused. On 16.09.2001, when the plaintiff had visited the suit property she found that the defendants 2 and 3 had trespassed into the property by breaking open the lock. In fact, the defendants had



also demolished a portion of the building. Therefore, left with no other alternative, she has come forward with the suit.

3. The defendants had come forward with the defense that now there is no building in existence and it has been razed to the ground after the plaintiff's husband had handed over possession of the same.

4. Both the courts below, taking into account the fact that there was no building in existence on the land, had dismissed the suit for bare injunction filed by the appellant/plaintiff seeking to have her possession of the suit superstructure protected. Challenging the said judgment, the plaintiff is before this Court.

5. Heard the learned counsel for the appellant.

6. The respondent has not been served. However, after hearing the arguments advanced by the appellant, this Court deems it fit to pass orders in the absence of the respondent.

7. The courts below had clearly held that there is no building in existence as pleaded by the defendants. The very suit that has been filed is for protecting the possession of the plaintiff of the superstructure on the suit property. When the very superstructure is not in existence, nothing survives for consideration in the suit. Therefore, no substantial question has been made out in the case.

8. In the result, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

CM

To

1. The Additional Subordinate Court,
Tirunelveli

2. The 2nd Additional District Munsif Court,
Tirunelveli.

+1 CC to Mr.T. SELVAN, Advocate (SR-91086[F] dated 03/10/2019)

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 MK (20.11.2019) 2P 4C

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