



S.A.No.56 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.02.2023

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.56 of 2023
and
CMP.No.1754 of 2023

Sugirtham Rajagopal

...Appellant

Vs.

1.G.Palani
2.S.Selvakumar

...Respondents

Prayer :-

This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the judgment and decree passed in AS.No.257 of 2016 on the file of the IV Additional City Civil Court, Chennai dated 21.09.2021 by confirming the judgment of the trial court in OS.No.14192 of 2010 on the file of the V Assistant City Civil Court, Chennai dated 06.04.2016 and to allow the second appeal.

For Appellant : Mr.R.Ravichandran



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JUDGMENT

This second appeal is directed as against the judgment and decree passed in AS.No.257 of 2016 on the file of the IV Additional City Civil Court, Chennai dated 21.09.2021 by confirming the judgment of the trial court in OS.No.14192 of 2010 on the file of the V Assistant City Civil Court, Chennai dated 06.04.2016, thereby dismissed the suit.

2. The appellant is the plaintiff and the respondents are the defendants. The appellant filed suit for declaration and permanent injunction in respect of the suit property. The case of the appellant is that the suit property originally belonged to the second respondent herein and the same was let out in favour of Kather Mohaideen who had put up superstructure and he was running a firewood shop and the appellant had purchased the superstructure along with leasehold right of the land. Thereafter, she obtained electricity service connection and no objection was issued by the second respondent to Chennai Corporation. Thereafter, the appellant was paying rent to the second respondent. While being so, the second respondent had sold the suit property with superstructure in favour of the first respondent. The first respondent attempted to evict the petitioner by force. Therefore, the appellant filed suit for bare injunction in



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OS.No.5065 of 1994 and the same was decreed in her favour. Aggrieved by the same, the first respondent filed appeal suit in AS.No.113 of 2001 and the same was allowed in his favour and dismissed the suit filed by the appellant herein. Aggrieved over the same, the appellant filed second appeal before this Court in SA.No.1943 of 2002 and it is pending.

2.1 Further averred that the first respondent filed eviction petition in RCOP.No.2107 of 2000 before the Rent Controller as against the appellant and the same was dismissed by order dated 04.07.2004 holding that the first respondent had not exercised his right as landlord. Aggrieved by the same, the first respondent preferred appeal before the Rent Control Appellate Authority in RCA.No.582 of 2005 on the file of the VIII Small Causes Court, Chennai and the same was allowed and ordered for eviction by order dated 13.10.2009. The appellant and the first respondent simultaneously applied for certified copy of the order. However the petitioner was not served with any certified copy of the fair and decretal order passed by the learned Rent Control Appellate Authority. Whereas the first respondent was served with certified copies. On the strength of the said order, the first respondent filed execution petition and delivery of possession was ordered and the appellant was forcibly evicted from the premises and



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vacant possession of the petition premises was handed over to the first respondent. Therefore, the appellant filed the present suit for declaration declaring that the order passed by the learned Rent Controller and the learned Rent Control Appellate Authority are void and non est in the eye of law, mandatory injunction directing the respondents to restore the possession of the suit schedule property and also for declaration declaring that the appellant is the tenant of the petition premises and he is entitled to the benefits under the City Tenants Protection Act and consequent permanent injunction.

3. Resisting the same, the first respondent filed written statement and stated that the appellant is not entitled to get relief under Section 9 of the City Tenants Protection Act and the rent control proceedings will alone apply. The rent control proceedings was duly contested by the appellant and eviction order was passed by the learned Rent Control Appellate Authority. The appellant failed to apply for certified copy of the fair and decretal order passed by the learned Rent Control Appellate Authority. The appellant also failed to prefer any civil revision petition as against the order of eviction passed by the learned Rent Control Appellate Authority. In fact, the first respondent obtained certified copy and filed execution petition in order to



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execute the same. Accordingly, the appellant was evicted and vacant possession had been handed over in favour of the first respondent. Though the appellant filed second appeal as against the dismissal of bare injunction suit, now it has become infructuous since already vacant possession was handed over in favour of the first respondent.

4. On the basis of the pleadings, the trial court framed the following issues:

(a) Whether the plaintiff is entitled for declaration (a) as prayed for?

(b) Whether the plaintiff is entitled for mandatory injunction?

(c) Whether the plaintiff is entitled for declaration (c) as prayed for?

(d) Whether the plaintiff is entitled for declaration (c) as prayed for?

(e) To what reilef?

5. In support of the appellant, she had examined PW1 and marked Ex.A1 to Ex.A35. On the side of the respondent, D.W.1 was



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examined and Ex.B1 to Ex.B9 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit. Aggrieved over the judgment and decree of the trial Court, the appellant preferred an appeal suit in AS.No.257 of 2016 before the IV Additional City Civil Court, Chennai. The first appellate Court on appreciating the materials placed on records, dismissed the appeal by confirming the judgment and decree passed by the trial Court. Challenging the same, the plaintiff has come forward with the present second appeal.

6. The learned counsel for the appellant would submit that though the appellant applied for certified copy of fair and decretal order passed by the learned Rent control Appellate Authority in RCA.No.582 of 2005, she was not served with certified copies. Therefore, the appeal remedy was curtailed to the appellant herein in order to avoid the eviction proceedings, since she has got very good case to succeed in the civil revision petition. Further, no notice was served on the appellant in the execution proceedings and *exparte* order of eviction was passed and the appellant was forcibly evicted from the petition premises. Admittedly, the appellant is a lease-holder in respect of the land. As such, the rent control proceedings is



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not at all maintainable. The first respondent ought to have filed suit for ejectment.

7. Heard, Mr.R.Ravichandran, learned counsel appearing for the appellant.

8. The learned counsel for the appellant has raised the following substantial questions of law:

(a) When the Small Causes Court Registry not made ready copy of RCA.No.582 of 2005 but made order copy ready to the respondent only the exparte execution proceeding of delivery Small Causes Court whether legal or illegal.

(b) When the appellant having right to prefer civil revision petition against the order of RCA.No.582 of 2005 but the first respondent fraudly received the order copy and filed the EP and order of Small Causes Court is legally sustainable in law or not and exparte delivery is legal or not.

(c) By wide the order copy of RCA should made ready



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on simultaneously to the respondent and appellant if copy application is correctly applied. But the office of Small Causes Court wrongly made ready only to respondent and not made ready order copy to the appellant is valid in law or not.

(d) When the both RCOP court and appellate court failed to consider the illegal eviction of the appellant is liable to be set aside or not.

(e) When there is no tenancy relationship between appellant and respondent the proceeding under the Rent Control is maintainable or not.

(f) When the appellant pleaded before the forum RCOP court as well as RCA court about RCOP not maintainable only ejectment suit is maintainable but not framed the issues and decreed in favour of respondents legally sustainable or not.

(g) When the natural justice is violated by not furnishing copy of RCA 582 of 2005 to appellants and subsequently delivery order in EP is liable to be set aside of not.

9. Admittedly, the appellant was already evicted from the premises and handed over the vacant possession of the suit property in favour of the first respondent herein. Admittedly, the first respondent



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purchased the suit property and now he is in possession and enjoyment of the same. Even according to the appellant, she was inducted as tenant by the second respondent and while pending tenancy, the suit property was purchased by the first respondent. Thereafter, the first respondent filed petition for eviction and the same was duly contested by the appellant. Though the learned Rent Controller dismissed the eviction petition, the learned Rent Control Appellate Authority allowed the petition for eviction in view of the decree passed in the appeal suit in AS.No.113 of 2001 on the file of the V Fast Track Court, Chennai. In fact, the appellant filed suit for bare injunction when the first respondent requested to vacate the petition premises. Though it was decreed by the trial court and the same was reversed by the first appellate court in AS.No.113 of 2001 dated 25.10.2000. Therefore, the first respondent filed petition for eviction and the same was ordered in favour of the first respondent. The appellant failed to file any revision as against the order of eviction and the first respondent filed execution petition, in which eviction was ordered. Accordingly, the appellant was evicted from the suit property and vacant possession of the suit property was already handed over to the first respondent herein. As such, both the courts below rightly dismissed the suit filed by the appellant and this Court does not find any valid reason to interfere with the findings



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rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the suit filed by the appellant.

10. Accordingly, this Court is of the considered opinion that no substantial questions of law involved in this appeal. As such, this Second Appeal is dismissed and the judgment and decree passed in AS.No.257 of 2016 on the file of the IV Additional City Civil Court, Chennai dated 21.09.2021 confirming the judgment in OS.No.14192 of 2010 on the file of the V Assistant City Civil Court, Chennai dated 06.04.2016 are confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

07.02.2023

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

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To

1. The IV Additional City Civil Court,
Chennai
2. The V Assistant City Civil Court,
Chennai
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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