



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.06.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.368 of 2021

and

C.M.P. (MD)No.4848 of 2021

K.Mathavan Nair

... Appellant/Appellant/
Respondent/Plaintiff

versus

Francis

... Respondent/Respondent/
Petitioner/Defendant

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 17.04.2021 passed in A.S.No.36 of 2019 on the file of the Sub Court, Padmanabhapuram, confirming the fair and decreetal order dated 23.07.2019 passed in I.A.No.1 of 2019 in O.S.No.131 of 2018 on the file of the Principal District Munsif Court, Padmanabhapuram.

For Appellant : Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi

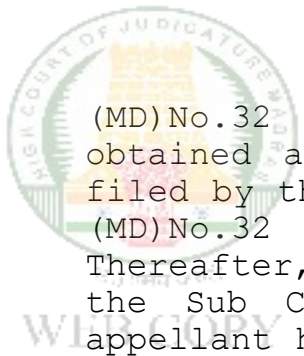
JUDGEMENT

The plaintiff is O.S.No.131 of 2018 on the file of the Principal District Munsif Court, Padmanabhapuram, is the appellant in the Second Appeal

2. The suit was filed for restraining the respondent herein from dispossessing him except by due process of law. In the said suit, the defendant filed I.A.No.1 of 2019 for rejection of plaint. The said interlocutory application was allowed. Challenging the rejection of plaint, the plaintiff filed A.S.No.36 of 2019 on the file of the Sub Court, Padmanabhapuram. The appeal was dismissed. Challenging the same, the second appeal has been filed.

3. The learned counsel appearing for the appellant reiterated all the contentions set out in the Memorandum of Grounds and also took me through the materials enclosed in the typed set of papers.

4. It is seen that the respondent herein had already filed O.S.No.147 of 2011 against the appellant herein for the relief of recovery of possession and he succeeded before this Court in S.A.



(MD)No.32 of 2016. In other words, the respondent had already obtained a decree for possession. A Special Leave Petition was filed by the appellant against the Judgment and Decree made in S.A. (MD)No.32 of 2016 and that was dismissed by the Supreme Court. Thereafter, the respondent had also filed E.P.No.10 of 2019 before the Sub Court, Padmanabhapuram. In these circumstances, the appellant has no cause of action to complain that the plaintiff may take recourse to illegal method for dispossessing him. When the respondent is having a decree for recovery of possession, the respondent has to necessarily work out his remedy before the Executing Court and the question of illegal dispossession of the appellant will not arise at all. The apprehension of the appellant appears to be without any basis. Of course, the learned counsel for the appellant would state that the appellant was earlier illegally dispossessed and he had to file O.S.No.60 of 1998 under Section 6 of the Specific Relief Act. The matter went up to the Supreme Court and those events had probably given rise to such apprehension in the mind of the appellant.

5. In view of the subsequent developments, I am of the view that the appellant need not have any such apprehension.

6. With these observations, the second appeal is dismissed as I do not find any substantial question of law arising for consideration. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

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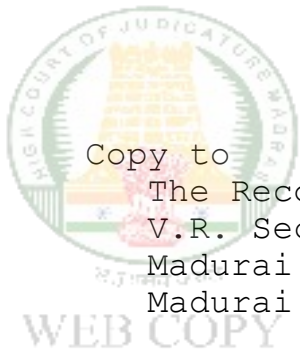
Sub Assistant Registrar(CS)

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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 Sub Court,
Padmanabhapuram.
2. The Principal District Munsif, Padmanabhapuram.



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The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai (2 copies)

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SGS (CO)
TR(18.06.2021) 3P 5C