



A.S.No.676 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

A.S.No.676 of 2023

K.Thirumurugan Appellant

Vs

Shakeela Respondent

PRAYER: Appeal Suit filed under Section 96 of CPC to set aside the Judgment and Decree dated 10.02.2023 made in I.A.No.6 of 2021 in O.S.No. 4 of 2019 on the file of the II Additional District Judge, Vellore at Ranipet.

For Appellant : M/s.Vandana Parasuram

For Respondent : No appearance

JUDGMENT

This Appeal Suit has been filed as against the Judgment and Decree dated 10.02.2023 made in I.A.No.6 of 2021 in O.S.No. 4 of 2019 on the file of the II Additional District Judge, Vellore at Ranipet, thereby rejected the plaint.



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2. The appellant is the plaintiff and the respondent is the defendant. The appellant filed a suit seeking compensation for the illegal eviction from the premises, in which the appellant was a tenant. The appellant was a tenant of the premises owned by one Haseen Ali Akbar, who is Muthavalli of Late Arcot Mohammed Khader Wakf Estate, in favour of one Malar, who in turn subleased the premises to the appellant herein. The said Muthavalli had filed a writ petition before this Court in W.P.No.5484 of 2016 for demolishing the unauthorised construction in the said property. This Court had directed the District Collector to conduct an enquiry. The Enquiry Officer, by a proceedings dated 24.04.2018, concluded that there was no unauthorised construction in the premises. The appellant also filed a suit in O.S.No.29 of 2016 on the file of the District Munsif-cum-Judicial Magistrate, Arcot, seeking injunction and the same was decreed in his favour. In the meanwhile, the municipal authorities had taken the articles and the appellant filed a writ petition before this W.P.No.17407 of 2018 not to demolish the building without due process of law. This Court directed the respondents to store the articles seized by the authorities in the suit property itself.



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3. Therefore, the appellant filed a suit in O.S.No.4 of 2019 claiming damages of Rs.7,000/- per day from the date on which the respondent seized the articles from the shop to the date of institution of the plaint with interest. The suit was filed against the respondent in her personal capacity instead of a suit against the Commissioner of Municipal Administration. Therefore, the respondent filed a petition for rejection of plaint in I.A.No.6 of 2021 in O.S.No.4 of 2019 on the ground that the suit filed as against the respondent in her personal capacity itself is not maintainable. Admittedly, the respondent had been involved in the matter her official capacity i.e., the capacity of Commissioner of Arcot Municipality. Therefore, the Trial Court allowed the application on the ground that the suit itself is not maintainable on her personal capacity.

4. The learned counsel for the appellant would submit that the appellant may be given one more opportunity to proceed with the said suit on merits and in accordance with law.



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5. Considering the above facts and circumstances of the case, this Court is of the view that the matter may be remanded back to the Trial Court for fresh consideration. The appellant is at liberty to file a petition for necessary amendment in the plaint and proceed with the suit. Notice had been issued to the respondent and the same was returned as “she was shifted from the said place”. However, the suit is not maintainable as against the respondent in her personal capacity.

6. In the result, this Appeal Suit stands allowed. No costs.

20.12.2023

Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order
Lpp

To

1. The II Additional District Judge,
Vellore at Ranipet,

2. The Section Officer,
V.R.Section,
High Court, Madras.

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G.K.ILANTHIRAIYAN, J.

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