

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2016

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1098 of 2015

- 1.Tmt.Muthuammal
- 2.R.Renuka Devi
K.Venkatesan (Deceased)
- 3.K.Govindasamy
- 4.Tmt.Ramani
- 5.Yokesh (Minor)
- 6.Yuva Sri (Minor)

[Appellants 5 and 6 are Minors
and they are represented by
their Natural Guardian 4th
Appellant Mrs.Ramani] ... Appellants/Plaintiffs

-Versus-

The Tashildar,
Nungambakkam Taluk,
Nungambakkam, Chennai. ... Respondent/Defendant

This second appeal is filed against the judgment and decree dated 25.09.2014 made in A.S.No.104 of 2014 by the learned XVIII Additional Judge, City Civil Court, Chennai, confirming the judgement and decree dated 06.11.2013 made in O .S.No.3194 of 2013 by the learned V Assistant Judge, City Civil Court, Chennai.

For Appellant(s) : Mr.S.Arivazhagan

For Respondent : Mr.P.H.Arvinth Pandian, AAG-V,
Assisted by Mr.T.Jayaramaraj, GA(CS)

JUDGMENT

The appellants claimed to be the legal heirs of one Mrs.Muniyammal through her predeceased son Mr.Kannaiyan. The respondent-Tahsildar remained ex parte. On the side of the plaintiffs, 1st plaintiff was examined as P.W.1 and as many as 10 documents were exhibited. Having considered all the above, the trial court dismissed the suit by decree and judgement dated 06.11.2013. Aggrieved over the same, the respondent filed an appeal in A.S.No.104 of 2014 before the XVIII Additional Judge, City Civil Court, Chennai. The first appellate court, by decree and judgement dated 25.09.2014, dismissed the appeal thereby

confirming the decree and judgement of the trial court. Challenging the same, the plaintiffs are now before this court with this second appeal.

2. This second appeal was, in fact, filed with a delay of eighteen days along with a miscellaneous petition in M.P.No.1 of 2015 in Un SASR 20599 of 2015 seeking to condone the delay in preferring the second appeal. On service of notice in that petition, the respondent-Tahsildar entered appearance through Government Advocate (CS). After the delay was condoned, the second appeal has been numbered and the same has come up today for admission.

3. I have heard the learned counsel for the appellants and the learned Additional Advocate General for the sole respondent. The present Tashildar, Nungambakkam Taluk, is also present. I have also perused the records carefully.

4. The learned Addl. Advocate General appearing for the respondent would submit that without properly appreciating the unchallenged oral testimony of P.W.1 and without properly appreciating the documentary evidence let in, the trial court as well as the first appellate court dismissed the suit.

5. The learned Additional Advocate General would further submit that by mistake, the then Tahsildar, Nungambakkam Taluk, did not respond to the summons issued by the trial court. As a result, the respondent remained ex parte before the trial court and in the appeal also he remained ex parte. He would submit that, however, if the matter is remitted back to the trial court, the respondent would file written statement and properly contest the suit.

6. From the above submissions made and from the records, I find the following substantial question of law in this second appeal for consideration:-

Whether the judgement of the trial court which has been confirmed by the first appellate court is perverse inasmuch as it has not appreciated the unchallenged testimony of P.W.1 and the documents exhibited by the plaintiffs?

7. A perusal of the judgment of the courts below would go to show that in the absence of any written statement and in the absence of any challenge to the oral testimony of P.W.1, on considering the documents and giving certain reasons, which are untenable, the courts below have dismissed the suit. Considering the submissions that the respondent is now prepared to file his written statement and contest the suit, I am inclined to allow

the second appeal, set aside the decree and judgement of the courts below and remit back the matter to the trial court for fresh disposal.

8. In view of the above, the second appeal is allowed and the decree and judgement of the trial court and as confirmed by the first appellate court are set aside. The suit in O.S.No.3194 of 2013 is remitted back to the file of the learned V Assistant Judge, City Civil Court, Chennai, for fresh disposal in accordance with law. The appellants shall implead the District Collector, Chennai, as a defendant in the original suit. The respondent shall file his written statement within a period of four weeks from the date of receipt of a copy of the judgement and decree by the trial court and thereafter, both the parties shall be at liberty to lead evidence/additional evidence, if any. The learned trial Judge shall dispose of the original suit as expeditiously as possible, but, preferably within a period of eight weeks thereafter. No costs.

kmk

-s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

1.The XVIII Additional Judge, City Civil Court, Chennai.

2.The V Assistant Judge, City Civil Court, Chennai.

+ 1 cc to Mr.S.Arivazhagan, Advocate SR 4532

tej(co)

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