



WEB COPY



S.A.No.806 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.11.2024

CORAM:

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

S.A.No.806 of 2024
and
CMP.No.25752 of 2024

Vijaya

.. Appellant

Vs.

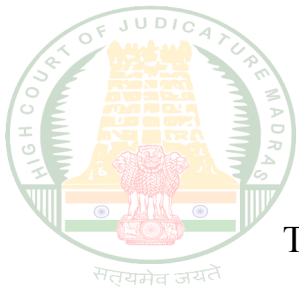
Vinod Kumar

.. Respondent

PRAYER : Second Appeal is filed under Section 100 of the Code of Civil Procedure, prayed to set aside the Judgment and Decree dated 19.06.2017 made in A.S.No.158 of 2016 on the file of the III Additional City Civil Court, Chennai, confirming the Order and decree made in I.A.No.8190 of 2013 in O.S.No.6518 of 2012, dated 04.03.2016 on the file of III Assistant City Civil Court, Chennai.

For Appellant : Mr.R.Balasubramanian

J U D G M E N T



S.A.No.806 of 2024

WEB COPY

The appellant has filed this Second Appeal against the Judgment and Decree dated 19.06.2017, made in A.S. No. 158 of 2016, on the file of the III Additional City Civil Court, Chennai, confirming the Order and Decree made in I.A. No. 8190 of 2013 in O.S. No. 6518 of 2012, dated 04.03.2016, on the file of the III Assistant City Civil Court, Chennai.

2. Heard, Mr.R.Balasubramanian, learned counsel for the appellant, and perused the materials available on record.

3. For ease of reference, the parties herein are referred to as they were designated in the suit.

4. Challenging the concurrent findings of the courts below, the plaintiff preferred this appeal. Before the trial court, she filed a suit, O.S. No. 6518 of 2012, praying for relief of permanent injunction. She stated that for more than a decade, her husband's forefathers had been in possession and enjoyment of the property. However, the defendant, along with his henchmen, suddenly interfered, prompting the plaintiff to file the suit for permanent injunction.

5. Upon receiving the notice, the defendant filed an application to



S.A.No.806 of 2024

reject the plaint in I.A. No. 8190 of 2013, asserting that he is the owner of the suit property and that the plaintiff's husband, Jayabal, was a tenant. After purchasing the property, he informed the plaintiff's husband, who then paid a monthly rent of Rs. 600 from 2007 onwards. Subsequently, the property was sublet to third parties. Therefore, the defendant initiated RCOP No. 1865 of 2008, Chennai, for eviction, which was ordered on 27.10.2009.

6. Thereafter, the plaintiff's husband, Jayabal, filed RCA No. 26 of 2010, which was disposed of on 13.02.2012. To execute the decree, the defendant filed E.P. No. 417 of 2012, and delivery was ordered on 06.10.2012. On 11.10.2012, the defendant, along with the amin, went to the suit property, and a part of the property was delivered. However, the plaintiff obstructed the delivery of the remaining portion, preventing the execution of the warrant. Subsequently, the plaintiff's husband filed an M.P.No.220 of 2012 in EP.No.417 of 2012 petition to suspend the warrant. Later, the executing court passed an order on 11.03.2013, directing the delivery of the remaining portion.

7. Accordingly, on 14-3-2013, when the defendant went to suit



S.A.No.806 of 2024

premises, the plaintiff, along with henchmen, prevented him from delivering the property. The police were also unable to provide assistance. Thereafter, he submitted a report to the execution court. At that time, he was informed that the plaintiff had obtained an ex parte injunction by suppressing all the relevant facts.

8. The defendant further contended that the plaintiff had deliberately suppressed the entire RCOP proceedings and obtained the order fraudulently. Therefore, the plaint was ordered to be rejected on the grounds of abuse of process of law. In response, the plaintiff filed a counter-objection, claiming that the house property was constructed by her husband's forefathers and that they were conducting business there. She also alleged that the RCOP order was fraudulently obtained by the defendant.

9. Upon considering the entire facts, the trial court concluded that the plaintiff had failed to disclose the RCOP proceedings initiated by the defendant against her husband, including the eviction order, RCA proceedings, execution application, and delivery order. This amounted to suppression of material facts and abuse of the process of law. Consequently,



S.A.No.806 of 2024

the plaint was rejected. Challenging this order, the plaintiff filed an appeal in

WEB C A.S.No. 158 of 2016. The learned first appellate judge confirmed the trial court's findings, holding that the plaintiff had not approached the court with clean hands and had suppressed the RCA proceedings. Accordingly, the appeal was dismissed.

10. In the present appeal, the learned counsel for the appellant argued that the RCA proceedings initiated against the plaintiff's husband were entirely different. She was in possession of the suit property, whereas the defendant, who had no rightful ownership, had interfered. Hence, she approached the court. However, the courts below failed to consider that the defendant was not the real owner of the property. The learned counsel also submitted that a land-grabbing case had been filed against the defendant, reinforcing that he had no legal claim over the property. In support of his contention, he relied on the legal authority 1998-1-LW.203, *Swadharma Swarajya Sangha rep. by its Director Mrs.Lalitha Rathnam, Madras-1 Vs. Indian Commerce & Industries Company Private Ltd., having its Registered Office at No.29, Broadway, Madras-1*"

11. Upon a perusal of the plaint, it is evident that the appellant/plaintiff



S.A.No.806 of 2024

WEB COPY

sought relief of permanent injunction by asserting possession and enjoyment of the suit property at Door No. 512, Mint Street, Chennai. However, after the issuance of notice in the suit, the defendant appeared and filed an application to reject the plaint, stating that the plaintiff's husband was his tenant and had faced RCOP proceedings. The eviction was ordered in RCOP No. 1865 of 2008, and RCA No. 637 of 2012 was subsequently dismissed. Thereafter, E.P. No. 417 of 2012 was filed, and delivery was ordered, with a portion of the property being delivered through the amin.

12. The present suit was filed solely to obstruct the execution proceedings. It is a settled proposition that while rejecting a plaint, courts must consider the averments in the plaint alone. The courts below rightly analyzed the plaint and found that the plaintiff had entirely suppressed the fact that her husband had faced RCOP proceedings. There were no counter-allegations regarding this suppression. By approaching the court while concealing material facts, the plaintiff clearly abused the legal process. Therefore, the courts below rightly concluded that the authority cited by the appellant was not applicable to the facts of the case.

13. Accordingly, this second appeal is dismissed as devoid of merits.



S.A.No.806 of 2024

Consequently, the connected miscellaneous petition is closed. There shall be

no order as to costs.

20.11.2024

Index : Yes/No

Speaking Order: Yes/No

Nutral citation: Yes/No

rri

To

- 1.The III Additional Judge, City Civil Court, Chennai.
- 2.The III Assistant Judge, City Civil Court, Chennai.
- 3.The Section Officer, VR Section,
High Court of Madras.

T.V.THAMILSELVI, J.



WEB COPY



S.A.No.806 of 2024

rri

S.A.No.806 of 2024
and
CMP.No.25752 of 2024

20.11.2024