



S.A.No.422 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.422 of 2021
and
C.M.P.No.8024 of 2021

R.Perumal

...Appellant

Vs

Perumal

...Respondent

Prayer: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree passed in A.S.No.11 of 2017 on the file of the Principal Subordinate Court, Erode, dated 24.01.2020 reversing O.S.No.64 of 2011 on the file of the District Munsif cum Judicial Magistrate, Kodumudi dated 04.01.2017.

For Appellant : Mr.M.Arun

For Respondent : Mr.V.S.Kesavan

JUDGMENT



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The defendant is the appellant before this Court. The facts that has resulted in filing of the second appeal are herein below set out and the parties are referred to in the same ranking as before the trial Court.

2. The plaintiff had filed the suit O.S.No.64 of 2011 on the file of the District Munsif cum Judicial Magistrate, Kodumudi for permanent injunction restraining the defendant, his men and agents from evicting the plaintiff from the suit property except by due process of law. The suit property is herein below set out.

Description of properties

ஈரோடு, ரிடி, கொடுமடி சப்டி, ஈரோடு வட்டம்,
சென்னசமத்திரம் கிராமம், புதிய க.ச.226/1
நெ.பு.உெற.0.35.0க்கு த.நீ 0.70, புதிய க.ச.226/6,
நெ.பு.உெற.1.13.0 க்கு த.நீ.2.26 (இதன் பழைய க.ச.40)
இதில் கட்டுப்பட்ட சொத்துக்கு செக்குப்பந்தி விபரம்.

சந்திரன் வகையறா பாக பூமிக்கும் வடக்கு,



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காளிங்கராயன் வாய்க்காலுக்கும் கிழக்கு, குரவப்ப நாய்டு
பூமிக்கும் தெற்கு, ஆர்.விராமசாமி, ரங்கசாமி வகையறா பாக
பூமிக்கும் மேற்கு, இதன் மத்தியில் உள்ள பு.ஏ.0.56
விஸ்தீரணமுள்ள பூமி பூராவும் பின்னும்

மேற்படி சென்னசமுத்திரம் கிராமம், புதிய க.ச.226/2
நெ.காலையில் உள்ள வடபரத்து கிணற்றிலும், அதனைச்
சார்ந்த ஏத்து துலை உத்திவாரி வாய்க்கால் இவைகளில்
பொதுவில் 1/5 பங்கு பாத்தியமும், மாழில் வழிநடை
பாத்தியங்கள் சகிதம்.

3. It is the case of the plaintiff that the suit property belonged to one Moorthyammal, W/o.Velappa Naidu. Moorthyammal had no issues and owing to her old age, she was not in a position to cultivate the lands. The plaintiff, who is an agriculturist, had taken on lease the suit property from the said Moorthyammal under a Lease Deed dated 05.11.1993 on a rental of Rs.300 for 11 months. The lease deed of the said date was entered into between the plaintiff and the said



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Moorthyammal. The plaintiff would submit that ever since he has been in possession of lands and personally cultivating the same The lease deed was being renewed periodically till the life time of Moorthyammal. Moorthyammal died in the year 2001 and she had no legal heirs to succeed her estate.

4. While so, the defendant, who is the son of the said Moorthyammal's brother, claimed that the property was bequeathed to him under a registered Will dated 13.05.1997. A xerox copy of the said Will was also handed over to the plaintiff. The document has been filed along with the plaint.

5. Thereafter, the lease was being renewed periodically by the defendant in favour of the plaintiff. In 2002, the lease rental was a sum of Rs.600/- for 11 months and at the time of filing of the suit, the rental was for a sum of Rs.750/- for 11 months. In fact, the defendant had



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been periodically renewing the rent under a Lease Deed dated 15.01.2011. The lease was renewed for a further period of 11 months effective from 15.01.2011 on a rental of Rs.750/-. The plaintiff is in possession of the property as a cultivating tenant. The plaintiff would submit that he is cultivating turmeric in the said lands and has recently harvested the crops.

6.While so, all of a sudden, the defendant had met the plaintiff and demanded enhanced rent of Rs.10,000/- without any basis. When the plaintiff had politely informed him that the same could not be paid, the defendant had threatened the plaintiff stating that he would not be permitted to cultivate the lands.

7.On 22.06.2011, the defendant and his rowdy elements attempted to trespass into the suit property forcibly. With the help of



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the neighbours, the plaintiff has, however, repelled this attempt. The plaintiff would submit that the defendant is a rich man with a great deal of influence in the locality and therefore, he has come forward with the above suit.

8. The defendant has resisted the above suit, *inter-alia* denying the fact that the plaintiff was ever inducted into the suit property as a tenant. The defendant would submit that till the year 1971, Moorthyammal was personally cultivating the suit property and on 13.05.1997, the defendant had entered into a lease agreement with the said Moorthyammal for a period of 5 years at Rs.2,500/- per year. The defendant would submit that he has been cultivating the properties in terms of the above lease agreement and has been paying rents to Moorthyammal till her death on 02.03.2001. On the death of the said Moorthyammal, the Will dated 13.05.1997 had come into force and the defendant started enjoying the property as his absolute owner. The



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defendant would submit that the plaintiff is a total stranger with regard to the suit property. The defendant would further submit that the plaintiff had an eye on the suit property and had requested him to sell it for a meagre sum, which was refused by the defendant. Aggrieved by this, the plaintiff has fabricated the documents and filed the suit. The plaintiff is not a cultivating tenant and was never in possession of the suit property. Therefore, he sought for dismissal of the suit. The defendant had also pleaded that the cause of action set out in the plaint was a false one.

9. The trial Court has framed the following issues:

(i) வாதி கோரியுள்ள நிரந்தர தடையுறுத்து கட்டளை

பரிகாரம் அளிக்கத்தக்கதா?

(ii) வேறு என்ன பரிகாரம் வாதிக்கு அளிக்கத்தக்கது?



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10. The plaintiff had examined himself as P.W1 and had examined three other persons as P.Ws 2 to 4. The defendant had examined himself as D.W1 and one Krishnamurthy as D.W2 and marked Exs.B1 to B6. The learned trial Judge, relying upon the registered lease agreement Ex.B1, which is produced on the side of the defendant, observed that the lease which is put forward by the plaintiff appears to be a created one. Since the property in respect of which the rent in the year 1997 was a sum of Rs.2,500/- per annum by no stretch of imagination would Moorthyammal has leased out the property for a meagre sum of Rs.600 /- per annum. That apart, the trial Court had also held that the plaintiff has failed to prove the cause of action, namely, the attempted trespass on 22.06.2011. The learned Judge observed that the plaintiff has not proved possession of the property through valid documents and oral evidence. Ultimately, the suit was dismissed. Challenging the same, the plaintiff had filed A.S.No.11 of 2007 on the file of the Principal Subordinate Court, Erode. The learned



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Principal Subordinate Judge, on perusing the evidence, reversed the judgment and decree of the trial Court and allowed the appeal.

Challenging the same, the defendants are before this Court.

11. Mr.M.Arun, learned counsel for the defendant, would submit that Moorthyammal has never entered into any lease agreement with any third party, including the plaintiff. He would submit that it is the defendant who is in possession of the property and cultivating it, which is evident from a perusal of Ex.B1-lease Deed. He would submit that the appellate Court has totally overlooked the reasons that have been given by the trial Court for dismissing the suit which are as follows:

(i) The oral evidence of P.W3.

(ii) The plaintiff's name does not find a place in the Adangal extracts.

(iii) The lease amount is very meagre as the rent



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under Ex.B1 was a sum of Rs.2,500/- per annum as early as in the year 1997.

(iv) The trial Court had held that the description of the property has not been properly given in the lease agreement.

(v) The plaintiff has not given the name of the persons who were involved in disturbing the plaintiff's possession.

He would also submit that the lower appellate Court has been totally swayed by the report of a handwriting expert, which was not at all marked as evidence. He would further submit that the lower appellate Court has wrongly observed that the defendant has not stated that as to how the fraud was played by the plaintiff in creating Exs.A1 to A3 . He would submit that, being a suit for bare injunction, the Court should take into consideration the conduct of the plaintiff and ought to have dismissed the suit.



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12. Mr.V.S.Kesavan, learned counsel for the plaintiff, would submit that the defendant himself has entered into an agreement of lease with the plaintiff, which was being periodically extended and since these signatures were disputed, an application for sending the documents to the Forensic Department had been taken out by the defendant and a report was also received. Though the report has not been marked as a document, however, a plain reading of the same would show that the disputed signatures were similar to the admitted signatures. He would therefore submit that the lower appellate Court, being the final court of fact, had stepped in and reconsidered the evidence on record and allowed the appeal. No exception could be taken to the same.

13. The second appeal was admitted on the following questions of law:

1. Whether the appellate Court was right in



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reversing the judgment of the trial Court without setting aside the finding on admission of the respondent / plaintiff?

2. Whether the appellate Court was right in not considering the evidence of P.W1 regarding cause of action for the suit, when he could not able to state when and who was the persons disturbed his possession?

14. The injunction granted by the lower appellate was also suspended by orders of this Court dated 05.08.2021 in C.M.P.No.8024 of 2021.

15. The plaintiff seeks an injunction to protect his possession of the property which he has taken on lease from Moorthyammal. It is an



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admitted case that the property belonged to Moorthyammal and Moorthyammal had died issueless. The defendant had stated that Moorthyammal had executed a Will (which was not marked as evidence) under which the suit property was bequeathed to him. The plaintiff does not dispute the said bequest. The plaintiff would further submit that after the demise of Moorthyammal, the lease was being renewed by the defendant after receiving the rents and the lease agreement was being reduced into writing. The last such deed was in the year 2011 which was marked as Ex.A6. The defendant had stated that he had not entered into any lease deed with the plaintiff and neither had Moorthyammal. It also appears that since there was a dispute with reference to signatures of the defendant in these documents, the learned District Munsif cum Judicial Magistrate, Kodumudi had referred the document to the Forensic Department to verify the disputed signatures with that of the admitted signatures. An advocate Commissioner was appointed in this regard, who was directed to take the disputed



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signature and the admitted signatures to the Tamil Nadu Finger Print Bureau for obtaining a report. The disputed signature has been compared with the admitted signatures. The Forensic Department has also sought for further particulars, which have also been provided and ultimately, a report has been given stating that the signatures in Ex.A6 and the admitted signatures are one and the same. Therefore, the signatures of the defendant in Ex.A6-Lease Deed dated 15.01.2011 stood proved. Therefore, the first argument of the defendant that neither the defendant nor the Moorthyammal have inducted the plaintiff as a tenant stood disproved.

16. The defendant, to show that his possession, has produced Exs.B2 to B6, which he claims are pursuant to the lease deed marked as Ex.B1. A perusal of these documents does not provide the details of the property for which payments were being made or that it is paid in respect of the suit property. Further, Exs.B1 to B4 stand in the name of



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the deceased Moorthyammal. The defendant has produced Exs.B5 and B6, however, both of which dated 25.04.2011 (after institution of the suit) indicate that the amount due towards the several Faslis were being paid by way of a single payment. Therefore, the defendant has not proved that he is cultivating the property as a tenant from the year 1997. On the contrary, the plaintiff has proved possession by producing the lease agreement which was being periodically extended and also producing Ex.A6, which is the lease agreement signed by the defendant in and by which he has leased out the property to the plaintiff. There is nothing on record to show that as to when and how the plaintiff has been dispossessed. Therefore, the fact that the defendant has pleaded that there is no lease agreement between the plaintiff and himself or the plaintiff and the deceased Moorthyammal and that the plaintiff is not in possession of the property and that the plaintiff is not in possession of the property is by itself proof of his disturbing the possession of the plaintiff. The plaintiff has pleaded that



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on 22.06.2001, an attempt was made to forcibly enter into the property.

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The defendant has refuted the statement by stating that when the property has not been leased to the plaintiff, there was no question of his possession being disturbed. This argument stands repelled by Ex.A6.

16. The plaintiff, who has in his chief examination submitted that the defendant had disturbed his possession, he has not been seriously cross-examined in this regard. Therefore, the substantial questions of law are answered in favor of the plaintiff. The lower appellate court has extensively considered the evidence from the correct perspective, and I see no reason to interfere with the well-considered judgment and decree of the appellate Court. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking order/non-speaking order
srn

To

1. The Principal Subordinate Court, Erode,
2. The District Munsif cum Judicial Magistrate, Kodumudi
3. The Section Officer, V.R.Section, High Court, Madras.



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srn

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