



S.A. No.1260 of 2009

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No.1260 of 2009

and

M.P.No. 1 of 2009

M.Chandrasekaran

... Appellant

Vs.

G.Lyzamma

.. Respondent

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 19.08.2009 passed in A.S.No.5 of 2009 on the file of District Court, Udhagamandalam confirming judgment and decree dated 10.12.2006 passed in O.S.No.66 of 2007 on the file of Subordinate Court, Udhagamandalam.

For Appellant : Mr. T.K.Bhaskar

For Respondent : No appearance



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JUDGMENT

The appellant, who is the defendant in the suit in O.S.No. 66 of 2007, challenging the concurrent findings of the courts below, had preferred this Second Appeal.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the plaintiff filed a suit in O.S.No.66 of 2007 for recovery of possession as well as damages. By filing written statement, the defendant contested the suit. On hearing both sides, the trial court held that the suit property belong to plaintiff, in which occupation of suit premises by the defendant is illegal one. Already the notice was issued to vacate the premises by the plaintiff, even then he has not handed over the premises. Therefore, the plaintiff is entitled for both relief of recovery of possession as well as damages and arrears of rent and accordingly, the suit was decreed in her favour. Aggrieved over the same, the defendant preferred an appeal in



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A.S.No.5 of 2009 before the District Judge (Appellate Authority), Nilgiris at Udthagamandalam. The learned first appellate judge analysed the facts and evidence on record and finally concludes that the alleged compromise made by the plaintiff is false one as well as the occupation of suit premises by the defendant is illegal one and as a owner, the plaintiff is entitled for the relief, thereby confirmed the findings of the trial judge. Challenging the concurrent findings of courts below, the defendant preferred this Second Appeal.

4. The learned counsel for defendant argues that both the courts below failed to see that the possession of plaintiff's property by the defendant is directly linked to the possession by the plaintiff of the defendant's property, which is subjudice in another proceedings. Thus, the present suit as such is not maintainable. But the courts below erroneously granted the relief in favour of plaintiff without considering the case in proper perspective. He would further submit that there was a via media arrangement between the defendant and plaintiff. Accordingly, the defendant was permitted to occupy the suit premises until disposal of S.A. No.1104 of 2004. But, suppressing those facts, the plaintiff approached the court, though those facts were



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proved by the defendant, but it was not properly appreciated by the courts below. Therefore, he prayed to set aside the findings of the courts below. He would further submit that based on the terms of compromise, there is no necessity to pay the rent. But the courts below failed to appreciate the same and erroneously granted the relief of damages as well as arrears of rent, as such is liable to be set aside.

5. On considering the facts and circumstances, this Second Appeal is admitted on the following substantial question of law :-

- “1) When the defendant was let into possession of the property based on the equitable arrangement arrived at between the parties, can be the plaintiff resile from the equitable arrangement and sue for recovery of possession?
- 2) Whether the courts below are right in law in awarding damages in the absence of any proof?



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6. The brief facts of case is that the suit property is belong to plaintiff with two portions and one portion under the occupation of defendant was vacated in the year of 2007. The plaintiff along with her husband went to their native place leaving their son, who is residing in that house and at that time, the defendant approached her son, he permitted him to stay for a week, but subsequently he failed to vacate the premises. Therefore, the plaintiff issued a notice to the defendant to vacate the premises as well as claiming damages. But, inspite of notice, he has not handed over possession nor given any reply.

7. The objection on the side of defendant is that already he filed a suit against co-parceners including plaintiff's husband in O.S.No.8 of 1997 and after the decree, there was an appeal. Till the disposal of appeal, there was a rent due from the husband of plaintiff. Hence, an arrangement was made. Accordingly, the defendant was permitted to occupy the suit premises till the disposal of Second Appeal in S.A.No. 1104 of 2004. So, as per the terms of compromise, there is no necessity to pay the rent nor he is entitled to vacate the premises.



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8. By way of reply, the learned counsel for plaintiff would submit that the defendant approached the plaintiff's son and occupied the suit premises without her consent, who is a true owner. Hence, she demanded to vacate the premises, but he failed to vacate inspite of notice and as on date from the year of 2007, there is no payment of rent nor he vacated the premises inspite of the decree passed against him. Therefore, he prayed for eviction.

9. The contention of defendant is that he was permitted to occupy the suit premises by the plaintiff's husband, against whom, there is another litigation pending in respect of arrears of rent. During the evidence of D.W.1, the witness admitted that the alleged compromise was ended in vain. Therefore, there was no compromise between plaintiff's husband and the defendant. So, the courts below rightly observed that the alleged compromise pleaded by the defendant is not proved. By his own admission, he deposed that the said compromise was not concluded. Therefore, the occupation of the suit property by the defendant is illegal one, which needs interference. As per the evidence of plaintiff, she is a true owner and as a true owner, she is entitled for the relief, so, the suit was decreed in favour of



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plaintiff and there is no substantial question of law involved in this Second Appeal. Accordingly, this Second Appeal is dismissed as devoid of merit. No costs. Consequently, connected Miscellaneous Petition is closed. Time to hand over possession 2 months.

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

The District Judge, Appellate Authority,
Nilgiris at Udhagamandalam.



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T.V.THAMILSELVI, J.

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Pre-delivery judgment in
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