

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.85 of 2016

Arulmigu Vridhagirishwarar Devasthanam,
Rep. By its Executive Officer,
Kaspa, Vriddhachalam,
Cuddalore District.

.. Appellant/Plaintiff

Vs.

Baskaran

... Respondent/Defendant

Prayer: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, praying to set aside the judgment and decree dated 11.10.2013 passed in A.S.No.5 of 2013 on the file of the Principal Subordinate Judge, Vriddhachalam confirming the judgment and decree dated 29.10.2012 in O.S.No.451 of 2009 on the file of the Principal District Munsif, Vriddhachalam.

For Appellant : Mr.R.Sunil Kumar

For Respondent : Mr.D.Shiva kumaran

J U D G M E N T

The plaintiff in O.S.No.451 of 2009, whose suit for permanent injunction or in the alternative for recovery of possession was dismissed by the trial Court, upon its affirmation by the appellate Court, has come up with this second appeal.

2. The suit was laid by the plaintiff claiming that the father of the defendant was a tenant under the temple and he died leaving behind the defendant as his legal representative. The rents are being paid in the name of his father Thangavel udaiyar. The original tenancy was in the year 1974. The rent was increased subsequently in the year 2000 to Rs.1010/- and thereafter to Rs.1,335/-. On 23.09.2009, the defendant had requested the temple to permit him to renovate the building as it had suffered heavy damage because of the rains. Though, no

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permission was granted by the temple, the defendant commenced the construction. Hence the suit came to be filed seeking an injunction restraining the defendant from putting up construction in the suit property or in the alternative for possession.

3. The suit was resisted by the defendant contending that he had put up the construction on the basis of oral permission granted. He also relied upon Xerox copies of certain plans issued by an Engineer belonging to the Hindu Religious and Charitable Endowment Department. It was also claimed that a similar suit filed against an another tenant came to be dismissed.

4. The trial Court upon a consideration of the evidence on record concluded that the plaintiff cannot seek an injunction as prayed for and the suit for possession cannot be maintained without termination of the tenancy. On the said findings, the trial Court dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No.5 of 2013.

5. The appellate Court upon a reconsideration of the evidence on record, concurred with the findings of the trial Court and dismissed the appeal. Aggrieved the plaintiff has come up with this second appeal.

6. Notice of motion was ordered on 16.02.2016 and the appeal was directed to be posted for final hearing. Thereafter, the matter was adjourned for considering the proposal given by the defendant.

7. I have heard Mr.R.Sunil Kumar, learned counsel appearing for the appellant and Mr.D.Shivakumaran, learned counsel appearing for the respondent.

8. The Courts below have considered the evidence on record and have come to the conclusion that the tenant namely the defendant has already raised the superstructure and the same has been completed. The trial Court has recorded a finding that there is enough evidence to support the claim of the defendant that the building was put up with the permission of the temple authorities. Even though there is no written permission, the Court has considered the preponderance of the probabilities and arrived at a finding to that effect. The lower appellate Court has also agreed with the said conclusion of the trial Court. As regards for prayer for possession, both the Courts have rightly held that once a relationship of landlord and tenant is admitted, a suit for possession without termination of the tenancy cannot be maintained.

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9. Despite his best efforts, Mr.R.Sunilkumar, learned counsel appearing for the appellant/plaintiff is unable to show that the factual findings are perverse in nature. I cannot interfere with the concurrent findings of the Courts below sitting in an appeal under Section 100 of the Code of Civil Procedure unless they are shown to be perverse.

10. Despite his best efforts, the learned counsel for the appellant is unable to show any substantial question of law that would arise in the appeal. Leaving it open to the appellant, as the owner of the property to exercise whatever rights it has, against the tenant the appeal is dismissed. There will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vum

To

1.The Principal Subordinate Judge,
Vriddhachalam

2.The Principal District Munsif,
Vriddhachalam.

Copy to:
The Section Officer, VR Section,
Madras High Court, Chennai.

+lcc to Mr.D.Shivakumaran, Advocate SR.26041

RP(CO)
CB(29/10/2020)

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