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S.A.No.468 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
ORDER RESERVED ON : 18.07.2024**

ORDER PRONOUNCED ON : 12.08.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

**S.A.No.468 of 2024
and CMP.No.14401 of 2024**

Hajee Mohammed

... Appellant

Vs.

Jailani

... Respondent

PRAYER:-- This Second Appeal is filed under Section 100 of the Civil Procedure Code, to allow this Second Appeal and set aside the Judgment and Decree passed in A.S.No.182 of 2023 dated 19.02.2024 on the file of the XVIII Additional City Civil Court at Chennai by confirming the Judgment and Decree passed in O.S.No.4325 of 2017 dated 03.07.2023 on the file of the XI Assistant City Civil Court at Chennai.

For Appellant : Mr.K.Balaji Aasirvadam

For Respondent : Mr.T.Gnanabanu

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J U D G M E N T



S.A.No.468 of 2024

This Second Appeal is filed to allow this Second Appeal and set aside the Judgment and Decree passed in A.S.No.182 of 2023 dated 19.02.2024 on the file of the XVIII Additional City Civil Court at Chennai by confirming the Judgment and Decree passed in O.S.No.4325 of 2017 dated 03.07.2023 on the file of the XI Assistant City Civil Court at Chennai.

2.The unsuccessful plaintiff in the suit is the appellant in the second appeal. The appeal is filed against the confirming Judgment of the lower appellate Court.

3.The parties will be referred to as per their rank in the trial Court.

4.FACTS:

The plaintiff states that he was running a construction business and for that purpose entered into an oral lease agreement with the defendant in November, 2007. The lease was initially for a period of 1 year and the rent agreed was Rs.18,000/- per month. In 2009 the compound wall of the demised property got damaged and the plaintiff spent huge amount to renovate the same. Though the defendant agreed to treat the said expense towards advance and promised to return the same at the time of



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vacating, the defendant contrary to the said assurance was trying to evict the plaintiff by unlawful means. Hence the plaintiff filed the suit for permanent injunction restraining the defendant from dispossessing him except by due process of law.

5.The defendant denied the landlord tenant relationship between the plaintiff and himself. The defendant stated that the plaintiff forged documents to grab the property which he purchased from one Abdul Rahaman vide Sale Deed dated 27.12.2006. The defendant submitted that the plaintiff did not file any documents to show that he was in possession of the property as a tenant. According to the defendant, the cheque issued by the plaintiff for paying the taxes were returned and notice was sent to the defendant by the authorities for payment.

6.The defendant denied the oral ageement and further stated that as the owner of the property he applied for planning permission and the same was granted after inspection of the land. The said fact according to the defendant established his possession of the property. The defendant therefore prayed for the dismissal of the suit.

7.Before the trial Court the plaintiff examined himself and filed Ex.A1 to Ex.A5



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and the defendant examined himself and filed Ex.B1 to Ex.B10.

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8.The trial Court after framing necessary issues dismissed the suit holding that the plaintiff having failed to establish lawful possession was not entitled for the relief of permanent injunction against the true owner. The lower appellate Court confirmed the findings of the trial Court on its finding that the plaintiff failed to prove that he was running Haji Traders in the suit property and that he was in enjoyment of the suit property since 2007. The lower appellate Court found that the allegation of the plaintiff on threat of dispossession was also not proved. Hence the lower appellate Court dismissed the appeal. Aggrieved by the Judgment and Decree of the lower appellate Court, the plaintiff has filed the second appeal.

9.In the appeal the respondent appeared as Caveator. At the time of the admission of the second appeal, the learned counsel for the appellant submitted that the Courts below miserably failed to appreciate the evidence on record and that has resulted in miscarriage of justice.

10.I have heard the learned counsel for the appellant and I have perused the



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11.The appellant claims to be a tenant under the respondent in pursuance of an oral lease agreement entered into in November, 2007. According to the appellant the rent agreed was Rs.18,000/- per month. As the respondent tried to dispossess the appellant by unlawful means he filed the above suit for the aforesaid relief. The respondent on the other hand denied the land lord tenant relationship and stated that the appellant was trying to grab his property by fabricating documents.

12.The appellant having approached the Court for relief of permanent injunction restraining the defendant from dispossessing him except by due process of law, the burden is on the appellant to prove his case. To establish the jural relationship with the respondent the appellant relied on Ex.A1 to Ex.A5. The said documents are water and sewerage card tax receipt (dated 28.03.2017), Registration certificate, tax receipt (both are post suit documents) and Trade license. It is impossible to rely on the said documents to find that there is a jural relationship of landlord and tenant between the appellant and the respondent. As rightly found by the Courts below in the absence of rent receipts, and other relevant documents the contention of the appellant that he was a tenant of the respondent cannot be countenanced. Moreover, the Courts below have



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found that the appellant had suppressed real facts with a view to grab the defendant's property. I find absolutely no infirmity with the findings of facts of the Courts below.

The respondent has purchased the property under Ex.B1 and also applied for planning permission for putting up construction under Exs.B3 and B4. The appellant has not proved that his possession is lawful or that he was in settled possession. The lower appellate Court found that the allegation of the appellant that he was threatened by unidentified persons, set up by the respondent, to vacate the suit property was a mere allegation and no proof was filed in support of the same. It is also pertinent to note that the appellant failed to prove that he spent Rs.1,25,000/- towards renovation of compound wall. It is trite that the relief of injunction is a discretionary and equitable relief and so the persons seeking the discretionary relief should approach the Court with clean hands. Moreover, the Courts below found that the appellant had suppressed many facts and therefore non-suited the appellant on that score also.

13.From a perusal of the Judgments of the Courts below, I find absolutely no ground to interfere with the well considered judgments and hence the second appeal is devoid of merits. I am of the view that absolutely no substantial question of law raises for consideration in the second appeal and hence the same is dismissed in admission stage. However, there shall be no order as to costs. Consequently, the connected



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miscellaneous petition is closed.

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NCC : Yes /No

Index : Yes / No

Speaking Order / Non-speaking order
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To

- 1.The XVIII Additional City Civil Court at Chennai.
- 2.The XI Assistant City Civil Court at Chennai.
- 3.The Section Officer,
Vernacular Records,
High Court,
Madras.

N.MALA, J.



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PRE-DELIVERY JUDGMENT IN

S.A.No.468 of 2024

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