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S.A.No.472 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2025

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

S.A.No.472 of 2025

and C.M.P.No.15458 of 2025

Shabiulla

...Appellant / Plaintiff

Vs.

1. The Commissioner,
Gobichettipalayam Municipality,
O/o. Gobichettipalayam Municipality,
Sakthi Road, Gobichettipalayam.

2. S.Natarajan

3. Poovizhi

4. Kothai Sree

...Respondents / Defendants

PRAYER:- This Second Appeal is filed under Section 100 of Code of Civil Procedure, 1908, to set aside the judgment and decree dated 29.07.2019 made in A.S.No.10 of 2015 on the file of the Subordinate Judge, Gobichettipalayam in reversing the well considered judgement and decree, dated 02.03.2015 made in O.S.No.188 of 2008 on the file of the District Munsif Court, Gobichettipalayam.



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For Appellant : Mr.AR.M.Arunachalam
For R1 : Mr.P.Gurunathan
Additional Government Pleader

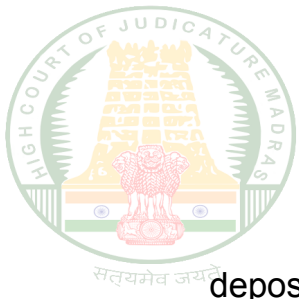
JUDGMENT

This Second Appeal has been preferred by the plaintiff against the judgement and decree dated 29.07.2019 passed in A.S.No.10 of 2015 on the file of the Subordinate Court, Gobichettipalayam, Erode District.

2. Parties are indicated herein as per their litigative status and ranking before the Trial Court.

3. According to the plaintiffs, the 1st plaintiff (died) was running a Shop at Shop No.8, Commercial Complex, which belongs to Gopichettipalayam Municipality, since 1997, in the name and style of Paridha Watch Kadai. 1st plaintiff and the 2nd defendant's wife, Shanmugha Vadivu decided to run a shop together and both invested amount and in the auction conducted by the 1st defendant, auction was taken in the name of Shanmugha Vadivu. On 31.05.1997, Shanmugha Vadivu withdrew from the joint business by executing partnership dissolution deed (கூட்டு வியாபார விலகல் பத்திரம்). As per the said agreement, she received an amount of Rs.50,000/- towards the

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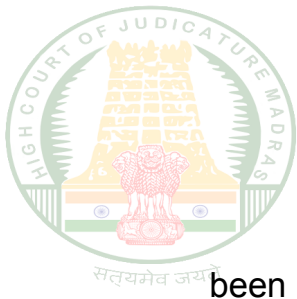
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deposit paid to the Municipality and her share amount of Rs.30,000/- from the 1st plaintiff. Based on the said document dated 31.05.1997, the 1st plaintiff has alone been running the watch shop. On 11.06.1997, Shanmugha Vadivu received an amount of Rs.2,55,000/- from the plaintiff, accepting the exclusive right of the plaintiff over the Shop and left the business. Based on the G.O.(Ms) No.92, Municipal Administration and Water Supply (MA 4) Department, dated 03.07.2007, as the plaintiff has been paying rent and he does have the right to occupy the shop. Shanmugha Vadivu died on 20.07.2006.

4. It is learnt that after the death of Shanmugha Vadivu, the 2nd defendant has given a requisition for name change in the lease and hence, he filed a suit for the relief that the plaintiff is entitled to get the benefits of G.O.Ms.92 and for consequential permanent injunction not to interfere with the peaceful possession and enjoyment of the shop.

5. Per contra, the 1st defendant would strenuously contend that from 01.06.1997, the plaintiff has to prove that the legal heirs of Shanmugha Vadivu do not have any right over the shop. Whereas, on behalf of the defendants no.2 to 4, it has been averred that in fact Shanmugha Vadivu had



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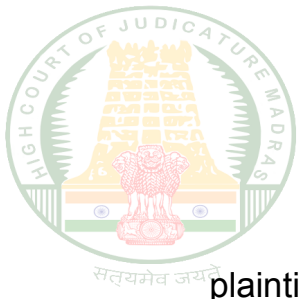
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been running Tea Shop and the plaintiff was working as a daily wager in the shop. As the said Shamuga Vadivu was sick and bedridden, the plaintiff was running the shop and no business agreement was entered into between the plaintiff and Shanmuga Vadivu and the other details are incorrect.

6. The Trial Court framed the relevant issues. At trial, on the plaintiff's side, three witnesses were examined and twenty one documents were marked. On the defendants side, three witnesses were examined and eighty one documents were marked. Ex.X1 and Ex.X2 are the list of destroyed records and shop agreement for shop no.8 and apart from that, nine documents were marked in X-Series.

7. From a careful perusal of Ex.A1, namely the Order allocating the shop in Shop No.8, Bus Stand Commercial Complex by Gobichettipalayam Municipality, license was granted in the name of Shanmugha Vadivu, who is the wife of the 2nd defendant herein. Ex.A2 is the Partnership Dissolution Deed executed between the plaintiff and Shanmugha Vadivu.

8. Further, when the joint business details are not admitted by the respondents no.2 to 4, mere marking of Ex.A2 will not confer any right to the

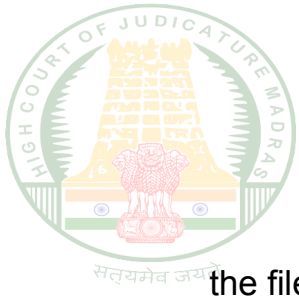


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plaintiff herein. Failure to examine the connected witness in respect of Ex.A2 is fatal to the plaintiff's case. It appears that monthly rent was paid in the name of Shanmugha Vadivu as per the rental receipts Ex.A8 to Ex.A11, Ex.A13, Ex.A17 and Ex.A18. Ex.A5 is the death extract of Shanmugha Vadivu dated 20.07.2006. Allotment of Shop No.8, Bus Stand Commercial Complex was allotted in the name of Shanmugha Vadivu. Shop No.8 of Bus stand Commercial Complex was allocated in the name of Shanmugha Vadivu. Based on the aforesaid documents marked on either side, it should not lie in the mouth of the plaintiff that he is entitled for the benefits as per G.O.No.92 for the reason that allocation was made in the year 1996 and after 29 years, the plaintiff has been paying the rent in the name of Shanmugha Vadivu, who died in the year 2006 itself. In the given circumstances, the Trial Court as well as the First Appellate Court have concurrently dismissed the suit and the appeal filed by the appellant herein needs no interference. This Court also does not find any good reason to upset the finding of the learned First Appellate Court.

9. Based on the aforesaid discussions, this Second Appeal is rejected in the admission stage itself and thereby dismissed. Sequel to this, the judgment and decree dated 29.07.2019 passed in A.S.No.10 of 2015 on



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the file of the Subordinate Court, Gobichettipalayam stands confirmed. There is no order as to costs. Consequently, connected Civil Miscellaneous Petition stands closed.

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Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
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R.KALAIMATHI, J.

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