



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 04.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.(MD)No.79 of 2020

and

C.M.P.(MD)No.1105 of 2020

WEB COPY

1.Sri Balaji Agencies,
Represented by its Proprietor,
N.Sri Priya,
Pappamapatty Village, Palani Circle,
Dindigul District.

2.N.Sri Priya ... Appellants / Appellants / Plaintiffs

Vs.

P.Ramasamy ... Respondent / Respondent / Defendant

PRAYER: This Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 10.12.2019 passed in A.S.No.61 of 2018 on the file of the Sub Court, Palani, confirming the judgment and decree dated 12.07.2018 passed in O.S.No.249 of 2012 on the file of the District Munsif Court, Palani.

For Appellants : Mr.T.Lajapathi Roy

JUDGMENT

This Second Appeal is filed against the concurrent finding of the Courts below, dismissing the suit filed for declaration and injunction.

2.The parties are referred to as per their rank before the trial Court.

3.The brief facts leading to file this appeal is as follows:-

It is the case of the plaintiffs that the husband of the second plaintiff entered into an agreement for lease on monthly lease of Rs.500/- on 04.01.2007. Thereafter, the second plaintiff is running a Petrol Bunk in the name of Sri Balaji Agencies. However, the defendant due to ill-will started to give trouble to the plaintiffs. Accordingly, in order to avoid further dispute, the plaintiffs and the defendant entered into other agreement. Thereafter, on 24.07.2007 another agreement was executed between the parties, wherein the lease has been surrendered. However, the above document came into existence only in the money transaction, whereas,



Indian Oil Corporation is not a party to that, hence, prayed for declaration and injunction.

4.The defendant admitting the lease agreement dated 04.01.2007 contended that on 24.07.2007, the lease was surrendered by a written document and denied all the allegations in the plaint. This is also denied that the property was leased out for running Petrol Bunk.

5.The trial Court, after framing five issues and analyzing the documents, has found that the lease was already surrendered and Indian Oil Corporation is not a party; there is no agreement between the Indian Oil Corporation and the plaintiffs; the plaintiffs have not come to the Court with clean hands and dismissed the suit. The First Appellate Court has also dismissed the appeal. Against which, the present Second Appeal is filed.

6.Heard the learned counsel appearing for the appellants and perused the materials available on record.

7.Ex.A1 lease agreement between the husband of the second plaintiff and the defendant makes it very clear that initially on 04.01.2007, there was a lease agreement between the parties in respect of the suit property. The recital does not indicate that the lease is for running Petrol Bunk. Thereafter, on 24.07.2007, under Ex.A.3, lease was surrendered. Thereafter, mortgage deed executed between the parties. Earlier lease was terminated by the subsequent contract between the parties. The suit has been filed to declare the lease as valid one. When the subsequent contract novates the earlier contract and the lessee also surrendered the possession and new contract is entered between the parties in different capacity, the Courts below rightly held that the declaration relief cannot be granted. Further, from the submissions of the learned counsel appearing for the appellants and findings of the Courts below, this Court is of the view that the plaintiffs are not in possession of the property. Such being the position, this Court is of the view that the judgment of the Courts below cannot be found fault with. There is no substantial question of law involved in this Second Appeal.

8.Accordingly, this Second Appeal is dismissed at the admission stage itself. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)



1.The Subordinate Judge,
Palani.

2.The District Munsif,
Palani.

+1 CC to MR.T.LAJAPATHI ROY, Advocate (SR-4858[F] dated
05/02/2020)

S.A. (MD) No. 79 of 2020
04.02.2020

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