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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.41 of 2011
and
M.P.No.1 of 2011

P.Karapuranahaswamy

...Appellant/Appellant/Plaintiff

-Vs-

1. C.Shanmuga Sundaram
2. C.Somasundaram
3. T.M.Logakumaresan
4. S.Muthuraman
5. M.Pakash
6. Maheswari

...Respondents/Respondents/Defendants

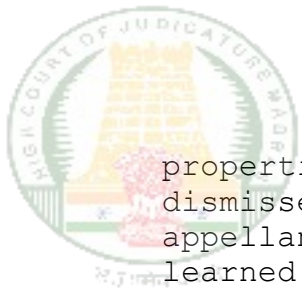
SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 29.10.2010 in A.S.No.49 of 2010 on the file of the II Additional Subordinate Judge, Salem, confirming the judgment and decree dated 01.12.2009 in O.S.No.953 of 2007 on the file of the Principal District Munsif, Salem.

For Appellant : Mr.Abrar Mohammed
for Mr.R.Subramanian

For Respondents : Mr.A.K.Kumarasamy for R1 to R5
Mr.S.Rameshkumar for R.6

J U D G M E N T

The plaintiff in O.S.No.953 of 2007 on the file of the learned Principal District Munsif, Salem is the appellant herein and the respondents are the defendants in the suit. There are two items of suit properties. The plaintiff filed the said suit for permanent injunction to restrain the defendants from in any manner interfering with his alleged peaceful possession and enjoyment of the suit



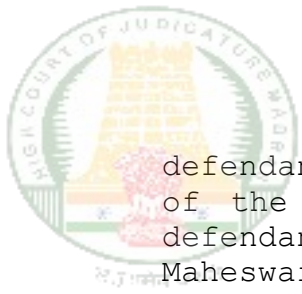
properties. The trial court by decree and judgment dated 01.12.2009 dismissed the suit in its entirety. As against the same, the appellant filed an Appeal in A.S.No.49 of 2010 on the file of the learned II Additional Subordinate Judge, Salem. By decree and judgment dated 29.10.2010, the lower Appellate Court dismissed the appeal, thereby confirming the decree and judgment of the trial court. As against the same, the appellant is before this court with this second appeal.

2. This Second Appeal has come up before me today for admission. I have heard Mr.Abrar Mohamed, the learned Counsel appearing for the appellant, Mr.A.K.Kumarasamy, the learned Counsel appearing for the respondents 1 to 5 and Mr.S.Rameshkumar, the learned Counsel appearing for the 6th respondent. I have also perused the records carefully.

3. The case of the plaintiff is as follows :

So far as the first item of the suit property is concerned, it was purchased by his father Palanisamy, by means of a registered sale deed dated 26.04.1961 and after the demise of his father, he has been in possession and enjoyment of the suit property as absolute owner. So far as the second item of the suit property is concerned, admittedly, it belongs to the first defendant. The plaintiff's father entered into an oral lease agreement with the 1st defendant thirty years before the date of filing of the suit. As per the said oral lease, the plaintiff's father was in possession and enjoyment of the second item of the suit property as a cultivating tenant. His father died on 21.04.1999. Thereafter, the plaintiff has been in possession and enjoyment of the second item of the suit property, contributing his physical labour. Thus, according to the plaintiff, he has been in possession and enjoyment of both the items of the suit property and the defendants have got no right to disturb the same.

4. The case of the defendants is that it is true that the plaintiff is the absolute owner of the first item of the suit property and he is also in possession and enjoyment of the same. The first defendant makes it very clear that he does not make any claim over the first item of the suit property at all. So far as the second item of the suit property is concerned, it is stated that the plaintiff's father had never entered into any lease agreement with the first defendant. Neither his father nor the plaintiff was in possession of the second item of the suit property at any point of time. It is their further case that the second item of the suit property was all along in the possession and enjoyment of the first



defendant and the first defendant, in turn, has sold away the 2nd item of the suit property to the 2nd defendant on 28.03.2007. The 2nd defendant, in turn, has sold away a portion of the property to one Maheswari under a registered sale deed dated 25.05.2007 and another portion to one Loga Kumaresan, S.Muthuraman and M. Prakash on 28.3.2007. These purchasers have been in possession and enjoyment of the second item of the suit property.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, 4 witnesses were examined and as many as 7 documents were exhibited. On the side of the defendants, 2 witnesses were examined and as many as 14 documents were exhibited. Having considered all the above, the trial court dismissed the suit which was confirmed by the lower appellate court. That is how, the appellant is before this Court with this Second Appeal.

6. In this second appeal, it is contended by the learned Counsel for the appellant that when there is no dispute in respect of the first item of the suit property, the courts below ought not to have dismissed the suit at all in respect of the said item. It is further contended that in respect of the second item of the suit property, the civil court has got no jurisdiction to decide the question as to whether the plaintiff is a cultivating tenant of the 2nd item of the suit property or not in view of the provisions of the Tamilnadu Cultivating Tenants' Protection Act, 1955 (hereinafter referred to as, 'the Act') which has expressly ousted the jurisdiction of the civil court. The learned Counsel for the appellant would, therefore, submit that in this case, the courts below have illegally gone into the question as to whether the plaintiff is the cultivating tenant or not, thereby usurping the power of the competent forum under the Act. The learned Counsel would further point out that the courts below ought to have referred the issue as to whether the plaintiff is a cultivating tenant or not to the competent forum under the Tamilnadu Cultivating Tenants' Protection Act, 1955 for taking an authoritative decision on the same. Thus, according to the learned Counsel, the decree and judgment of the courts below, in respect of the second item of the property, is not sustainable.

7. From the above pleadings and the materials placed before this Court, I find that the following substantial questions of law have arisen for consideration:



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1. Whether the courts below were right in dismissing the suit in respect of the first item of the suit property, when the defendants themselves have not disputed the plaintiff's title and his possession in respect of the item No.1?

2. Whether the decree and judgment of the trial court which was confirmed by the lower appellate court is vitiated for want of jurisdiction in view of the specific provision contained under the Tamilnadu Cultivating Tenants' Protection Act, 1955, in respect of the second item of the suit property?

8. Reiterating the above grounds, the learned Counsel for the appellant, in respect of the second item of the suit property, relied on a judgment of this Court in *Philominal and another vs. M.Shanmugasundaram (died) and others* reported in 2014(1) MWN (Civil) 294 wherein a learned Single Judge of this Court has gone into the question as to whether the civil court has got jurisdiction to decide the question as to whether the party concerned is a cultivating tenant of the suit property or not. The learned Counsel would submit that the decree and judgment of the trial court which was confirmed by the lower appellate court stands vitiated for want of jurisdiction.

9. The learned counsel for the respondents would submit that so far as the first item of the suit property is concerned, they have got no objection for a decree being granted as prayed for. The said statement is recorded. Accordingly, the first substantial question of law is answered in favour of the appellant.

10. So far as the second item of the suit property is concerned, the learned Counsel for the respondents would submit that it is true that there is a competent forum constituted under the Tamil Nadu Cultivating Tenants' Protection Act, 1955, to decide as to whether any individual is a cultivating tenant in terms of the said Act or not. But the learned Counsel for the respondents would submit that in a suit for injunction, in order to find out the possession and the character of possession, there is no bar for the civil court to incidentally go into the question as to whether the person who claims to be in possession of the property is a cultivating tenant or not. According to the learned Counsel for the respondents, to this extent, the jurisdiction of the civil court has not been ousted.



11. The learned Counsel for the respondents would further submit that in the instant case, absolutely, there is no evidence to prove the oral lease. He would also submit that absolutely there is no document whatsoever to prove the payment of rent. He would further submit that absolutely, there is no document to prove the possession of the plaintiff in the second item of the suit property as a tenant. Thus, two courts below, on appreciating the entire facts have held that the plaintiff is not in possession of the 2nd item of the suit property as a cultivating tenant, which according to the learned Counsel for the respondents, does not warrant any interference at the hands of this Court.

12. I have considered the above submissions.

13. So far as the first item of the suit property is concerned, I may not find any difficulty in granting the decree as prayed for in favour of the appellant, since the defendants have tacitly admitted that the appellant is the absolute owner and he is in possession and enjoyment of the same. To that extent, I am inclined to modify the decree of the trial court which was confirmed by the lower appellate court.

14. So far as the second item of the suit property is concerned, the question is as to whether he is in possession of the suit property and whether his possession is as a cultivating tenant. It is not as though that at this length of time, the civil court does have jurisdiction to incidentally go into the question as to whether the individual is a cultivating tenant or not, while deciding the question of possession in a suit for injunction. That is what has been held by this Court in *Philominal and another vs. M. Shanmugasundaram (died) and others* reported in 2014(1) MWN (Civil) 294. In paragraph 17 of the judgment, the learned Judge has categorically held as follows:

"17. Though the civil court does not have jurisdiction to decide the question whether one is a cultivating tenant or not, such a question when raised incidentally in a suit which is otherwise maintainable can be gone into and decided by the civil court. But, such incidental decision shall not have the effect of overriding the provision found in Section 16-A of the Tamil Nadu Cultivating Tenants' Protection Act as held in *Krishnasamy Pillai Vs. Arumighu Adhi Satheeswarasamy Deveasthanam, Kopurapuram* by its Executive Officer reported in 2006 (3) L.W. 207...."



15. Applying the said well settled law to the facts of the present case, I have to hold that in the present suit, which is for injunction, based on possession, it is permissible for the civil court to incidentally go into the question as to whether the plaintiff is the cultivating tenant in respect of the second item of the suit property. Whether a person is a cultivating tenant or not is to be fundamentally decided based on the contribution of his physical labour in the cultivation of the land.

16. In the instant case, absolutely, there is no evidence at all to prove the oral lease which was allegedly entered into between the plaintiff's father and the 1st defendant 30 years ago. Absolutely, there is no evidence to prove the possession of the plaintiff in respect of the second item of the suit property. There is no document produced to show the possession and enjoyment of the plaintiff. On appreciating all these evidence, the courts below have held that the plaintiff is not at all in possession and enjoyment of the second item of the suit property. When the courts below have held that the plaintiff has not proved that he is in possession and enjoyment of the second item of the suit property, the further question as to whether the plaintiff is a cultivating tenant or not, cannot be gone into at all. It is only, in a case, where it is found that the plaintiff is in possession, then the question as to whether he is a cultivating tenant or not, that question can also be gone into as an incidental issue.

17. Here in this case, for want of oral and documentary evidences, the courts below have held that the plaintiff has not proved that he is in possession and enjoyment of the second item of the suit property. This is essentially a question of fact which does not warrant any interference at the hands of this Court in the same. In view of the above, I have to answer the second substantial question of law only against the appellant. Thus I do not find any merit at all in respect of the appellant, in so far as second item of the suit property is concerned.

18. In the result, the Second Appeal is partly allowed in the following terms :

1. There shall be a decree for permanent injunction restraining the defendants from in any manner interfering with the peaceful possession and enjoyment of the first item of the suit property by the plaintiff; and



2. In respect of the second item of the suit property, the decree and judgment of the trial court, which was confirmed by the lower appellate court, dismissing the suit, is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

tsi/vrc

To

1. The II Additional Subordinate Judge,
Salem.

2. The Principal District Munsif,
Salem.

1 CC to Mr.R.Subramanian, Advocate SR.No. 16748

1 CC to Mr.A.K.Kumarasamy, Advocate SR.No. 17088

1 CC to Mr.S.Rameshkumar, Advocate SR.No. 16939

S.A.No.41 OF 2011
& M.P. No. 1 of 2011

EV (CO)
PSI (03.06.2015)