

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

S.A.No.876 of 1999

1. Chinna Pillai
2. Rajangam

.. Appellants/Respondents/Plaintiffs

-Vs-

- 1.T.S.Natarajan
- 2.T.S.Ganesan
- 3.Chakrapani
(R3 - Exparte)

... Respondents/Respondents/Defendants

Second Appeal filed under section 100 of C.P.C against the judgment and decree made in A.S.No.119 of 1998 on the file of the Court of Principal Subordinate Judge, Mayiladuthurai dated 25.01.1999 in reversing the judgment and decree made in O.S.No.686 of 1993 on the file of the Court of Additional District Munsif, Mayiladuthurai dated 20.02.1997.

For Appellant : Mr.A.Muthukumar

For Respondents 1 & 2 : Mr.S.Sounthar
R3 : Exparte.

JUDGMENT

The plaintiffs in the original suit are the appellants in the second appeal. They filed the suit against the respondents herein for a bare injunction claiming that they were in possession and enjoyment of the suit property and the defendants were making attempts to interfere with their peaceful possession and enjoyment. Their possession, according to the plaint averments, was adverse to that of the real owner and they had perfected title by adverse possession. On the basis of the said contention, they pleaded for the relief of permanent injunction against the respondents herein, who figured as the defendants in the suit.

2. The suit was resisted by respondents 1 and 2 herein/defendants 1 and 2 contending that the property was not in the possession of the plaintiffs as claimed by them and on

the other hand, it belonged to the first defendant, who sold the same to the third defendant and that since the third defendant had gone out of the country, by virtue of the authorization given by him, the second respondent/second defendant was managing the property.

3. The trial Court, after framing necessary issues and on completion of the trial, accepted the case of the plaintiffs and rejected the defence plea. Accordingly, the suit was decreed for the relief of permanent injunction as prayed for. As against the said decree of the trial Court dated 20.02.1997, the respondents 1 and 2 herein /defendants 1 and 2 filed an appeal before lower appellate Court in A.S.No. 119 of 1998. The learned lower appellate Court, allowed the appeal, set aside the decree granted by the trial Court and dismissed the suit by its judgment and decree dated 25.01.1999. It is as against the said decree of the lower appellate Court dated 25.01.1999, the present second appeal came to be filed.

4. The second appeal was admitted on 18.06.1999 identifying the following to be the substantial question of law involved in the second appeal.

"Whether the possession of the plaintiffs is protected by law, when the 1st plaintiff was recorded as a cultivating tenant after hot contest as per Ex.A3, in the proceedings of the Authorized Officer under the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, Act 10 of 1969 and the same was allowed to become final by the defendants?"

5. The arguments advanced by Mr.A.Muthukumar, learned counsel for the appellants and by Mr.S.Sounthar, learned counsel for respondents 1 and 2 are heard. The judgments of the Courts below and other materials available on record are perused and they are also taken into account.

6. The suit as originally filed was for the relief of permanent injunction on the basis of title alleged to have been derived by way of adverse possession. An interesting twist in the case took place during the course of trial. The plaintiffs, who prayed for injunction on the basis of their alleged title, chose to approach the Authorized Officer under the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969, claiming that the first appellant herein/first plaintiff was a cultivating tenant in respect of the suit property. Some how or other the appellants were able to get an order under Ex.A3 recording the first appellant/first plaintiff as cultivating tenant in respect of the suit property in its entirety. The trial Judge chose to grant the relief of injunction relying on Ex.A3 which came into existence during the pendency of the suit.

Based on Ex.A3, the learned trial Judge also came to the conclusion that the entire suit property was in possession and enjoyment of the plaintiffs.

7. On appeal, the lower appellate Court reversed the judgment of the trial Court and set aside the decree on the following grounds:

1. The proceedings of the Authorized Officer under the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969 came to be initiated on an application submitted by the first appellant/first plaintiff after the filing of the suit and hence, no weight could be attached to the order under Ex.A3.
2. The learned lower appellate Judge also suspected the genuineness of the order on the ground that the officer, who passed the order, was not examined before the trial Court.

8. As rightly contended by the learned counsel for the appellants, the above said reasoning of the lower appellate Judge cannot be countenanced. When an authority under a special enactment, having power to decide an issue, passes an order in accordance with the provisions of such special enactment, such an order is binding on the civil Court irrespective of the fact whether such an order came to be passed prior to the filing of the suit or during the pendency of the suit. The civil Court cannot ignore the order and it has to give effect to that order. The position will be different in case the Civil Court renders the finding prior to the passing of the order by the competent authority under the special enactment. In that case, the Civil Court can go into the question of propriety of the competent authority in passing such an order disregarding a decree passed by the civil Court, which cannot be said to be without jurisdiction. Hence, this Court comes to the conclusion that both the reasons assigned by the lower appellate Judge for not relying on Ex.A3 have got to be rejected as untenable.

9. However, the learned counsel for the contesting respondents advanced an argument, which according to this Court, has got some weight and cannot be lightly discarded. According to the submissions made by the learned counsel for the contesting respondents, the appellants ought not to have been allowed to lead evidence on the basis of their new contentions as a result of afterthought and that Ex.A3 could not have been admitted as a piece of evidence in the absence of a plea by the plaintiffs in their plaint that the first plaintiff was a cultivating tenant. It is the further contention of the learned counsel for the contesting respondents that even such a plea

could not have been taken in the plaint as the said plea and the plea of perfection of title by adverse possession are mutually destructive of the other and hence the trial Court ought not to have permitted the plaintiffs to adduce evidence on the basis of the contention that one of the appellants/plaintiffs was a cultivating tenant. The question of election of the pleas was also not available in this case, because the only plea taken by the appellants herein/ plaintiffs in the plaint was that they got title to the suit property by adverse possession. Any amount of evidence adduced in the absence of plea cannot be looked into. There is substance in the above said contention raised by the learned counsel for the contesting respondents. Hence, on the said ground itself, the trial Court ought to have excluded Ex.A3 and the parol evidence touching Ex.A3 from the purview of consideration in the suit.

10. To be frank, the appellants/plaintiffs, who had chosen to file the suit for injunction on the basis of their claim of title to the suit property, on obtaining an order from the authorized Officer under the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969, ought to have withdrawn the suit or at least ought to have pleaded for amendment of the plaint. As the appellants/plaintiffs did none of the above said alternatives, the appellants/plaintiffs are bound to fail in the present suit, which is based on their claim of title and possession.

11. In view of the above discussions, this Court, without expressing any opinion as to who is in possession, comes to the conclusion that though the other two reasons assigned by the lower appellate Court cannot be sustained, the decree passed by the lower appellate Court, which resulted in the dismissal of the suit filed by the appellants herein, has got to be sustained. Accordingly, this Court comes to the conclusion that the second appeal does have no merit in it and the same deserves to be dismissed.

In the result, the second appeal is dismissed. No costs.

gpa

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Principal Subordinate Judge
Mayiladuthurai

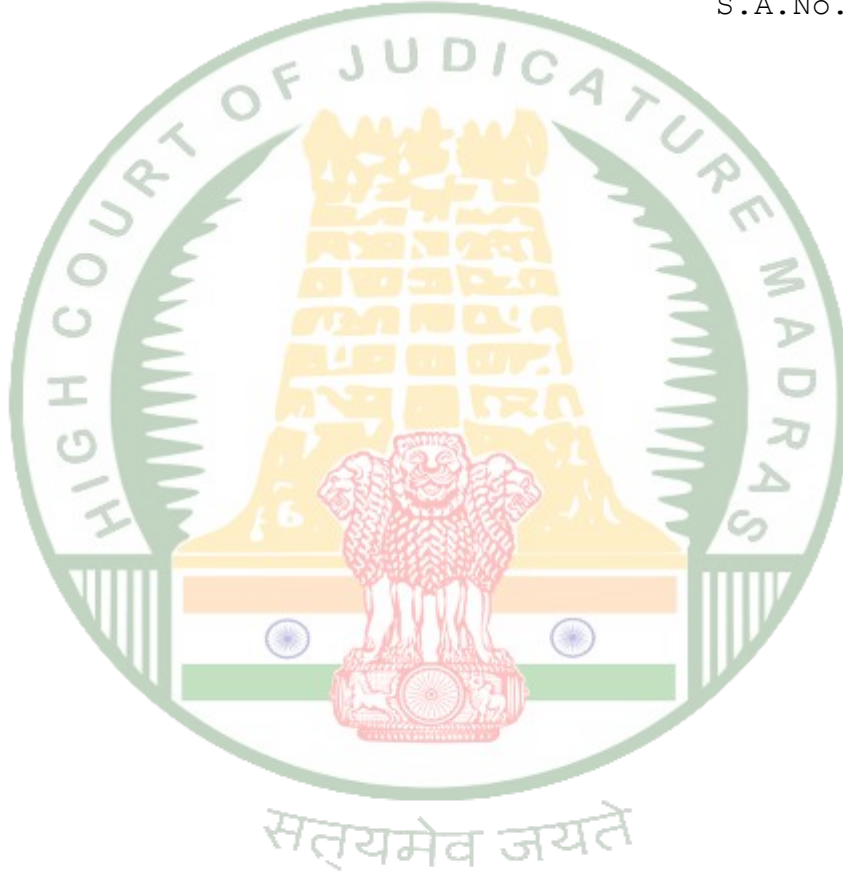
2. The Additional District Munsif
Mayiladuthurai

3. The Section Officer,
V.R.Section, High Court,
Madras.

+ 1 cc to M/s.A.Muthukumar, Advocate SR 47096

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