



S.A.(MD)No.4 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.07.2024

PRONOUNCED ON: 19.10.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.4 of 2020

and

C.M.P.(MD)No.110 of 2020

A.Subramanian : Appellant/Appellant/Plaintiff

Vs.

A.Rajendran : Respondent/Respondent/Defendant

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 19.08.2019 made in A.S.No.165 of 2018 on the file of the Subordinate Judge, Lalgudi confirming the judgment and decree, dated 28.03.2012 made in O.S.No. 61 of 2008, on the file of the Principal District Munsif-cum-Judicial Magistrate, Lalgudi.

For Appellant : Mr.K.Prabhakar

For Respondent :Ms.J.Anandhavalli



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JUDGMENT

The Second Appeal is directed against the judgment and decree passed in A.S.No.165 of 2018, dated 19.08.2019, on the file of the Subordinate Court, Lalgudi, confirming the judgment and decree made in O.S.No.61 of 2008, dated 28.03.2012, on the file of the District Mnsif cum Judicial Magistrate, Lalgudi.

2. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

3. Admittedly, the plaintiff and the defendant are brothers. It is not in dispute that the suit properties are belonging to Arulmighu Thirumoolanathaswamy Temple of Poovalur Village, Lalgudi Taluk, that one Andi Muthuraja, father of the plaintiff and the defendant was the statutory cultivating tenant in respect of the suit properties under the said temple, that Andi Muthuraja had three sons namely the plaintiff, the defendant and one Selvam, that the said Selvam died as bachelor and that the said Andi Muthuraja and subsequently, his wife had died intestate.



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4. The plaintiff, claiming to be the cultivating tenant of the entire suit properties, by alleging interference from the defendant – brother, has filed the above suit, claiming permanent injunction restraining the defendant and his men in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit properties. The defendant has admitted that the items 1 and 2 of the suit properties are in possession and enjoyment of the plaintiff as he is the cultivating tenant therefor. But, according to the defendant, he is the cultivating tenant in respect of items 3 to 5 of the suit properties. Since the defendant has admitted the case of the plaintiff in respect of items 1 and 2 of the suit properties, the suit was decreed granting permanent injunction in favour of the plaintiff with regard to the items 1 and 2 of the suit properties and that the said judgment and decree was not under challenge. The challenge before the first appellate Court as well as before this Court is only with respect to the items 3 to 5 of the suit properties.

5. The case of the plaintiff is that he has been in possession and enjoyment of the entire suit properties as a statutory cultivating tenant for more than 25 years, that the plaintiff has filed a petition before the revenue authorities to fix fair rent and accordingly, fair rent was fixed in



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F.R.A.No.95/1987, that the temple authorities had also filed petitions to collect arrears of rent and eviction was also ordered on several occasions, that the plaintiff has been paying kists for the suit properties continuously, that the plaintiff used to measure paddy and made payment to the temple through the defendant at sometimes, that the defendant has absolutely no connection whatsoever with the suit lands, that since there was misunderstanding between the brothers, the defendant during the third week of January 2008, had attempted to disturb the plaintiff's possession, but the same was thwarted, that the defendant who is a politically influenced person, had again attempted to interfere with the plaintiff's possession during the month of February 2008 and that therefore, the plaintiff was constrained to file the above suit claiming permanent injunction.

6. The defence of the defendant is that after the death of their father Andi Muthuraja, the defendant has been cultivating items 3 to 5 of the suit properties situated in SN.No.431, which admeasures 2.25 acres, that the plaintiff has been cultivating 1.50 acres items 1 and 2 of the suit properties, that the revenue proceedings alleged by the plaintiff are not acted upon and are not binding on the defendant, that the plaintiff has



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paid rent only for items 1 and 2, whereas the defendant has been paying rent for the items 3 to 5 of the suit properties and that since the plaintiff has no cause of action, the suit is liable to be dismissed.

7. The learned trial Judge, upon perusing the pleadings of both sides, has framed the following issues:

1. Whether all the suit properties are in possession and enjoyment of the plaintiff?

2. Whether the plaintiff is entitled for the relief of permanent injunction?

3. To what other reliefs, the parties are entitled to?

7. During trial, the plaintiff has examined himself as P.W.1 and exhibited 12 documents as Exs.A.1 to A.12. The defendant has examined himself as D.W.1 and the Executive Officer of the temple - Thiru.Bharathi Raja as D.W.2 and exhibited 19 documents as Exs.B.1 to B.19 and 6 witness documents as Exs.X.1 to X.6 through D.W.2.

8. The learned District Munsif, upon considering the pleadings, evidence both oral and documentary and on hearing the arguments of both sides, has passed the judgment and decree dated 28.03.2012,



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decreeing the suit in respect of the items 1 and 2 and dismissing the suit in respect of the items 3 to 5 of the suit properties. Challenging the dismissal of the suit with respect to the items 3 to 5 of the suit properties, the plaintiff has preferred an appeal in A.S.No.165 of 2018 and the learned Subordinate Judge, Lalgudi, upon considering the materials available on record and on hearing the arguments of both sides, has passed the impugned judgment and decree, dated 19.08.2019, dismissing the appeal and thereby confirming the judgment and decree of the trial Court in respect of the items 3 to 5 of the suit properties. Aggrieved by the dismissal of the appeal, the present Second Appeal came to be filed.

9. At the time of admission, the following Substantial Question of Law came to be formulated:

“Whether the Courts below are right in dismissing the suit for injunction in the absence of any finding that the defendant has been cultivating the suit property by contributing his physical labour and he would fall under the definition of term cultivating tenant under the Tamil Nadu Cultivating Tenants Protection Act, 1955?”



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10. The learned Counsel for the plaintiff would contend that the plaintiff has been in cultivation of the suit lands for a period of nearly 25 years at the time of filing of the suit as a tenant of Arulmighu Thirumoolanathaswamy Temple of Poovalur Village, which is borne out by the documentary evidence being petitions and orders of the revenue Courts fixing the fair rent for all the suit properties, orders for payment of arrears and eviction orders, that the Courts below have erred in placing undue reliance on the theory of partition canvassed by the defendant, when the same has not been specifically pleaded by the defendant in his written statement, but the Courts below have committed a mistake in proceeding to decide the case assuming that such a partition had taken place and the defendant was allotted with the items 3 to 5 of the suit properties in such partition, based on the oral evidence of the defendant without any pleadings and without any acceptable evidence to corroborate such a partition, that the plaintiff had filed a petition for temporary injunction with respect to all the suit properties in I.A.No.146 of 2008 along with the suit, that an order of interim injunction was granted at the initial stage and thereafter the same was made absolute, vide order dated 05.08.2009 after enquiry, that the defendant has not preferred any appeal challenging the granting of temporary injunction till



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the disposal of the suit, that the plaintiff has been enjoying the temporary injunction during the pendency of the suit and the same would go to show that the defendant was never in possession of the items 3 to 5 of the suit properties, that the documents under Exs.X.1 to X.6 marked by the Executive Officer of the temple – D.W.2 does not make any reference to the survey numbers and he was not working in the said temple during the proceedings in Exs.A.1 to A.12 and therefore, his evidence cannot be relied on to substantiate the case of the defendant and that therefore, the Courts below without considering the documentary evidence in proper perspective and relying on some lines in the evidence of the plaintiff have rejected the plaintiff's claim with regard to the items 3 to 5 of the suit properties.

11. The learned Counsel for the defendant would contend that though the plaintiff had given much importance to the revenue proceedings, the defendant had absolutely no knowledge about the said proceedings and he was also not a party to the said proceedings and as such, the same would not bind on him, that the defendant has been a cultivating tenant of 2.25 acres in S.No.431, as evident from Exs.X.1 to X.6, which would establish that the tenancy was registered in the name of



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their father Andi Muthuraja and the same is not at all challenged, that after the death of their father Andi Muthuraja, the properties were divided and the plaintiff has been cultivating the items 1 and 2 of the suit properties and whereas the defendant has been cultivating the items 3 to 5 of the suit properties, that the plaintiff in his evidence has specifically admitted the factum of partition, that though the trial Court has granted temporary injunction, subsequently taking note of the evidence available on record, has dismissed the suit with regard to the items 3 to 5 of the suit properties, that non-filing of the appeal challenging the temporary injunction, cannot be taken against the defendant as the suit was dismissed after full trial in respect of the said properties, that D.W.2 – Executive Officer of the temple has given evidence only on the basis of the records available with the temple authorities and that therefore, the trial Court as well as the appellate Court by correctly appreciating the evidence have rejected the plaintiff's claim with regard to the items 3 to 5 of the suit properties.

12. It is pertinent to note that though the plaintiff has claimed in the plaint that he has been cultivating the lands in respect of all the suit properties for more than 25 years, at the trial would specifically admit



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that his father Andi Muthuraja was the statutory cultivating tenant in respect of the properties owned by the Arulmighu Thirumoolanathaswamy Temple of Poovalur Village. It is not the specific case of the plaintiff that after the death of his father, cultivating tenancy was transferred in his favour and he was recorded as the registered cultivating tenant. As rightly contended by the Courts below, the plaintiff has nowhere whispered in his plaint or in his chief examination affidavit that his father was the cultivating tenant and after his death, he got the entire lands.

13. As already pointed out, the learned Counsel for the plaintiff would contend that the defendant without raising any pleadings with regard to partition, has adduced evidence and the Courts below without considering the settled legal position that any amount of evidence without pleadings are of no use, have considered the same. No doubt, the defendant in his written statement has not specifically pleaded any partition. But he has specifically stated that after the death of his father, he has been cultivating 2.25 Acres of the items 3 to 5 of the suit properties and whereas the plaintiff has been cultivating 1.50 acres in the items 1 and 2 of the suit properties. During the cross-examination of the



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plaintiff, he has admitted the factum of partition and the relevant portion is extracted hereunder for better appreciation:

“என் குடும்பத்தை என் தகப்பனார் றேந்தவுடன் குடும்பத்தில் முத்தவர் என்ற முறையில் நான்தான் குடும்பத்தை நிர்வாகம் செய்து வந்தேன். தாவா நிலத்தை அல்லாமல் உவறு நிலங்கள் நேக்கிறது. குத்தகை நிலங்களை மட்டும் தான் சாகுபடி செய்து வந்தேன். அந்த குத்தகை நிலங்கள் தான் நேத வழக்கில் உள்ளது. என் தாயார் சொத்துக்களை பிரித்துக்கொடுத்தார். எனக்கும் பிரதிவாதிக்கும் என் தாயார் பிரித்து கொடுத்தார். என்தாயார் சொத்து பிரித்து கொடுத்தது 25 ஆண்டுகளுக்கு முன்பு என்றால் சரிதான். அந்த பாக பிரிவினையில் தாவா சொத்துக்கள் அனைத்தும் என் பாகத்திற்கு ஒதுக்கப்பட்டது. அதற்கு முன்பு குத்தகை பாக்கி நான் செலுத்த உவண்டும் என்று முடிவு செய்யப்பட்டது. பிரதிவாதி ராஜந்திரனுக்கு 1 ஏக்கர் மானாவாரி கொடுக்கப்பட்டது.”

14. During subsequent cross-examination, P.W.1 would say,

“எனது தகப்பனார் நேக்கும்வரை தாவா நிலங்களை அவர் தான் குத்தகை சாகுபடி செய்து வந்தார். என் தகப்பனார் றேந்த பிறகு முழு சொத்துக்களையும் என் தாயார் பார்த்து வந்தார். என் தாயார் றேந்த பிறகு குடும்ப சொத்துக்களை நான் நிர்வாகம் செய்து வந்தேன் என்றால் நான் நிர்வாகம் செய்யவில்லை. என் தாயார் றேப்பதற்கு ஒரு வருடத்திற்கு முன்பு சொத்துக்களை பிரித்து கொடுக்கவில்லை. ஒதுக்கிக்கொடுத்தார்கள். எனக்கு திருமுலநாதர் உகாவில்கவாமி நிலங்களை எனக்கு ஒதுக்கி கொடுத்தார்கள். அவைகள்தான் தாவா



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சொத்துக்கள். பிரதிவாதிக்கு ஒதுக்கி கொடுத்த நிலங்களின் சர்வ ஓடும்பர் எனக்கு தெரியாது. அந்த நிலம் மணச்சநல்லூர் பங்களாயத்து உளுந்தக்குடி கிராமத்தில் உள்ளது.”

15. Considering the above, as rightly contended by the learned Counsel for the defendant, the plaintiff has admitted the factum of partition and the allotment of properties to him. The defendant in his evidence would say that his mother had orally partitioned the properties and wherein he was allotted with items 3 to 5 and the plaintiff was allotted with the items 1 and 2 in the year 1995. As rightly contended by the learned Counsel for the defendant, the defendant was not at all subjected to cross-examination with regard to the factum of partition specifically. Whatever it is, since the plaintiff himself has admitted the factum of partition, the above objections raised by the plaintiff's Counsel that the evidence with regard to the partition cannot be taken into consideration for want of pleadings, is absolutely devoid of substance and the same is liable to be rejected.

16. On considering the evidence of P.W.1 above referred it is clearly evident that his father was cultivating the suit lands as tenant



17. The learned Counsel for the plaintiff would contend that the defendant has not filed any tenancy agreement nor produced any receipts containing the survey number of the items 3 to 5 of the suit properties. But as rightly contended by the learned Counsel for the defendant, the plaintiff has also not produced any tenancy agreement entered into between himself and the temple authorities nor receipts containing the survey numbers of the suit properties.

18. Regarding the argument that Exs.B.1 to B.19 does not contain the name of the defendant, the learned trial Judge has specifically



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observed that since the tenancy is registered in the name of Andi and the same is not changed or altered even after his demise, there is nothing unnatural in Exs.B.1 to B.19 containing the name of Andi. As rightly observed by the Courts below, though the plaintiff has alleged that he has been cultivating the entire suit properties by contributing his labour, the plaintiff has not produced any evidence to substantiate the same. But on the other hand, he has taken a stand that the defendant has not proved his defence.

19. It is settled law that the plaintiff has to succeed the case on his own strength and he cannot be allowed to succeed by relying on the loopholes or defects in the defence of the defendant. No doubt, the plaintiff has approached the rent Court for fixation of fair rent. As already pointed out, it is pertinent to note that the tenancy came to be registered only in the name of their father Andi and the same was not changed after his death. In the absence of any material to show that the plaintiff was recognized as a statutory cultivating tenant, as rightly contended by the learned Counsel for the defendant, this Court is also at loss to understand as to how fair rent petition came to be filed before the revenue Court. As rightly observed by the learned appellate Judge, the



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plaintiff with sole intention to gather evidence, has voluntarily filed the fair rent petition and by not paying the rent arrears, made the temple authorities to file the petition against him for recovery of arrears and for eviction.

20. D.W.2 who was holding the additional charge of Executive Officer of Arulmighu Thirumoolanathaswamy Temple would say in his evidence that the plaintiff has not paid rent for the suit properties for the faslis 1419 and 1420. The plaintiff who is claiming permanent injunction on the ground that he was in possession and enjoyment of the suit properties on the date of filing of the suit, has to prove that he was in possession of the property at that time. As rightly observed by the learned appellate Judge, the plaintiff has not produced any iota of evidence to substantiate the same.

21. As rightly observed by the learned appellate Judge, the plaintiff who is claiming an equitable and discretionary relief of permanent injunction, has to approach the Court with clean hands by not suppressing any of the material facts. But in the present case, as already pointed out, the plaintiff has suppressed the material facts that his father



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was the registered statutory cultivating tenant under the temple and after the death of his father, his mother was in possession and enjoyment of the property and she had allotted the properties to her sons and as such, as rightly observed by the learned appellate Judge, the plaintiff has approached the Court with unclean hands. Viewing from any angle, the plaintiff is not entitled to get the relief of permanent injunction and the Courts below by rightly appreciating the evidence available on record have decided against the plaintiff and as such, there is nothing to interfere with the reasoned findings of the Courts below and hence, the Substantial Question of Law is decided against the plaintiff and in favour of the defendant. Consequently this Court concludes that the Second Appeal is liable to be dismissed. Considering the other facts and circumstances and the relationship between the parties, this Court is of the view that the parties are to be directed to bear their own costs.

22. In the result, the Second Appeal is dismissed, confirming the concurrent judgments of the trial Court made in O.S.No.61 of 2008, dated 28.03.2012 on the file of the Principal District Munsif cum Judicial Magistrate Court, Lalgudi and the first appellate Court made in A.S.No. 165 of 2018, dated 19.08.2019, on the file of the Subordinate Court,



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Lalgudi. Consequently, the connected Miscellaneous Petition is also dismissed. The parties are directed to bear their own costs.

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NCC : Yes:No
Index : Yes : No
Internet : Yes : No

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To

1. The Subordinate Court, Lalgudi.
2. The Principal District Munsif cum Judicial Magistrate Court,
Lalgudi.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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19.10.2024