



S.A.No.193 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 193 of 2018
and
C.M.P.No.5028 of 2018

K.Dhanalakshmi

...Appellant

Vs.

1.Arulmighu Angala Parameshwari Thirukoil
Represented by its Executive Officer
A/M Angala Parameshwari Thirukoil
NO.194, Adham Shaibu Street
Royapuram
Chennai-13.

2.Mr.K.Kanniappan

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the decree and judgment dated 27.06.2017 in A.S.No.215 of 2016 on the file of Appellate Authority the XIX Additional City Civil Court, Madras confirming the decree and judgment in O.S.No.3970 of 2012 dated 26.04.2016 on the file XV Assistant City Civil Court, Madras.



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For Appellant : M/s.G.Ramadurai
For Respondent 1 : Mr.S.D.Ramalingam
For respondents 2 : No appearance

JUDGEMENT

The unsuccessful plaintiff in the suit for injunction is the appellant. She filed a suit seeking injunction restraining respondents/defendants from interfering with her peaceful possession and enjoyment of the suit property except by due process of law. The suit was dismissed by the Trial Court and the findings of the Trial Court were affirmed by the First Appellate Court. Hence, she is before this Court.

2. According to the appellant/plaintiff, she has been running a flower shop in the suit property belonging to the 1st respondent temple for the past 30 years. It was further claimed by her that 1st respondent recognized the appellant/plaintiff as a tenant/licence holder of the suit property. The 1st respondent, at the instigation of 2nd respondent, attempted to evict the appellant and hence, she was constrained to file a suit for bare injunction.



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3.The 1st respondent filed a written statement and denied the averments of the appellant as if she was a lessee/licensee of the 1st respondent temple. It was specifically averred by the 1st respondent that appellant herein was only a trespasser in the property of the temple and hence, she could not maintain a suit for bare injunction against the original owner.

4. Before the Trial Court, the appellant was examined as P.W.1. During the course of her evidence, she clearly admitted that suit property in which she claimed to have put up flower shop belonged to the 1st respondent. She also admitted that the flower business was carried on by her in a temporary table like structure and the same was removed by the 1st respondent temple. She had gone to the extent of saying that she also sought for return of table like structure. Based on the said admission of the appellant, the Trial Court came to the conclusion that without any permission or licence from 1st respondent temple, the appellant carried on business by putting up a temporary table and the same was removed by the 1st respondent temple. In these circumstances, when appellant failed to prove her settled possession, the Trial Court declined to grant interim injunction on a specific finding that appellant failed to prove her settled



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possession over the suit property. Aggrieved by the same, she filed an appeal in A.S.No.215 of 2016 on the file of learned XIX Additional Judge, City Civil Court, Chennai. The First Appellate Court also confirmed the findings of the Trial Court that appellant failed to prove her settled possession over the suit property and therefore, not entitled to decree for injunction and dismissed the suit. Challenging the same, the appellant has come by way of second appeal.

5. The learned counsel for the appellant submitted that appellant has been doing flower business in the property of 1st respondent temple by putting up a temporary structure for the past 30 years. Therefore, her settled possession may be protected by granting a limited injunction restraining the respondents from interfering with her possession except by due process of law.

6. Both the Courts below, based on the admission made by the appellant, came to the conclusion that she failed to prove her settled possession over suit property. It was also admitted by the appellant that she used only a table like temporary structure and carried on flower business and the same was removed by the 1st respondent temple. It was also admitted by her that she sought for return of table and restitution of her possession. In these circumstances, the



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Courts below correctly came to the conclusion that appellant failed to prove her settled possession over the suit property. The said factual conclusion is based on the admission of the appellant and hence the same requires no interference by this Court.

7. In such circumstances, I do not find any substantial question of law arising for consideration in this second appeal calling for interference while exercising jurisdiction under Section 100 of CPC.

8. However, it is made clear that if the shops of the 1st respondent temple are brought to open auction for grant of lease/licence, the appellant is entitled to participate in open auction and submit her bid.

9. With these clarification, the second appeal stands dismissed.

a) by affirming the decree and judgment dated 27.06.2017 passed in A.S.No.215 of 2016 on the file of XIX Additional Judge, City Civil Court, Madras confirming the decree and judgment passed in O.S.No.3970 of 2012 dated 26.04.2016 on the file XV Assistant Judge, City Civil Court, Madras.



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b) In the above facts and circumstances of the case, there will be no order as to costs.

c) Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

- 1.The learned XIX Additional Judge, City Civil Court, Chennai
- 2.The learned XV Assistant Judge, City Civil Court, Chennai.



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S.SOUNTHAR, J.

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