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S.A.No.177 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2023

CORAM : JUSTICE N.SESHASAYEE

S.A.No.177 of 2023
and CMP.No.5078 of 2023

1.Sundarambal
2.T.M.Selvaraj

.. Appellant / Appellants / Defendants

Vs

Vennila

.. Respondent / Respondent / Plaintiff

Prayer : Second Appeal filed under Section 100 of CPC., praying to set aside the judgment and decree dated 18.12.2022 made in A.S.No.11 of 2022 on the file of the Principal Subordinate Court at Tiruppur, confirming the decree and judgment dated 28.09.2018 made in O.S.No.265 of 2013 on the file of the District Munsif at Tiruppur, and decree the suit as prayed for and pass such or further orders as this Court may deem fit and proper in the circumstances of the case.

For Appellants : Mr.A.Swaminathan

For Respondent : Mr.R.Prabakar
for NSS Advocacy LLP



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JUDGMENT

The defendants in O.S.No.265/2013 have preferred this appeal. The suit in O.S.No.265/2013 on the file of District Munsif Court, Tiruppur is laid by the plaintiff/respondent for recovery of possession of the suit property from the second defendant, upon the latter receiving a sum of Rs.50,000/-. Parties would be referred to by their rank before the trial Court.

2. According to the plaintiff, she purchased the suit property on 29.06.1994 under Ext.A7 from one Thirumoorthy. Contending that the second defendant was a tenant under his vendor Thirumoorthy, and alleging that the second defendant had defaulted in paying the rents, the plaintiff had laid RCOP.No.10/2001 for eviction of the second defendant on the ground of wilful default in the matter of payment of rents and for her personal occupation. This was resisted by the second defendant when he contended that he was not the tenant of Thirumoorthy, but had come into possession based on a '*bogiam*' (can be loosely compared to anomalous possessory mortgage), upon his mother, the first defendant paying a sum of Rs.50,000/- to Thirumoorthy.



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3. During the trial of RCOP.No.10/2001, the first defendant was examined as R.W.2, and she had admitted about '*bogiyam*'. Consequently, RCOP came to be dismissed, and left without an option, the present suit was laid for recovery of possession, upon the second defendant receiving a sum of Rs.50,000/-.

4. The second defendant resisted the suit. The dispute went to trial before the District Munsif, Tirupppur, during which, the second defendant as D.W.1 had admitted that he would vacate the property, if he was paid the '*bogiam*' amount. Taking into account this and other allied factors, the trial Court proceeded to decree the suit. The defendants preferred a first appeal in A.S.No.11/2022 before the Principal Subordinate Court, Tiruppur, and this came to be dismissed. Hence, the present second appeal.

5. Heard the learned counsel for the appellants. The learned counsel argued that the second defendant had made valuable improvements and this has not been reckoned. This Court finds that there is hardly any pleading to that effect. After going through the pleadings and the judgments, this Court



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finds that the decrees passed by the Courts below are in order, and the present second appeal does not involve any substantial questions of law as to warrant an interference in the findings of the Courts below.

6. In conclusion, the second appeal is dismissed and the decree and judgment dated 18.12.2022 made in A.S.No.11 of 2022 on the file of the Principal Subordinate Court at Tiruppur, confirming the decree and judgment dated 28.09.2018 made in O.S.No.265 of 2013 on the file of the District Munsif at Tiruppur, are hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

10.03.2023

Index : Yes / No
Speaking Order / Non-speaking Order
ds



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To:
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- 1.The Principal Sub Judge
Tiruppur.
- 2.The District Munsif
Tiruppur.
- 3.The Section Officer
VR Section, High Court, Madras.



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N.SESHASAYEE.J.,

ds

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