

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2015

CORAM

THE HONOURABLE Mr.JUSTICE S. NAGAMUTHU

Second Appeal No.1148 of 2014
and
M.P.No.1 of 2014

G.Raman

...Appellant/Defendant

-Vs.-

K.Rajasekaran

...Respondent/plaintiff

PRAYER: Appeal filed under Section 100 C.P.C., against the judgment and decree dated 25.06.2014 in A.S.No.20 of 2011 on the file of the learned II Additional Subordinate Judge, Cuddalore, confirming the judgement and decree dated 24.01.2011 in O.S.No.550 of 2003 on the file of the learned Principal District Munsif, Cuddalore.

For Appellant : Mr.P.Jagadeesan

JUDGMENT

The defendant in O.S.No.550 of 2003 on the file of the learned II Additional Subordinate Court, Cuddalore is the appellant herein. The respondent is the sole plaintiff in the suit. The respondent filed the said suit for declaration of title and for recovery of possession of the suit property from the appellant herein and for mesue profits to the tune of Rs.27,000/-. The learned Principal District Munsif by decree and judgement dated 24.01.2011 decreed the suit as prayed for. However, the trial Court directed that the mesue profits shall be separately assessed and orders would be passed on a separate application being filed by the plaintiff/respondent herein.

2.As against the said decree and judgement, the appellant herein filed an appeal in A.S.No.20 of 2011 on the file of the learned II Additional Subordinate Judge, Cuddalore. The said appeal

was dismissed by decree and judgement dated 25.06.2014 thereby confirming the decree and judgement of the trial Court. Challenging the same, the appellant is before this Court with this second appeal.

3.This second appeal has come up today for admission. I have heard the learned counsel for the appellant and I have also perused the records carefully.

4.The suit property is an agricultural land. According to the plaintiff, this property was originally owned by one Mr.Duraisamy Pillai. There was a partition effected on 04.09.1949 between Mr.Duraisamy Pillai and Mrs.Thayalnayaki Ammal who is none other than the brother's wife of Mr.Duraisamy Pillai, in which, the suit property was allotted to Mr.Duraisamy Pillai. This fact was admitted even in the written statement as well. It is the further case of the plaintiff that Mr.Thayalnayaki Ammal, lost all the properties which were allotted to her in the above partition due to over debts. Considering the condition of Mrs.Thayalnayaki Ammal, Mr.Kothandarama Pillai who is the son of Mr.Duraisamy Pillai allowed her to enjoy the suit property after the demise of Mr.Duraisamy Pillai. Accordingly, Mrs.Thayalnayaki Ammal was in possession and enjoyment of the suit property as a permissive occupier. She died in the year 1977. While she was alive, she had allowed the defendant herein to possess the property. Based on the said possession, Mrs.Thayalnayaki Ammal along with the defendant filed an application before the Record Officer under the Tamil Nadu Agriculturists Record of Tenancy Right Act, to register their names as cultivating tenants of the suit property. The said application was dismissed by the Record Officer in T.R.No.12/1985. Thereafter, Mr.Kothandarama Pillai issued a legal notice to Mrs.Thayalnayaki Ammal to vacate the property. As I have already pointed out, Mrs.Thayalnayaki Ammal had inducted the defendant in possession of the suit property. The defendant thereafter, filed a suit in O.S.No.290 of 2002 against the plaintiff and some others for permanent injunction. That suit was dismissed for default on 11.06.2003. Even after dismissal of O.S.No.290 of 2002, the defendant did not vacate and hand over possession of the property to the plaintiff. Therefore, the plaintiff filed the present suit for the above stated reliefs.

5.In the written statement filed by the defendant, it is admitted that the father of the plaintiff Mr.Kothandarama Pillai was the owner of the property. It has stated that Mr.Kothandarama Pillai gave away the property to Mrs.Thayalnayaki Ammal and this defendant became as tenant under Mrs.Thayalnayaki Ammal by means of registered lease deed dated 15.05.1974. Thus, from the year 1974 onwards,

according to the defendant, he has been cultivating the suit property and after the demise of Mrs.Thayalnayaki Ammal, he is entitled for protection under the Tamil Nadu Agriculturists Record of Tenancy Right Act and he cannot be evicted.

6.The trial Court framed appropriate issues on the above pleadings and allowed the parties to let in evidence. Having considered the same, the trial Court found that Mrs.Thayalnayaki Ammal had no title and she had no right to lease out the suit property to the defendant. Thus, though the defendant is a lessee under Mrs.Thayalnayaki Ammal, he is not a cultivating tenant under the plaintiff and therefore, he is liable to be evicted. The First Appellate Court has also confirmed the same. That is how the appellant/defendant is before this Court with this second appeal.

7.The learned counsel for the appellant would submit that since, the property was given to Mrs.Thayalnayaki Ammal by Mr.Kothandarama Pillai, she had right to create a lease in respect of the suit property in favour of the defendant. The learned counsel would further submit that the appellant/defendant has been in possession as a cultivating tenant under Mrs.Thayalnayaki Ammal from the year 1974 onwards and during the life time of Mrs.Thayalnayaki Ammal, he was also paying the rent to her regularly. He would further submit that D.Ws.1 to 4 have very categorically stated that the defendant is a cultivating tenant of the suit property. This aspect was not taken note off by the Courts below, the learned counsel contended.

8.At the outset, I would like to say that there is no substantial question of law involving in this second appeal warranting admission of the case. The basic question is whether the appellant herein is the cultivating tenant so as to enjoy the protection under the Tamil Nadu Agriculturists Record of Tenancy Right Act. It is not the case that the lease was granted to the defendant by the plaintiff. It is the case of the defendant that Mrs.Thayalnayaki Ammal only gave lease to him in the year 1974. The question is whether Mrs.Thayalnayaki Ammal herself had got any right to lease out the property to the defendant. At no stretch of imagination, it can be concluded that Mrs.Thayalnayaki Ammal granted lease in favour of the defendant. The application filed by Mrs.Thayalnayaki Ammal and the defendant before the Record Officer under the Tamil Nadu Agriculturists Record of Tenancy Right Act to record their names as cultivating tenants was dismissed. It seems that there was no such juridical relationship of landlord and tenant between the plaintiff and the defendant.

9. Even now, it is not the case at all that any such juridical relationship was created between the plaintiff and the defendant at the instance of the plaintiff. It is also not the case that Mrs. Thayalnayaki Ammal had leased out the property to the defendant with the consent or knowledge of the plaintiff. At any rate, two Courts below have held that Mrs. Thayalnayaki Ammal had no right to lease out the suit property to the defendant and therefore, though the defendant has been in possession of the property and he has been cultivating the land all along from the year of 1974 onwards, he cannot be termed as a "cultivating tenant" under the plaintiff. In other words, to repeat, I have to say that the juridical relationship between Mrs. Thayalnayaki and the defendant has not been proved. This conclusion was arrived at by the two Courts below on facts. That is the reason why I say that there is no substantial question of law involving in this second appeal even to admit the same.

10. In the result, the second appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst. Registrar (CS-III)

/true copy/

Sub Asst. Registrar.

To

1. The II Additional Subordinate Judge,
Cuddalore.

2. The Principal District Munsif,
Cuddalore.

1 cc to Mr. P. Jagadeesan, Advocate S.R.No. 4147

Second Appeal No. 1148 of 2014

UG(CO)
PSI 24/02/2015