

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2016

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.2033 of 2004
and
C.M.P.Nos.219 and 284 of 2015

Lakshmanan
Rep. by Mr.Ramadoss Appellant/ Plaintiff

-Versus-

- 1.Veerakathi Chettiar (died)
- 2.Baby Ammal
- 3.Pakkirisamy
- 4.Durairaj
- 5.Ravichandran
- 6.Raju
- 7.Murugan
- 8.Vasanthi
- 9.Shanthi
- 10.Rani
- 11.Ramadoss
- 12.Mrs.R.Thangamani

[Respondents 11 and 12 were brought on record as legal representatives of the deceased 1st respondent herein vide order dated 12.08.2005 made in C.M.P.No.11580 of 2005]

... Respondents/ Defendants

This second appeal is filed against the judgment and decree dated 20.10.2003 made in A.S.No.6 of 2000 by the learned Subordinate Judge, Thiruvavur, confirming the judgement and decree dated 05.07.1999 made in O.S.No.180 of 1983 by the learned District Munsif, Thiruthuraipoondi.

For Appellant : Mr.V.K.Vijayaraghavan

For Respondents : Mr.V.Bharathidasan for R2 & R8
Mr.V.Rahupathi for R11 & R12
No Appearance for R3 to R5, R6, R7
R9 & R10

JUDGMENT

The sole plaintiff in O.S.No.180 of 1983 on the file of the learned District Munsif, Thiruthuraipoondi, is the appellant herein. The suit was filed originally against the respondents 1 and 2 herein and one Chinna Pillai. The said suit was filed for permanent injunction restraining the defendants from in any manner interfering with the alleged peaceful possession and enjoyment of the suit property by the plaintiff. By decree and judgement dated 05.07.1999, the trial court dismissed the suit. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.6 of 2000 before the learned Subordinate Judge, Thiruvarur. During the pendency of the appeal, the 2nd respondent/ 2nd defendant passed away. Therefore, the respondents 2 to 10 herein were impleaded as her legal representatives. The learned Subordinate Judge, Thiruvarur, by decree and judgement dated 20.10.2003 dismissed the appeal thereby confirming the decree and judgement of the trial court. As against the same, the plaintiff has come up with this second appeal. During the pendency of the second appeal, the 1st defendant Veerakathi Chettiar died. Therefore, the respondents 11 and 12 herein have been impleaded as his legal representatives.

2. The case of the plaintiff in brief is as follows:- The suit property measuring an extent of 14 kulis comprised in R.S.No.163/5 at Thiruthuraipoondi belongs to "Sri Bava Oushadeeswararswami Temple" situated at Thiruthuraipoondi. It is a temple governed by and administered under the Tamil Nadu Hindu Religious and Charitable Endowments Act. The plaintiff claims that he has been in possession and enjoyment of the suit property as a lessee. The total extent of the property described in the plaint is 14 kulis. According to the plaintiff, the defendants have got no right whatsoever over the suit property. Since the defendants attempted to disturb his possession, the present suit was filed for permanent injunction.

3. The 1st defendant filed a written statement wherein he has stated that he is the lessee of 37 kulis of land comprised in resurvey No.163/50. The suit property forms part of the lands belonging to him in S.No.163/5 which is in his possession and the same forms part of resurvey No.163/50 which has been given on lease to him by the temple. He would further submit that the plaintiff has got no right whatsoever over the suit property.

4. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, his power agent was examined as P.W.1 and as many as 23 documents were exhibited while on the side of the defendants the 1st defendant was examined as D.W.1 and one Mr.Raja was examined as D.W.2 and as many as 33 documents were exhibited. During the pendency of the suit, an Advocate Commissioner was appointed and his report and rough sketch were exhibited as Exs.C.1 and C.2 respectively.

5. Having considered all the above, the trial court dismissed the suit which was confirmed by the first appellate court. That is how, the plaintiff is now before this court with the present second appeal.

6. At the time of admission of the second appeal, this court framed the following questions of law:-

(1) Whether the contention of the first defendant that he was in possession of the suit property sustainable in view of Exs.A10, A11 and A14?

(2) When the plaintiff had produced lease deed for the suit property as per Exs.A2 and A3 and without taking possession from him thereafter after the expiry of the lease period, would the lease of suit property purported to have been given to the 1st defendant as per Exs.B13 and B14 is enforceable?

7. I have heard the learned counsel for the appellant; the learned counsel for the respondents 11 and 2; and the learned counsel for the respondents 2 and 8 and also perused the records carefully.

8. The learned counsel for the appellant would submit that through Exs.A10, A11 and A14 it has been clearly established that the plaintiff has been given the suit property on lease by the temple and he has been in possession and enjoyment of the same. He would further submit that Exs.B13 and B14 upon which 1st defendant makes reliance cannot be accepted since the temple itself had no authority to issue such orders in favour of the 1st defendant without evicting the plaintiff from the lawful possession and enjoyment of the suit property. At any rate, according to the learned counsel for the appellant, the courts below have failed to appreciate both oral as well as documentary evidences in their proper perspective.

9. The learned counsel for the respondents 11 and 12 would vehemently oppose this second appeal. According to him, the suit property has not been properly described. Exs.B13 and B14 would clearly go to show that the suit property has been given on lease only to the 1st defendant. He would further submit that the suit property forms part of S.No.163/50 which has been leased out to the 1st defendant. The learned counsel would further submit that the courts below have properly appreciated both the oral and documentary evidences and have come to the right conclusion that the plaintiff has not been in possession and enjoyment of the suit property. Thus, according to the learned counsel, there are no

reasons to interfere with the well considered judgement and decree of the courts below.

10. I have considered the above submissions carefully.

11. The suit has been laid for the property measuring an extent of 14 kulis. In the plaint, the suit survey number has been mentioned as 163/5. The land in S.No.163/5 is the larger extent of the property. During resurvey, there were sub divisions made and according to the 1st defendant, the sub divided property comprised in S.No.163/50 has been in the possession and enjoyment of the 1st defendant as lessee under the temple. As of now, admittedly, there is no such survey number as No.163/5. Therefore, the property cannot be identified by means of survey number. In such an event, the property should be identified at least by four boundaries. But, in the instant case, the boundaries on the north, east and south have been property described, but the western boundary of the suit property has been shown as the property belonging to the plaintiff. But, the Advocate Commissioner's report and sketch would go to show that the western boundary of the suit property, as it was identified by the plaintiff, is the property of the 1st defendant. As a matter of fact, the property which is admittedly in the possession and enjoyment of the 1st defendant and the suit property as identified by the plaintiff form part of the very same survey number i.e., S.No.163/50. Thus, it is crystal clear that even by means of four boundaries, the suit property cannot be precisely identified.

12. The learned counsel for the appellant would submit that the parties have identified the suit property and there is no dispute regarding the same. But, I find it very difficult to accept the same. Any decree that may be passed by a civil court shall be executable and the same shall not be the source for another litigation or confusion. In my considered view, unless the suit property has been properly described, a workable decree cannot be granted by the civil court. In the instant case, the learned counsel for the appellant would himself admit that the western boundary of the suit property has not been properly described in the plaint schedule. In such an event, I am of the view that with the wrong four boundaries and with the wrong description of survey number, a decree cannot be passed in favour of the plaintiff. But, at the same time, it is also seen from the records that earlier when the 1st defendant failed to pay the rent to the temple, the temple authority issued a notice and filed a suit under Ex.A.14 in which the temple authority itself had prayed for recovery of possession only in respect of 26 kulis. Thus, the land measuring an extent of 26 kulis alone is admittedly in the possession of the 1st defendant. From this, it is stated by the learned counsel for the appellant that except the land measuring an extent of 26 kulis which is admittedly in the possession of the 1st defendant, he is not in a possession of any other land nor the

suit land which is situated on the east. Some of the documents produced by the 1st defendant would go to show that he is in possession and enjoyment of only 26 kulis whereas the 1st defendant claims to be in possession of 37 kulis of land. Above all, in order to prove their respective claim for possession, now, the appellant has filed a miscellaneous petition in C.M.P.No.219 of 2015 under Order 41 Rule 27 of CPC requesting the court to receive a document as additional evidence. According to the learned counsel for the appellant, this document is so vital to come to a just conclusion in the case. Similarly, the respondents 11 and 12 have filed a miscellaneous petition in C.M.P.No.284 of 2015 requesting the court to receive certain documents as additional evidence. According to the learned counsel for the respondents 11 and 12, these documents are vital for a just conclusion in the case. When both the parties claim that these documents are absolutely necessary for a just conclusion in the case, in my considered view these documents could be considered by this court only in the event there are proved in evidence in accordance with law. The adverse party needs to be given sufficient opportunity to challenge these documents, if he so wishes. For the above reasons, I am of the view that the matter should be remitted back to the trial court.

13. There is yet another reason also to come to such a conclusion. The temple is, admittedly, the owner of the suit property. The temple was not unfortunately impleaded as a party to the suit. Neither the temple authorities were examined as witnesses. In the absence of the temple being a party in my considered view it is not possible to effectively adjudicate upon the issues. In other words, I hold that the temple is a necessary party and therefore, the temple should also be heard.

14. Above all, as I have already pointed out, the suit property has not been described properly. For all these defects, if the suit is simply disposed of without affording further opportunity to the parties to prove or disprove their cases, it may not amount to doing justice between the parties. The learned counsel on either side therefore submitted that the suit may be remitted back to the trial court so that the parties could lead additional evidence and if the plaintiff so decides he may implead the temple as a party and he may even amend the suit so as to correct the description of the suit property. Exs.A.10, A11 and 14 do not describe the suit property and, therefore, they are of no help to the courts to conclude that the plaintiff is in possession of the suit property. In short, these documents have not been correlated to the suit property at all.

15. Similarly, so far as Exs.B13 and B14 are concerned they also do not describe the property covered under these documents. Therefore, even if these documents were considered by the courts below meticulously, I am of the view that it would be difficult

still for this court to decide the question of possession which is disputed by the parties. Thus, I answer the substantial questions of law as detailed above, which is neither in favour of the plaintiff nor in favour of the defendants. As pointed out herein above, I am inclined to remit back the matter to the trial court after setting aside the decree and judgments of both the courts below.

16. In the result, the Second Appeal is allowed. The Decree and Judgment of both the courts below is set aside. The suit in O.S.No.180 of 1983 by the learned District Munsif, Thiruthuraipoondi, Thiruvarur District, is hereby remitted back for fresh disposal. The parties are at liberty to either amend the pleadings or to file additional pleadings and to lead additional evidence, both oral and documentary, if any, in accordance with law. The Registry is directed to return the documents filed along with the Civil Miscellaneous Petition to the respective party so as to enable the parties to lead additional evidence before the trial court.

At any rate, the trial court shall dispose of the said suit within a period of nine months from the date of receipt of a copy of this judgement. However, there shall be no costs. Consequently, connected CMPs are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

Note: The Registry is directed to dispatch the case records to the respective court forthwith.

kmk

To

1.The Subordinate Judge,
Thiruvarur, Thiruvarur District.

2.The District Munsif,
Thiruthuraipoondi, Thiruvarur District.

Copy to

The Section Officer
VR Section,
High Court, Madras

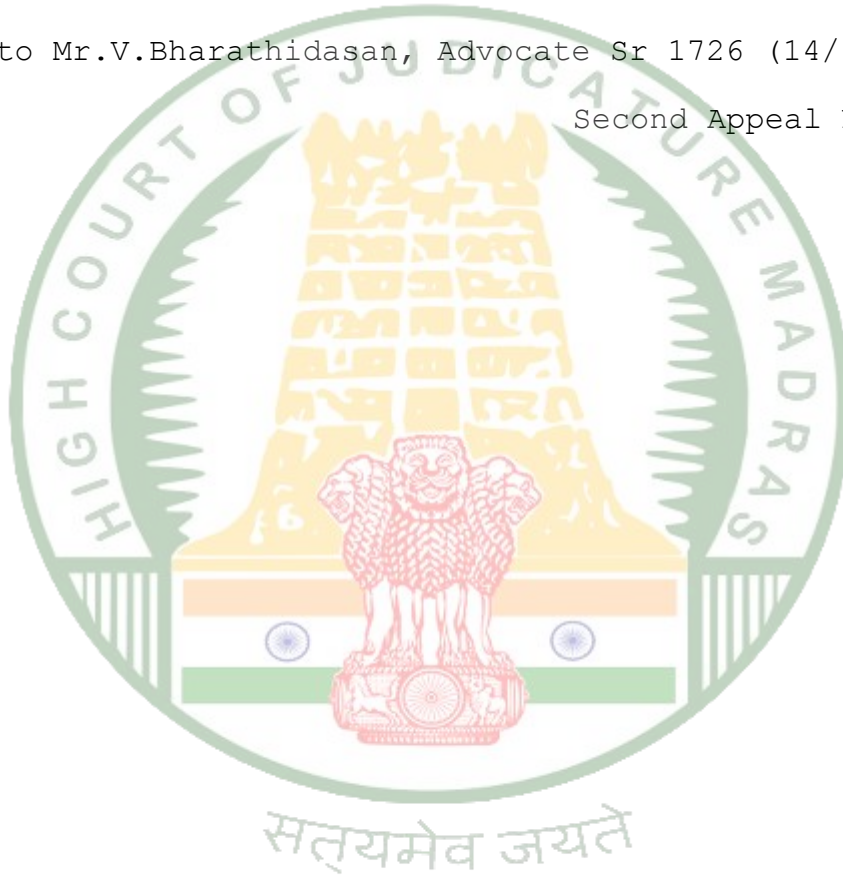
1 cc to M/s.V. Raghupathi, Advocate, Sr. 1488

2 ccs to Mr.V.K. Vijaya raghavan, Advocate, Sr. 1730

+ 1 cc to Mr.V.Bharathidasan, Advocate Sr 1726 (14/6/16)

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