

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2015

CORAM

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

S.A.No.1651 of 2008

Jayaraman

.. Appellant/Plaintiff

-Vs-

1. Ramakrishnan
2. Gopalakrishnan
3. Balakrishnan

.. Respondents/Defendants

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of Principal Sub-Court, Mayiladuthurai dated 22.08.2008 made in A.S.No.77 of 2007 confirming the judgment and decree of District Munsif Court, Srikali dated 13.07.2007 made in O.S.No.39 of 2004.

For Appellant : Mr.S.Sounthar

For Respondent : Mr.G.M.Shankar for R1 to R3

JUDGMENT

The unsuccessful plaintiff is the appellant herein. The plaintiff has come forward with the suit for the relief of permanent injunction restraining the defendants, who are none other than his brothers, from interfering with his peaceful possession and enjoyment of the property.

2. According to the plaintiff, the suit property belongs to Sri Sattanathasamy Devasthanam, Sirkali and one Packirisamy, who was the father of the plaintiff as well as the defendants was a tenant in his personal capacity and he had been cultivating the land and the plaintiff used to assist him in the cultivation work and the plaintiff's father on his own out of his love and affection, executed a Will dated 10.02.2001 bequeathing his leasehold right in favour of the plaintiff and his wife and after his death, the plaintiff got the leasehold right and has been in possession and enjoyment of the property by cultivating the land and the same is sought to be interfered with by the defendants.

3. The claim of the plaintiff that he used to help his father in cultivation and he has been in possession and enjoyment in his capacity as lessee under the temple is seriously disputed by the defendants 1 to 3. According to them, their father, original tenant, even during his life time transferred his leasehold right in favour of the defendants 2 and 3 and thereafter, the defendants 2 and 3 have been in possession and enjoyment of the same and have been carrying on cultivation in the same and the defendants 2 and 3

have, on the strength of transfer of tenancy right by the father, approached the appropriate authority for recording their name as cultivating tenant and their claim was admitted by the father Packirisamy and the original owner Sri Sattanathasamy Devasthanam, Sirkali who was arrayed as the second respondent in the said proceedings and on the basis of their admission, the defendants 2 and 3 were recorded as cultivating tenants as per the order even dated 29.03.1982 in respect of 1.40 acres in R.S.No.460/1 and they continue to be in possession and enjoyment of the same.

4. Both the parties have, in support of their respective claim, adduced oral and documentary evidence before the trial Court and the trial Court based on the oral and documentary evidence, arrived at a conclusion that the plaintiff has not established his possession and enjoyment of the property, whereas the defendants have proved their leasehold right and possession and enjoyment of the property in their capacity as cultivating tenants and dismissed the suit. Aggrieved against the same, the plaintiff preferred A.S.No.77 of 2007 along with an application I.A.No.119 of 2007 for receiving additional documents. The lower appellate Court received the additional documents produced on the side of the parties as Exs.A23 to A26 and Exs.B23 and B24 and on the basis of the available evidence adduced before the trial Court as well as before lower appellate Court, the lower appellate Court confirmed the findings and judgment and decree of the trial Court and dismissed the appeal. Hence, this second appeal by the plaintiff before this Court.

5. This Court admitted the second appeal on the following substantial questions of law:

1. Whether the judgment of the lower appellate Court is vitiated in its ignoring the order passed by the Record Officer under Tamil Nadu Agricultural Lands Records of Tenancy Rights Act?
2. Whether the finding of Record Officer under RTR Act that the appellant is a cultivating tenant is not binding on civil Court in view of bar created under Section 16-A of Tamil Nadu Agricultural Lands Records of Tenancy Rights Act?

6. Heard the submissions made by the learned counsel for the appellant and the learned counsel for the respondents and also perused the materials available on record.

7. The plaintiff is now questioning the correctness of the findings of the Courts below mainly by relying upon Ex.A23 order dated 03.09.2007 passed by the Record Officer under the Tamil Nadu Agricultural Lands Records of Tenancy Rights Act thereby recording the plaintiff as cultivating tenants. It is contended before this Court that Ex.A23 order, recording the plaintiff as cultivating tenant, prevails over the earlier orders and the same is also binding on Civil Courts in view of the bar created under Section 16-A of Tamil Nadu Agricultural Lands Records of Tenancy Rights Act (RTR Act). In my considered view, the plaintiff cannot make any new claim on the strength of Ex.A23 for the following reasons:

i) As per the order dated 29.03.1983, both the defendants 2 and 3 had been recorded as cultivating tenants in respect of the lands in question on the strength of admissions made by their father, the original lessee and the original owner Sri Sattanathasamy Devasthanam. As far as Ex.A1-Will dated 12.02.2001 is concerned, the same came to be executed by the father Packrisamy after defendants 2 and 3 had been recorded as cultivating tenants. The father, having duly transferred his right in favour of the defendants 2 and 3 and having admitted the same before the competent authority and the defendants 2 and 3 having been duly recognized as cultivating tenants by the original owner temple, the father had no right to execute the Will in respect of leasehold right which was no longer in force. Even assuming it to be true that the Will is genuine and duly executed by the father, the father having no leasehold right, the plaintiff gets no right under the Ex.A1 Will dated 12.02.2001.

ii) The plaintiff, though has come forward with the present suit as if the plaintiff has been in possession and enjoyment of the property, no document has been produced to prove the same. Though Exs.A10 to A14 rent receipts issued by the temple are produced to show that even after Exs.B14 and 15 orders, the plaintiff's father continued to be the lessee under the temple, those documents are of no help to the plaintiff as the same do not indicate that the rent paid is only in respect of the land in question. Further, mere rent receipts issued in the name of the father will in no way take away the right of the defendants 2 and 3, who have been admittedly recognized as cultivating tenants by the owner as well as competent authority under the relevant provisions of the statute.

iii) As far as Ex.A23 is concerned, the same came into existence during the pendency of the first appeal. The order is passed on the application filed by the plaintiff on 04.01.2007 to record his name as cultivating tenant. The order is passed in his favour basing on Ex.A1 Will effect of which has already been discussed in the forgoing paragraphs. As rightly pointed out by the learned counsel for the respondent, the plaintiff cannot claim any right under Ex.A23 when the claim of the parties is to be decided on the basis of the actual state-of-affairs prevailing on date of the suit. Further, the reading of Ex.A23 reveals that it refers to the earlier proceedings taken by the plaintiff unsuccessfully for the same relief. Unless and otherwise, the copy of the earlier orders are produced before this Court, no reliance can be made on this document, which is obtained much after the dismissal of the suit and during the pendency of the first appeal. The plaintiff has no other material document to prove his claim as tenant much less cultivating tenant and his possession and enjoyment of the suit property. That being so, both the Courts below have, in their well considered judgment, rightly rejected the claim of the plaintiff and this Court finds no ground to interfere with the same and the substantial questions of law are thus answered against the appellant/plaintiff.

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

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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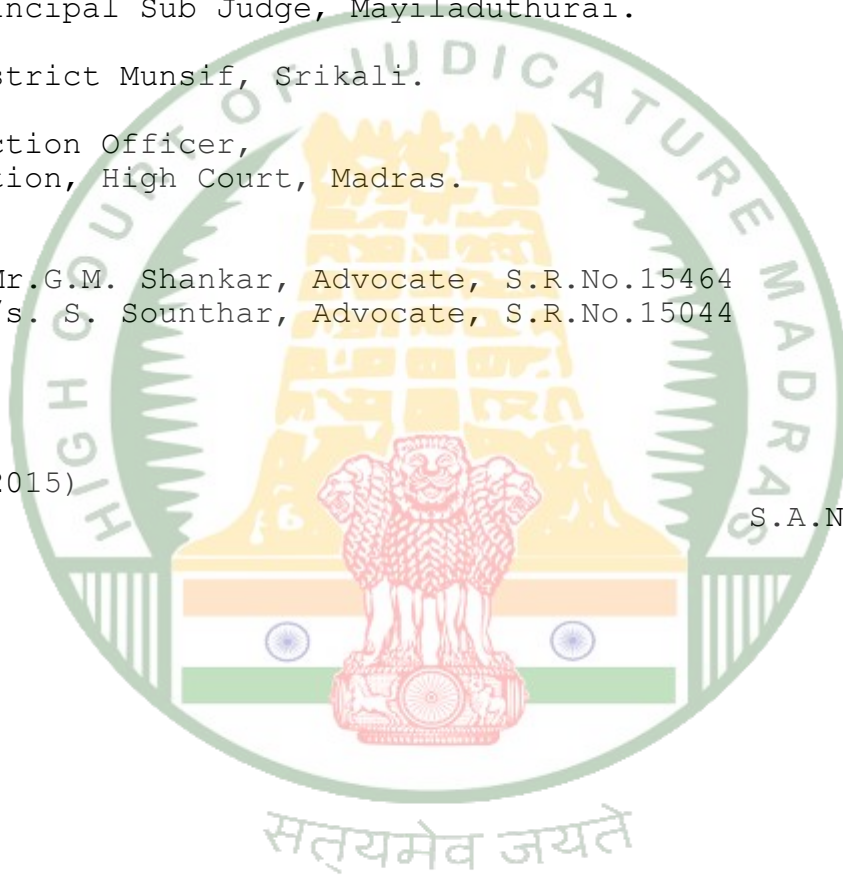
To

1. The Principal Sub Judge, Mayiladuthurai.
2. The District Munsif, Srikali.
3. The Section Officer,
VR Section, High Court, Madras.

+3ccs to Mr.G.M. Shankar, Advocate, S.R.No.15464
+1cc to M/s. S. Sounthar, Advocate, S.R.No.15044

MP(CO)
EU(10/07/2015)

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