



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.04.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.521 of 2011

and

M.P. (MD)No.1 of 2011

and

C.M.P. (MD)No.335 of 2017

P.Shanmugavel ... Appellant/Respondent/Defendant

Vs.

Ramakrishnan ... Respondent/Appellant/Plaintiff

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.23 of 2010 on the file of the Sub Court, Ambasamudhram, Tirunelveli District dated 09.06.2011 reversing the judgment and decree in O.S.No.274 of 2007 on the file of the District Munsif Court, Ambasamudhram, Tirunelveli District, dated 12.10.2009.

For Appellant : Mr.H.Arumugam

For Respondent : Mr.D.Nallathambi

JUDGEMENT

The defendant in O.S.No.274 of 2007 on the file of District Munsif Court, Ambasamudhram, is the appellant in this second appeal. The said suit was filed by the respondent herein for recovery of rental arrears. The suit was originally dismissed but the appeal filed by the plaintiff was allowed and the suit came to be decreed. The appellant had been directed to pay a sum of Rs.500/- as monthly rent. Even according to the plaintiff, only vacant site was let out in favour of the appellant.

2.The second appeal was admitted on the following substantial questions of law:-

"(i) Whether the unregistered document can be construed as a valid piece of evidence? and



(ii) *Whether the plaintiff is without filing Order 1 Rule 8 petition can represent the case on behalf of a group of people attached to a temple"*

3. Even though the learned counsel appearing for the appellant was ready to get along with the matter on merits, I suggested to the learned counsel on either side that since a subsequent suit has been filed in O.S.No.16 of 2018 on the file of the District Munsif Court, Ambasamudhram, for recovery of possession from the appellant, all the issues can be left open even though I may confirm the decree. The suggestion given by the Court was acceptable to both the parties. Therefore, the impugned judgment and decree is confirmed. However, I make it clear that all the outstanding issues raised by the appellant are left open. In other words, confirming the impugned judgment and decree will not cast any shadow on the appellant's defence in the subsequent comprehensive suit filed in O.S.No.16 of 2018 on the file District Munsif Court, Ambasamudhram. I make it clear that the finding regarding title as well as the validity of the suit document will be decided independently in O.S.No.16 of 2018 and the outcome of these proceedings will not govern the fate of the subsequent suit. In other words, the parties will fight out the matter on a clean slate. The second appeal is disposed of on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Ias

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:

1.The Subordinate Judge, Sub Court,
Ambasamudhram,
Tirunelveli District .

2.The District Munsif
District Munsif Court,
Ambasamudhram,
Tirunelveli District .

Copy to
The Record Keeper-2 copies
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.D.NALLATHAMBI, Advocate (SR-18185[F] dated 30/04/2021
)

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