

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.863 of 2015

and

M.P.No.1 of 2015

Rukmani

... Appellant/ Defendant

Vs.

Sri Nammalwar Trust,
Rep. by its Hereditary Trustee,
Sri A.Santhanakrishnan,
Poraiyar. ... Respondent/ Plaintiff

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 18.03.2013 and made in the appeal in A.S.No.7 of 2012 on the file of the learned Principal Subordinate Judge, Mayiladuthurai, confirming the judgment and decree dated 14.12.2011 and made in the suit in O.S.No.149 of 2010 on the file of the learned Principal District Munsif at Sirkali.

For Appellant : Mr.R.Chellappa

For Respondent : Mr.S.Sounthar

J U D G M E N T

This Memorandum of Second Appeal has been directed against the Judgment and decree dated 18.03.2013 and made in the appeal in A.S.No.7 of 2012 on the file of the learned Principal Subordinate Judge, Mayiladuthurai, confirming the judgment and decree dated 14.12.2011 and made in the suit in O.S.No.149 of 2010 on the file of the learned Principal District Munsif at Sirkali.

2. The appellant is the defendant in the suit in O.S.No.149 of 2010, whereas, the respondent is the plaintiff.

3. For easy reference and for the sake of convenience, the respondent may herein after be referred to as the plaintiff, whereas, the appellant be referred to as the defendant, where ever the context so require.

4. The plaintiff has filed the suit in O.S.No.149 of 2010, on the file of the learned Principal District Munsif, Sirkali at Nagapattinam District for recovery of vacant possession of the suit property, after removing the super structure and also for damages to the extent of Rs.3400/-. This suit was resisted by the defendant by filing her written statement. On evaluating the evidences, both oral and documentary, the Trial Court had proceeded to decree the suit on 14.12.2011 as prayed for granting two months time for the defendant to surrender vacant possession. Being aggrieved by the impugned judgment, the defendant had preferred an appeal in A.S.No.7 of 2012 on the file of the learned Principal Subordinate Judge, Mayiladuthurai. The learned Subordinate Judge being the I Appellate Judge, after hearing both sides had dismissed the appeal confirming the judgment of the Trial Court. Challenging the correctness of the judgment, the defendant stands before this Court with this second appeal.

5. Heard Mr.R.Chellappa, learned counsel appearing for the defendant (appellant) and Mr.S.Sounther, learned counsel appearing the plaintiff(respondent).

6. For the disposal of this second appeal, the provisions of Section 100 of the Civil Procedure Code are very much relevent. Section 100 enacts as under:

As envisaged under Sub-Section(1) of Section 100, if the High Court is satisfied that the case involves a substantial question of law, the second appeal against the judgment and decree of the Court below can be entertained.

As contemplated under Sub-Section (3) to Section 100, the Memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

If the High Court is satisfied, as it is seen from Sub Section (4) that a substantial question of law is involved in any case, it shall formulate that question. Then the appeal as per Sub-Section (5), shall be heard on the question so formulated.

7. The scope of second appeal under Section 100 of CPC is very limited and unless any substantial question of law involves, the Court need not entertain such second appeal.

8. As observed by the Apex Court in Biswanath Ghosh (d) by LR's Vs. Gobinda Ghosh, AIR 2014, SC 1582, the provisions of Section 100 empowers the High Court to hear any substantial question of law not formulated after recording reasons, from the provisions of Order XLI, Rule 3, it is clear that if a

memorandum of appeal arising out from an appellate decrees not drawn upon the manner prescribed in the code, the court may reject the same or return it for the purpose of being fixed by Court thus, the jurisdiction of High Court in second appeal is confined only to such appeals which are in substantial question of law. The very jurisdiction of the High Court in hearing the second appeal is found out on the formulation of the substantial question of law. The existence of substantial question of law is absolutely necessary.

9. As afore stated, unless substantial question of law is found emerged from the grounds of memorandum of appeal, no second appeal could be entertained.

10. On coming to the instant case on hand, on mere perusal of the grounds of the appeal alongwith the judgment and decree of the Courts below, this Court is of the considered view that no substantial question of law is involved and therefore, the second appeal itself cannot be entertained.

11. In this case, the plaintiff has claimed that after the demise of his father on 15.04.2005, he had/ has been maintaining the Trust viz., Sri Nammalvar Dharmastabanam as a Hereditary Trustee. The defendant's husband had agreed to pay Pagudhi @ Rs.100 per month and came to be in occupation of the suit property measuring to an extent of 1500 sq. feet (punja house sight) comprised in S.No.111B/4 situated at Raman Pillai Street, Poraiyar, Tranque bar. After the death of her husband, she had and has been in possession of the suit property as a Pagudhidar. It is also his case that the defendant had not paid Pagudhi from the year 2004 onwards and therefore, the Pagudhi was revoked through a lawyer's notice dated 21.08.2007. After the termination of Pagudhi by the said legal notice dated 21.08.2007, the defendant does not have right to be in the possession of the suit property. Therefore, the said suit was filed for the ejection of the defendant and to surrender vacant possession of the suit property alongwith the damages of Rs.3400/- which is calculated from 01.10.2007 to 31.07.2010 (34 months).

12. The defendant has resisted the above suit on the ground that the Predecessors of the defendant had been residing in the suit property for more than 60 years i.e., for three generations and therefore, she is entitled to get the benefit of the Tenants Protection Act. She has also contended that the plaintiff had not explained in the plaint as to how the defendant's husband came to be in occupation of the suit property as a Pagudhidar.

13. Based on the pleadings of the parties to the suit, the Trial Court had formulated the following three issues.

(i) Whether the plaintiff is entitled to get the relief of recovery of possession of the suit property?

(ii) Whether the plaintiff is entitled to get the damages as prayed for in the suit?

(iii) To what relief is the plaintiff entitled?

14. Including the plaintiff Mr.A.Santhana Krishnan, two witnesses were examined on the side of the plaintiff. During the course of their examination, 5 documents viz., Ex.A1 to A5 were marked. On the other hand, the defendant was examined as DW1 and one Mr.Das was examined as DW2. During the course of their examination, Ex.D1 to D6 were marked.

15. On scrutinizing the evidences, both oral and documentary, the Trial court had decreed the suit as prayed for with cost, granting two months time to surrender the suit property, after removing the super structure.

16. The first Appellate court has also confirmed the judgment of the Trial court. PW1, Mr.A.Santhana Krishnan has claimed that he is a Hereditary Trustee of the plaintiff's Trust viz., Sri Nammalvar Dharmastabanam, Poraiyar.

17. In this connection, he has stated that on 06.12.1962, a registered settlement deed was executed in favour of the plaintiff's father Ananthasayanam Naidu by his predecessor Krishna Samy Naidu. In the said settlement deed, the suit property and other properties have been shown as Trust properties.

18. In pursuant to the settlement deed, the plaintiff's father Ananthasayanam Naidu had been administering the properties in the capacity of Hereditary Trustee. He had passed away on 15.04.2005 and after his demise, the plaintiff has been administering the suit property as a Hereditary Trustee. It is the specific case of the plaintiff that the defendant's husband had agreed to pay Pagudhi @ Rs.100 per month and came to be in occupation of the suit property measuring an extent of 1500 sq. feet comprised in S.No.111B/4. Since the defendant had not been paying Pagudhi from the year 2004, this suit came to be filed for recovery of possession.

19. Ex.A1 is the certified copy of the Registered settlement deed dated 28.09.1928, which appears to have been executed by one Kabir Das Naidu in favour of Krishna Samy Naidu in respect of the suit property and other properties. Ex.A5 is the settlement deed executed in favour of Ananthasayanam Naidu, who is none other than the father of the plaintiff wherein, the suit property and other properties have been shown as Trust properties. Ex.A1 and Ex.A5 are the vital documents to show that the suit property has been maintained and administered as the Trust properties to fulfill the objectives of the Trust.

20. Mr.R.Chellappa, learned counsel appearing for the defendant/appellant has projected his argument on the ground that the plaintiff/appellant was not having competency to file the suit in the capacity of the Hereditary Trustee, in the absence of any document to that effect.

21. In this connection, this Court would like to point out that no such plea is taken of by the defendant in her written statement. In the absence of specific plea, with reference to the competency of the plaintiff to maintain the suit property, this Court is of the considered view that it is not now open to he defendant, to question the competency of Mr.Santhana Krishnan to maintain the suit on behalf of the plaintiff's Trust.

22. The Trial Court as well as the first Appellate Court have categorically held that the defendant had not refuted the fact that the suit property and the other properties were settled in favour of Mr.Krishna Samy Naidu under Ex.A1 and thereafter, Mr.Krishna Samy Naidu had settled those properties under Ex.A5, in favour of plaintiff's father Ananthasayanam Naidu. Both Ex.A1 as well as Ex.A5 are the registered settlement deeds.

23. Based on Ex.A1 and A5, the Courts below have concluded that there shall not be any impediment for the plaintiff to maintain the suit property as the Hereditary Trustee of the plaintiff's Trust. The Courts below have also concluded that in the absence of contrary evidence on behalf of the defendant, there was no other go excepting to place trust upon those documents viz., Ex.A1 and A5. Secondly, before the first Appellate Court, for the first time, a question was raised on behalf of the defendant/appellant that since the suit property and other properties were dedicated to the plaintiff's Trust for charitable purpose, the Tamil Nadu Hindu Religious and Charitable Endowment Act 1959(Tamil Nadu Act 22 of 1959) alone would be made applicable and hence the Civil Court does not have jurisdiction to entertain the suit.

24. This plea also was not taken by the defendant/appellant before the Trial Court. Alongwith the first appeal in A.S.No.7 of 2012, an application in I.A.No.114 of 2012 was also filed by the defendant under Order XLI, Rule 27, to receive the following two documents as Additional documentary evidences.

- (1) A certified copy of the partition deed dated 07.04.1881, executed between Rangasamy, Kothandaraman, Kabirdas.
- (2)Voters list relating to the year 1966.

25. The first Appellate Court while disposing the appeal had received the partition deed dated 07.04.1881 and marked as

Ex.B6. Another document viz., Voter list for the year 1966 was rejected and the said petition was partly allowed.

26. Further, on considering the submissions made on behalf of both sides, this Court is of the considered view that since the plaintiff's Trust is a private Trust, it will not come under the purview of the Tamil Nadu Hindu Religious and Charitable Endowment Act and therefore, the argument advanced on behalf of the defendant/appellant before the Appellate Court is not discernible.

27. Mr.R.Chellappa, learned counsel appearing for the appellant has also advanced his argument only on the sole ground of dismissal of the application in I.A.No.114 of 2012, which was filed under Order XLI, Rule 27 of the CPC.

28. In this connection, he would submit that the lower Appellate Court ought to have remanded the matter back to the Trial Court for fresh disposal because according to him, the evidence available on record was not sufficient for proper adjudication of the matter.

29. On the other hand Mr.S.Sounther, learned counsel appearing for the plaintiff / respondent has submitted that the fact, that the suit property was owned by the plaintiff's Trust was not denied by the defendant/plaintiff and that Ex.B6, Ex.A1 and A5 would go a long way to prove that the suit property was belonged to the plaintiff's Trust. He has also drawn the attention of this Court to paragraph No.13 of the Trial Court judgment, wherein, the Trial Court has unambiguously found that the suit property is belonged to the plaintiff's Trust and that the husband of the defendant was the Pagudhidar in respect of the suit property.

30. Further, it is also established that the defendant had not paid the rent from the year 2004 and in this connection a sum of Rs.3400/- has been claimed as damages. The possession of the defendant has not been denied by the plaintiff and the plaintiff has also established that the possession of the defendant in the suit property is in the nature of Pagudhi and since there was irregularity in payment of Pagudhi, it was terminated by a legal notice dated 21.08.2007, Ex.A3.

31. Under these circumstances, as afore said, this Court is of the considered view that no substantial question of law is involved in this second appeal. Therefore, the second appeal is liable to be dismissed on this ground.

32. Accordingly this second appeal is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1.The Principal Subordinate Judge,
Mayiladuthurai.

2.The Principal District Munsif,
Sirkali.

1 cc to Mr.S. Sounthar, Advocate, Sr. 13673

S.A.No.863 of 2015
and
M.P.No.1 of 2015

JSV (CO)
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