

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 04.11.2016

Judgment pronounced on : 08.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.No.172 & 173 of 1993

S.A.No.172 of 1993

Srimath Sivagnana Swamigal Madalayam,
Mailam. .. Appellant/ 1st Respondent/ 1st Defendant

Versus

1.K.G.Kuppuswamy Mudaliar (died)...1st Respondent/ Appellant/
Plaintiff

2.Mannankatti @ Murugesan2nd Respondent/ Respondent/
2nd Defendant

3.Sulochana

4.Palanivel

5.Thanigaivel

6.Jayaprakash .. 3 to 6 Respondents/ LRS of
1st Respondent

R3 to 6 are brought on record as legal representatives of the deceased first respondent vide order of Court dated 20.10.2009 made in CMP Nos.10682 to 10684 of 2004 in S.A.No.172 of 1993.

Prayer: Petition filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree as made in A.S.No.106 of 1990 dated 20.11.1991 on the file of the Subordinate Judge, Chingleput confirming the judgment and decree made in O.S.No.281 of 1984 dated 13.09.1990 on the file of the District Munsif, Madurantakam.

S.A.No.173 of 1993

Mannankatti @ Murugesan ... Appellant/ Respondent/ Plaintiff

Versus

1.K.G.Kuppuswamy Mudaliar (died)

2.Sulochana

3.Palanivel

4.Thanigaivel

5.Jayaprakash

.. Respondents

R2 to 5 are brought on record as legal representatives of the deceased sole respondent vide order of Court dated 25.08.2009 & 27.01.2010 made in CMP No.10685 to 10687 of 2004.

Prayer: Petition filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree as made in A.S.No.107 of 1990 dated 20.11.1991 on the file of the Subordinate Judge, Chingleput confirming the judgment and decree made in O.S.No.262 of 1984 dated 13.09.1990 on the file of the District Munsif, Madurantakam.

For Appellants : Mrs.N.Mala in both S.A.

For Respondents : No appearance

C O M M O N J U D G M E N T

Challenging the judgment of learned Subordinate Judge, Chinglepet, passed in A.S.Nos.106 & 107 of 1990 dated 20.11.1991, the second appeals have been filed.

2. The property which is subject matter of the Second Appeal is admittedly owned by the appellant Srimath Sivagnana Swamigal Madalayam, Mailam. OS.No.262 of 1984 is filed for bare injunction by one Mannankatti @ Murugesan stating that he has been put in possession of the suit property as a cultivating tenant under the appellant from the fasli year 1985. While so, one K.G.Kuppusamy Mudaliar, (plaintiff in O.S.No.281 of 1986), is trying to disturb his peaceful possession and hence he sought for declaration and injunction against him. Whereas K.G.Kuppuswamy Mudaliar has filed subsequent suit in O.S.No.281 of 1986 against the appellant as well as the Mannankatti @ Murugesan who is the plaintiff in O.S.No.262 of 1984. The trial Court has taken up both the suits together and has framed relevant issues in both the suits and after examining the witnesses on both sides and exhibits marked on their behalf has held that Mannankatti @ Murugesan, the plaintiff in O.S.No.262 of 1984 is entitled for declaration and injunction, whereas relying upon the admission of Kuppusamy Mudaliar made in Exhibit B2, has held that Kuppusamy Mudaliar, the plaintiff in O.S.No.281 of 1986 has given away the possession of the suit schedule property to the appellant Madam in the year 1984 itself and since then, Mannankatti @ Murugesan is in possession of the said property. Holding so, the trial Court has dismissed O.S.No.281 of 1986 preferred by Kuppuswamy Mudaliar.

3. Aggrieved by the said common judgment and decree, Kuppuswamy Mudaliar preferred two appeals one against allowing the suit in O.S.No.262 of 1984 another against dismissal of O.S.No.281 of 1986 the suit filed by him. The first appellate Court, considering the pleadings and evidence, had framed point for consideration, namely whether the suit property is under the possession of Kuppuswamy Mudaliar or in possession of Mannankatti @ Murugesan.

4. Taking note of the demand notice for arrears of rent (Ex A.1) issued by the appellant Madam to Kuppuswamy Mudaliar,

the pre-suit notice (Ex.A7) by the Madam to Kuppusamy Mudaliar, the reply (Ex.A8) sent by Kuppusamy Mudaliar and the tax receipts Ex.A1 to A3 marked in O.S.No.281 of 1986, Courts below have concluded that the appellant in A.S.Nos.106 & 107 of 1990, namely Kuppuswamy Mudaliar, who is the first respondent in this appeal was in possession of several pieces of land owned by Madalayam including S.No.379, which is the subject matter of these two appeals. So far as S.No.379 is concerned, it is to an extent of 1.56 acres and it forms part of 14 acres of land owned by the appellant Madalayam and put under cultivating tenancy of Kuppuswamy Mudaliar. The lower Appellate Court has also found that from the year 1984, for S.No.379, the appellant Madam has given the tenancy in favour of Mannankatti @ Murugesan and has also made a representation to the Thasildhar to recognise him as a cultivating tenant under the Madam. However the first appellate Court has also found that the possession claimed by Mannankatti @ Murugesan has not been properly established and it has not been proved to show that he was put into possession directly by the Madalayam or by Kuppusamy Murali as sub-tenant.

5. The lower appellate Court has found that on 06.09.1984, when Mannankatti @ Murugesan laid his suit for declaration and injunction, he has not specifically stated under whom he was enjoying the property as tenant. Contrarily, the Madam which is appellant herein, has leased out the property for rent to Kuppuswamy Mudaliar, which is evident from the demand notice dated 23.01.1984. Under these circumstances, the lower appellate Court has held that the declaration granted in favour of Mannankatti @ Murugesan, even without a pleading under whom he is a tenant as a cultivating tenant, is unsustainable.

6. Similarly, with regard to injunction relief sought by Kuppuswamy Mudaliar, the lower appellate Court has found that Kuppuswamy Mudaliar is not in possession of S.No.379 and he has admitted that at the time of instituting the suit, the disputed property was given in possession to Mannankatti @ Murugesan by the Madalayam. Therefore, the lower appellate Court has rightly found that, having lost the possession, instead of seeking for an injunction, as if he is in a possession, Kuppuswamy Mudaliar ought to have sought for re-possession of the suit property and not bare injunction. Having failed to seek appropriate remedy, the lower appellate Court has confirmed the judgment of the trial Court regarding the injunction suit filed by Kuppuswamy Mudaliar.

7. In fine, the lower appellate court has modified the judgment and decree of the trial Court to the effect that the declaration decree granted in favour of Mannankatti @ Murugesan is set aside and confirmed the dismissal of injunction prayer sought for by Kuppuswamy Mudaliar.

8. However, while concluding, the lower appellate Court has dismissed A.S.No.106 of 1990 filed against

O.S.No.281 of 1986 filed by Kuppuswamy Mudaliar for injunction and allowed A.S.No.107 of 1990, reversing the judgment and decree of the trial Court passed in O.S.No.262 of 1984 in toto.

9. Learned counsel appearing for the appellant submitted that being the land owner of the disputed property and Mannankatti @ Murugesan having been recognised as the cultivating tenant under the Madam, the first appellate Court without any proper discussion, had set aside the relief of injunction granted in favour of Mannankatti @ Murugesan by the trial Court by allowing A.S.No.107 of 1990.

"The substantial questions of law framed in these two appeals are as under:-

1. Whether the lower Court is right in holding that Mannankatti alias Murugesan is not a cultivating tenant within the meaning of the Tamil Nadu Act 25 of 1955?

2. Was the lower Court right in law in holding that Mannankatti is not entitled to the injunction prayed for?"

10. On a complete reading of the lower appellate court judgment, this Court finds that the lower appellate Court has not concluded about the status of Mannankatti @ Murugesan. It is rightly held in para 17 in the lower appellate Court judgment that whether Mannankatti @ Murugesan is protected under cultivating tenant Act, cannot be decided by the Civil Court and it is initially for the Revenue Authorities who are competent to consider his representation to register himself as a cultivating tenant as per law and therefore, on such observations the relief of declaration sought by Mannankatti @ Murugesan has been rejected.

11. This Court finds no error in the said findings. If at all, Mannankatti @ Murugesan is aggrieved by the judgment of the first appellate Court in AS No.106 of 1990 he should have preferred the second appeal and sought appropriate remedy. It is Madalayam which has preferred the second appeal SA No.172 of 1993 and not Mannankatti @ Murugesan. This Court is of the opinion that the declaration of Mannankatti @ Murugesan as a cultivating tenant, is not within the scope and purview of the second appeal. Further Madalayam is not a party in the suit O.S.No.262 of 84 filed by Mannakatti @ Murugesan. For the aforesaid reasons since the Courts below have found that at the time of filing the suit, Mannankatti @ Murugesan was in possession of the suit property and in the light of the fact Kuppuswamy Mudaliar against whom it was alleged that the peaceful possession of Mannankatti @ Murugesan is disturbed, is no more, this Court is of the opinion that the judgment of the first appellate Court need not be interfered with. Though the lower appellate Court has reversed the relief of injunction granted in favour of Mannankatti @ Murugesan, no prejudice is caused, since the demise of Kuppuswamy Mudaliar.

12. In the result both the Second Appeals dismissed. No order as to costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

dpq

To

1. The Subordinate Judge, Chingleput
2. The District Munsif, Madurantakam.

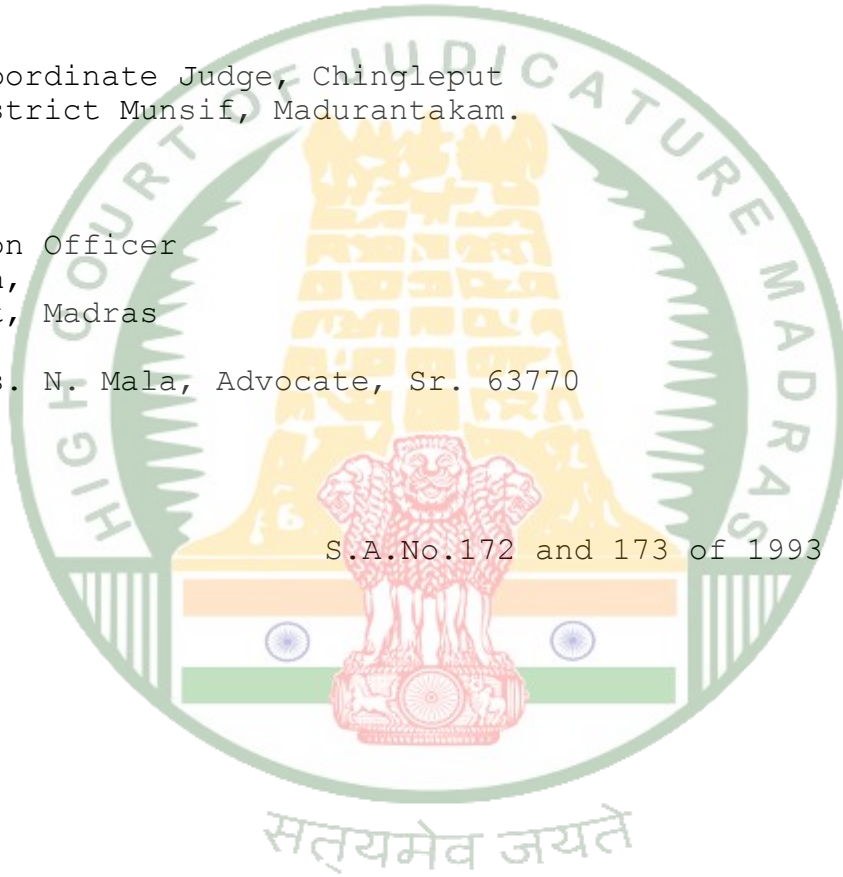
Copy to

The Section Officer
VR Section,
High Court, Madras

1 cc to Ms. N. Mala, Advocate, Sr. 63770

S.A.No.172 and 173 of 1993

GJ (CO)
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