

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :29.11.2016

Judgment pronounced on : 05.12.2016

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.No.1335 & 1336 of 1998

S.A.No.1335 of 1998

1. P.Chinnappa Pillai (deceased)
 2. C.Jagadeesan
 3. K.Premavathy
 4. Prabakaran
 5. Kasthuri
 6. Durga
 7. Devaki
 8. Kalaiarasi
- ...Appellants/Plaintiffs

Appellants 2 to 8 brought on record as legal representatives of the deceased sole appellant. Vide order of Court dated 23.06.2014 made in CMP Nos.762 to 764 of 2010 in SA. No.1335 of 1998.

Versus

1. V.Rukmani
 2. P.Veeramani
- ... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree as made in A.S.No.348 of 1994 dated 09.10.1995 on the file of the District Court, Nagapattinam reversing the judgment and decree made in O.S.No.528 of 1993 dated on the file of the District Munsif Court, Tiruvarur, dated 29.7.1994

For Appellants : Mr.S.Krishnasamy
For Respondents: No appearance

S.A.No.1336 of 1998

1. P.Chinnappa Pillai (deceased)
2. C.Jagadeesan
3. K.Premavathy
4. Prabakaran
5. Kasthuri
6. Durga
7. Devaki
8. Kalaiarasi

... Appellants/Plaintiffs

vs

V. Rukmani
P. Veeramani

..Respondents/Defendants

Appellants 2 to 8 brought on record as legal representatives of the deceased sole appellant. Vide order of Court dated 23.06.2014 made in CMP Nos.765 to 767 of 2010 in SA. No.1336 of 1998.

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree as made in A.S.No.357 of 1994 dated 09.10.1995 on the file of the District Judge, Nagapattinam reversing the judgment and decree made in O.S.No.142 of 1994 dated 29.07.1994 on the file of the District Munsif, Tiruvarur.

For Appellants : Mr.S.Krishnasamy
For Respondents: No appearance

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

Challenging the judgment of District Judge, Nagapattinam, passed in A.S.Nos.348 & 357 of 1994 dated 09.10.1995, the second appeals have been filed.

2. The plaintiff is the appellant in both the appeals. The brief facts involved in these appeals are as under.

3. The suit O.S.No.528 of 1993 the schedule property with a larger extent was under the leasehold of one Dhakshnamoorthy. From out of 1.3 acres, the plaintiff Chinnapillai got right over 1.14 1/3rd acres, vide sale deed dated 29.12.1967 from Dakshinamurthy Nadar and his wife Mennambal. The suit property is in survey No.65/1, which scrolls to extent of 8.18 acres. In the year 1975, the plaintiff leased the land to one Jayapal to run a touring talkies, later Jayapal vacated the premises and re-delivered the possession to the plaintiff. After getting back the possession from Jayapal, the plaintiff has let out the possession to various persons and also used the remaining vacant portion for his personal purpose. While so, the second defendant and one Govindasamy encroached upon the portion of the land on 31.12.1990 and few others also followed suit. Therefore, to recover possession from the encroachers, the plaintiff filed suit in O.S. 256 of 1991 and the same was allowed and the appeal was pending. While so, 70 Kuzis out of 1.14 1/3 acres of land laying on the Southern portion as 'A' schedule property, was sold by the plaintiff and 5 cents were sold to one Nagalakshmi and another, 5 cents to Subbaiyan and yet another 6.2/3 cents was sold to Kumaradoss and these properties are marked as B,C,D & E in the sketch marked as A and the remaining portion of the land is in possession of the

plaintiff marked as 'F'. While so, the defendants have trespassed into the said portion of the land on 31.08.1993. Hence the suit for recovery and possession.

4. The defendants have contested the suit on the ground that the suit property is owned by Arulmigu Thiyagarajaswami Temple. In Survey no.65/1, only two cents is in the name of Dakshinamurthy Nadar and 1.14 1/3 cents stands in the name of Jayapal. Jayapal has leased out all the 16 cents of land to first defendant Rukmani and she is in possession and enjoyment of the property paying house tax. The remaining portion is retained by Jayapal and plea of the plaintiff that Jayapal returned back the vacant possession, is false and incorrect. Since 1975, the plaintiff has lost right over the property. The plaintiff is in possession and enjoyment of the property since 1978. However, the allegation of the plaintiff is that the defendant encroached upon the land on 31.08.1993 is false. Property is owned by Thiyagaraja Swamy Temple and the defendants are lease holders under the Temple.

5. In O.S.142 of 1994 the very same pleading was made by the plaintiff who also sought for injunction restraining the defendants from interfering with the peaceful possession of 77.2/3 cents of land, which is in his possession and enjoyment. In this suit, the defendants reiterated their written statement filed in their earlier suit O.S.No.528 of 1994 and denied the claim of the plaintiff that they are trying to trespass into the land of the plaintiff, which extend to 77 2/3 cents. The specific case of the defendants was that the 60 cents of land purchased from Jayapal is in their possession and they have fenced it and enjoying the same. The suit land is not owned by the plaintiff, it is owned by the Temple and he has no right to sell away the property. Hence the suit has to be dismissed.

6. After examining the plaintiff, 29 exhibits were marked on their behalf as against the evidence of the second defendant and DW2 right of the Arulmigu Thiyagarajaswami Temple and 3 exhibits were marked on their behalf and 2 Court exhibits Ex.C.1 & Ex.C.2. In suit, injunction was granted in respect of G marked portion and mandatory injunction was also granted to remove the superstructure found in 'F' marked portion and to hand over the vacant possession to the plaintiff. As a result, the defendants were directed to remove their superstructure put up on the encroached portion and injunction in respect of "G" portion, which is found to be in possession of the plaintiff was granted.

7. Aggrieved by the above decree, the defendants preferred A.S.Nos.348 of 1994 and 357 of 1994 as against O.S.No.528 of 1993 and O.S.No.142 of 1994 respectively. The first appellate Court had re-appreciated the evidence and held that under Survey No.65/1, Peruntharakudi, Kulikkarai Post, Kodavasal Taluk is an extent of 8.18 acres from out of 1.30

acres, was leased to Dakshinamurthy Nadar by Sri Thiyagaraja Temple. Plaintiff has purchased 1 acre 14 1/3 cents of land from Dakshinamurthy Nadar under the sale deed dated 29.12.1967. Under this deed, only the right of enjoyment is transferred and not the title of the property, since the original owner of the land being the Temple, i.e., Arulmigu Thiyagarajaswami Devasthanam. Except receipt for payment of lease vide Ex.A.8 to A.13, the Temple register does not reflect the name of the plaintiff. In the Temple register Ex.X.1, the name of Jayapal alone finds place and not the plaintiff as stated by the plaintiff. On 24.03.1975, under Ex.A3, plaintiff 2 has transferred the leasedhold right to Jayapal and again on 24.09.1983 through Ex.A.4 he has again renewed the said agreement in favour of Jayapal and got registered with the Arulmigu Thiyagarajaswami Temple Management. The Temple register which is marked as Ex.X.1, reflects the name of Jayapal as leaseholder for 113-1/3 cents and Dakshinamurthy Nadar and Chinnapillai, the plaintiff, as lease holders of two cents and 14 1/3 cents. The appellate Court has disbelieved the version of the plaintiff that after letting out the portion of the land to Jayapal in the year 1975, Jayapalan voluntarily handed over the land to the plaintiff.

8. For all the above said reasons, the First appellate Court has held that after transferring the lease in favour of Jayapal, there is no acceptable evidence to show that Jayapal has surrendered all the properties to the plaintiff and therefore, on record of the Temple, it is only Jayapal who is the leaseholder and not the plaintiff and therefore, the plaintiff is not entitled for any injunction or recovery of possession. With these findings, the first appellate Court has allowed both the appeals.

9. As a result, the judgment passed by the trial Court in O.S.No.528 of 1993 and O.S.No 142 of 1994 was set aside. Aggrieved by that the plaintiff has filed the second appeal questioning the vires of the lower appellate Court's judgment on the ground that the evidence of DW2 was not properly appreciated by the first appellate Court and Exs.B1, B2 and B3 were not considered properly. On a mere reading of the evidence on record, it is seen that the lower appellate Court has negatived the relief of possession granted by the trial Court in O.S.No.528 of 1993 and also negatived the relief of permanent injunction granted by the trial Court in O.S.No.142 of 1991.

10. The learned counsel for the appellant pointed out the deposition of DW2, more particularly in his cross examination, who is the clerk of Arulmigu Thiyagarajaswami Temple, admitted in the registry that they have entered the name of Jayapal, only at the request of the plaintiff and no land is leased to Veermani or Rukmani the defendants in Survey No.65/1 owned by the temple. It is the specific evidence of

DW2 that the defendants are not leaseholders under the Temple and they have not paid any rent to the Temple and admission of DW2 is that the arrears of lease rent was paid by the plaintiff and pursuant to that, receipts Ex.A.26 & Ex.A.27 were issued. While the Temple authority admits the surrender of land of Jayapal back to the plaintiff straightly, the first appellate Court has disbelieved this and allowed the appeal filed by the defendants, who are not the tenants under the Temple.

11. Though the respondents have entered appearance through a counsel, after receipt of notice, there was no representation for them and hence the appeals were taken up for final hearing.

12. While admitting the Second Appeals on substantial questions of law the following were framed by this Court.

(i) whether the lower appellate Court committed an error in ignoring the document dated 29.12.1967 marked as Ex.A1 filed on the side of the appellant/plaintiff to show that the appellant/plaintiff purchased the leased hold interest in the suit property which has been recognised by Thiagarajaswami Devasthanam at Tiruvarur?

(ii) Whether the learned Judge of the lower appellate Court is right in relying on the document dated 01.07.1978 marked as Ex.B.1 for rejecting the claim of the appellant/plaintiff in both the suits without advertting to the document dated 29.06.1981 marked as Ex.A.22?

(iii) Whether the lower appellate Court omitted to consider the materials and misread the evidence on record to negative the relief of possession prayed for by the appellant/plaintiff in the first suit in O.S.No.528/93 and to negative the relief of permanent injunction in the second suit in O.S.No.142/94?

13. The lower appellate Court has not ignored document Ex.A1. In fact, it has taken note of Ex.A1 and the subsequent entry made in the register at the request of the plaintiff himself, in view of his agreements with one Jayapal which are marked as Ex.A.3 & Ex.A.4. That is the reason why at the behest of the plaintiff, name of Jayapal has been entered in the property register maintained by the Temple. DW2 L.Krishnan writer, attached to the Temple, has clearly deposed by referring the property register that at the behest of the plaintiff, Jayapal's name had been entered as the leaseholder, though the arrears of lease rent was paid by the plaintiff. Subsequently, as per record, he is not the leaseholder of the suit property. DW2 has further denied any knowledge about

Ex.A.22 the alleged letter written by Jayapal to the Temple in respect of the suit property. If really Jayapal surrendered the suit property back to the plaintiff in the year 1981 itself, it is for the plaintiff to explain as to why the same has not been carried out in the Temple property register. Above all, the plaintiff has not admitted at the inception of instituting the suit that the suit property is owned by Arulmigu Thiyagarajaswami Temple and he had purchased only the lease hold right from the Dakshinamurthy Nadar in the year 1967 vide Ex.A.1. It is only after the written statement of the defendants and in the course of the trial, the true owner of the property, namely Arulmigu Thiyagarajaswami Temple has been put to notice, that too to produce documents in their possession and to depose.

14. The Lower Appellate Court has given due consideration on Ex.A1, Ex.B1 and Ex.A.22. This Court finds no error in appreciation of these exhibits. In all these documents the Thiyagarajaswami Devasthanam is a party but unfortunately the Devasthanam Temple is not a party to the suit.

15. Further, this Court finds that the plaintiff has not disclosed at the inception that the land belongs to Arulmigu Thiyagarajaswami Temple and he is only the purchaser of the leasehold right from the original lessee Dakshinamurthy Nadar.

16. This Court is of the opinion that, landlord is a necessary party in a case of this nature while there is rival claim regarding the leasehold right and the possession. The defendants have brought to the notice of the Court in their written statement that the property belongs to Arulmigu Thiyagarajaswami Temple. Thereafter the plaintiff has thought it fit to shift his stand from absolute owner to lease holder under the Temple. No doubt, the witness DW2 has stated certain things in favour of plaintiff on seeing the records Ex.A1 & A.2. But, that by itself is not sufficient for the relief sought, without arraying the Temple as a party. On this point also this Court is of the opinion that the suits filed by the appellant/plaintiff are liable to be dismissed. Therefore, this Court does not find any substantial question of law involved in these second appeals.

17. In the result both the Second Appeals are dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The District Judge, District Court,
Nagapattinam

2. The District Munsif, Tiruvarur.

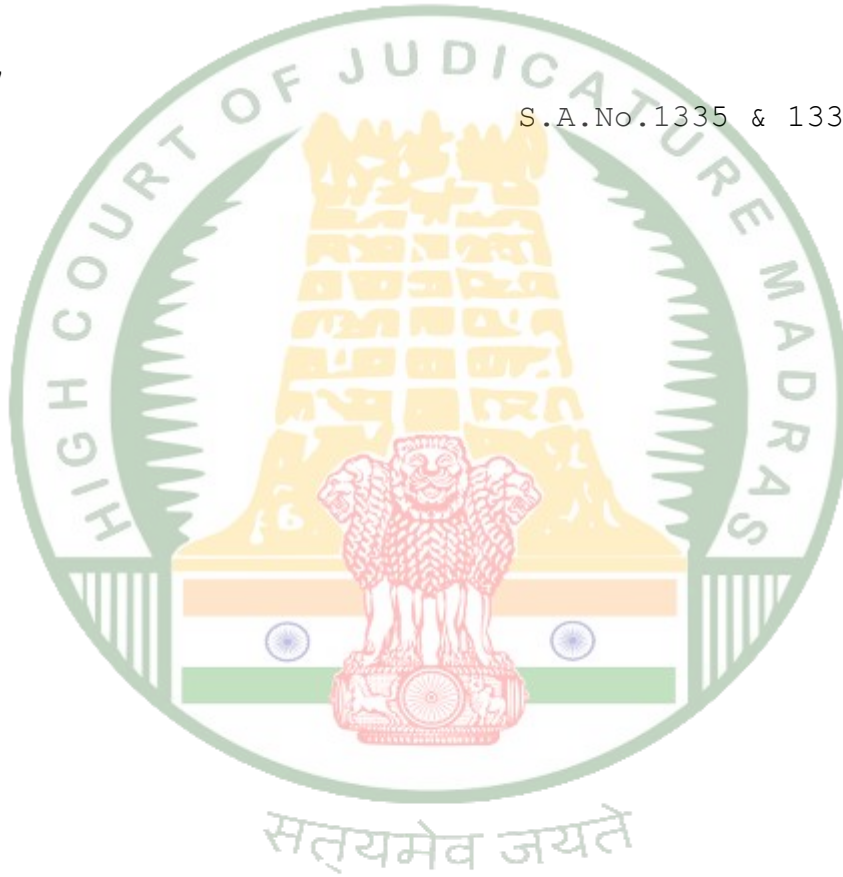
+1cc to Mr.S. Krishnasamy, Advocate, S.R.No.71764

+2ccs to Mr.K. Gnanasundaram, Advocate, S.R.No.72159 & 72160

NMI (CO)

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