



S.A.No.113 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.113 of 2024

and

C.M.P.No.3385 of 2024

P.Govindaraju

... Appellant

Vs.

1.Velasamy Chettiar School Board,
Represented by its Managing Trustee,
K.Sivashanmugam,
No.14/W3, Sowdamman Koil North Street,
Omalur Post and Taluk,
Salem.

2.The Tahsildar,
Taluk Office,
Omalur Post,
Salem.

3.The State of Tamil Nadu,
Represented by District Collector,
Collectorate,
Salem.

4.The Velasamy Chettiar School Board,
Represented by its Managing Trustee,
D.L. Gopalasamy (died), Omalur,
Salem.

... Respondents



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PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 31.08.2023 in A.S.No.2 of 2020 on the file of the Subordinate Court, Omalur, reversing the judgment and decree dated 28.03.2019 in O.S.No.154 of 1998 on the file of the District Munsif Court, Omalur.

For appellant : Mr.K.Selvaraj

JUDGMENT

The plaintiff is the appellant before this Court who challenges the judgment and decree dated 31.08.2023 of the Sub Court, Omalur, in A.S.No.2 of 2020, in and by which, the learned Judge has reversed the judgment and decree dated 28.03.2019 in O.S.No.154 of 1998 on the file of the District Munsif Court, Omalur.

2. The facts of the case are briefly set out hereinbelow and the parties are referred to in the same ranking as before the Trial Court.



FACTS OF THE CASE:

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2.1. The plaintiff has filed a suit for permanent injunction restraining the defendants 1 and 2 and their men from cancelling Patta No:1005 issued in the name of the plaintiff in respect of the suit property and from issuing a fresh patta to any other person in respect of the suit property.

2.2. It is the case of the plaintiff that the suit property is a Natham Poramboke land, in which, he and his father have been in continuous possession and enjoyment for over 50 years. They had constructed a tiled house, in which, they are residing. It is the contention of the plaintiff that he is paying the taxes in respect of the suit property and he had also obtained patta in his favour. It appears that the third defendant had questioned the patta issued in favour of the plaintiff and he was subsequently impleaded as a party to the suit. Thereafter, the 4th defendant was also impleaded as a party to the suit. Since the defendants 1 and 2 were taking steps to cancel the patta, the



plaintiff had come forward with the suit in question.

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2.3. The 4th defendant had filed a written statement *inter alia* contending that the suit property belonged to one Velasamy Chettiar School Board. The property was leased out to the plaintiff who has been paying rents to the 3rd defendant. Since he had failed to pay the rents to the 3rd defendant, thereafter, the 3rd defendant had filed a suit in O.S.No.264 of 1984 before the District Munsif Court, Mettur, to evict the plaintiff from the suit property. The suit was decreed and the appeal filed by the plaintiff on the file of the Sub Court, Mettur, in A.S.No.25 of 1999 was also dismissed.

2.4. Against the said appeal, the plaintiff has now preferred a second appeal before this Court in S.A.No.1353 of 2002 and the same is pending before this Court. This Court has directed the plaintiff to pay the rent till the conclusion of the said appeal. Therefore, the plaintiff has also deposited the rent for a period from 18.02.2017 to



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16.02.2020 before the District Munsif Court, Mettur.

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2.5. Concealing all the above facts, the plaintiff has managed to obtain the tax receipts and patta in his favour, that too, during the pendency of the earlier suit. Subsequently, the plaintiff has also managed to change the property tax in his favour. In order to give a legal binding to these illegal actions, the plaintiff has filed the instant suit by only impleading the defendants 1 and 2. Therefore, the defendants prayed for the dismissal of the suit.

TRIAL COURT:

3. The learned District Munsif, Mettur, had framed three issues and additional issues. The Trial Court had ultimately, decreed the suit for the relief of permanent injunction against the defendants 1 and 2, subject to the result in the second appeal in S.A.No.1353 of 2002 and partly dismissed the suit against the defendants 3 and 4.



LOWER APPELLATE COURT:

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4. Challenging the said judgment and decree, the 4th defendant had filed an appeal in A.S.No.2 of 2020 on the file of the Sub Court, Omalur. The learned Sub Judge, on perusing the records, held that the plaintiff has only filed Ex.A1 – patta and no other document evidencing his title. Further, the plaintiff has himself admitted that he is a tenant under the 3rd defendant in the suit property. Therefore, being a tenant, he cannot claim title to the property. Therefore, the appeal was allowed and the judgment and decree of the Trial Court were set aside.

5. Challenging the same, the plaintiff is before this Court.

6. Heard the learned counsel for the appellant and perused the materials available on record.

DISCUSSION:



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7. At the outset, it is clear that the plaintiff has come to Court with unclean hands. Nowhere in the plaint has he stated that he is a tenant in the defendant's property. On the contrary, he has stated that he and his father are in possession and enjoyment of the suit property for over 50 years by putting up a tiled house in the property. The plaintiff has suffered an order of eviction in O.S.No.264 of 1984 on the file of the District Munsif Court, Mettur, which was the suit filed by the 3rd defendant to evict the plaintiff from the suit property as he was in arrears to pay the rent to the 3rd defendant. That suit has been filed stating that the plaintiff herein is the tenant under the 3rd defendant. The suit has been decreed and the appeal filed against the said decree has been dismissed. The proceedings are now pending in the second appeal. Therefore, the plaintiff's possession of the property is only on the capacity of a tenant. The plaint in the instant suit is absolutely silent about the aforesaid proceedings.

8. In his cross-examination as P.W.1, he has submitted as



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follows:

“தியாகராஜ செட்டியார் என்பவர் மேற்சொன்ன பள்ளியின் முன்னாள் நிர்வாகி என்றால் சரிதான். அவர் தான் தாவா சொத்தினை எங்களிடம் சுவாதீனம் கொடுத்தார். அவர் எங்களுக்கு எதிராக அ.வ.எண் 264/1984 ல் எங்களை தாவா சொத்திலிருந்து வெளியேற்ற வேண்டும் என மேட்டுர் மாவட்ட உரிமையியல் நீதிமன்றத்தில் வழக்கு தாக்கல் செய்திருந்தார் என்றால் சரிதான். அவ்வழக்கு நாங்கள் தாவா சொத்திற்கு வாடகை செலுத்தாததால் மேற்படி வழக்கு தாக்கல் செய்யப்பட்டது. அது 20.10.1995 ல் பள்ளி வாரியத்திற்கு சாதகமாக தீர்ப்பாணை பகரப்பட்டது. அதை எதிர்த்து தாக்கல் செய்யப்பட்ட A.S.No.25/1999 என்ற வழக்கு மேட்டுர் சார்பு நீதிமன்றத்தில் 18.02.2002 ல் தள்ளுபடி செய்யப்பட்டது. அதை எதிர்த்து இரண்டாவது மேல்முறையீட்டு எண் 1353/2002 மாண்புமிகு சென்னை உயர்நீதிமன்றத்தில் தாக்கல் செய்து அது நிலுவையில் உள்ளது என சாட்சியம் அளித்துள்ளார்.”

9. The present suit has been filed after the earlier suit had been decreed in favour of the 3rd defendant. Considering the fact that the plaintiff is only a tenant which fact he has also admitted, the plaintiff is not entitled to the relief claimed by him. The Lower Appellate Court has rightly dismissed the suit and I see no reason to differ with the findings of the Court below.



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Accordingly, this second appeal stands dismissed as it does not give rise to any substantial question of law and consequently, connected C.M.P. stands closed. No costs.

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Index : Yes/No
Speaking order/non-speaking order
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To

1. The Subordinate Judge, Omalur.
2. The District Munsif, Omalur.
3. The Section Officer, V.R. Section, High Court, Madras.



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P.T.ASHA, J.,

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