



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2016

CORAM

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.(MD)No.381 of 2015

and

M.P.(MD)Nos.1 & 2 of 2015

1. Pitchamuthu

2. Namchivayam

... Appellants/Appellants/
Defendants 1 & 2

Vs.

1. Venkatachalam

2. Viswanathan

3. Sivaramakrishnan

4. Lakshmiammal

5. Vijayalakshmi

6. Balakrishnan

7. Parvathiammal

... Respondents 1 to 7/Respondents 1 to 7/
Plaintiffs

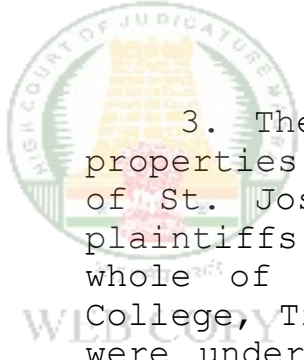
Prayer: Second Appeal is filed under Section 100 of C.P.C., against the Judgment and Decree passed in A.S.No.90 of 2009, dated 25.09.2013 on the file of the I Additional Subordinate Court, Thiruchirappalli, confirming the Judgment and Decree in O.S.No.590 of 2007, dated 23.12.2008 on the file of the III Additional District Munsif Court, Thiruchirappalli and to set aside the same.

For Appellants : Mr.V.Nagendran

JUDGMENT

This Second Appeal has been filed to set aside the Judgment and Decree passed in A.S.No.90 of 2009, dated 25.09.2013 on the file of the learned I Additional Subordinate Judge, Thiruchirappalli, confirming the Judgment and Decree in O.S.No.590 of 2007, dated 23.12.2008 on the file of the learned III Additional District Munsif, Thiruchirappalli.

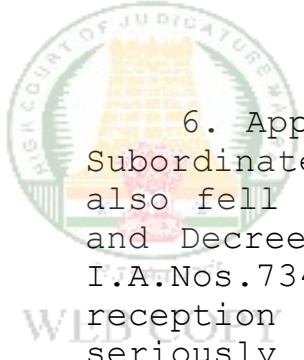
2. The unsuccessful defendants 1 and 2 are the appellants in the Second Appeal. The respondents filed a suit in O.S.No.590 of 2007 on the file of the District Munsif Court, Thiruchirappalli for permanent injunction restraining the appellants herein from any way interfering with the plaintiffs peaceful possession and enjoyment of the suit properties. The suit properties are described in Schedule 'A' to 'H'.



3. The case of the respondents/plaintiffs is that the suit properties originally belonged to one Society, namely, the Society of St. Joseph College, Trichy. It is the further case of the plaintiffs that the family members of the plaintiffs purchased whole of the suit properties from the Society of St. Joseph College, Trichy, through its Procreator. Since the suit properties were under different documents by the plaintiffs' predecessor in interest, the plaintiffs are in enjoyment of the suit properties, as the absolute owners. Since their possession and enjoyment were sought to be disturbed by the defendants, by a false claim, the plaintiffs have stated that they were constrained to file the suit for permanent injunction.

4. The suit was contested by the appellants on the ground that the first defendant's father, one Murugaiyan was the tenant of the lands and after the death of the said Murugaiyan, the first defendant's mother Nagammal was the tenant in respect of the suit properties. After the death of the said Nagammal on 12.12.1995, her only son, namely, the first defendant continued to be the cultivating tenant of the suit property, by using his physical labour. The appellants further pleaded that the receipts issued by the society were destroyed and that they have only one receipt for the rent paid by the first defendant's mother Nagammal. Since his possession as a tenant, is lawful, it was contended by the first defendant that he was not evicted through process of law and hence, the suit is not maintainable.

5. The Trial Court decreed the suit for bare injunction by specifically recording a finding that the appellants have not proved that they are the tenants in respect of the suit properties. The rental receipt filed by the appellants were held to be the documents not pertaining to the suit property. Ultimately, the trial Court has categorically found that the defendants have not established their case that they are the cultivating tenants. Since the production of Patta under Ex.B.8 would show that Patta has been issued in the name of mother of the first appellant and it is contrary to the case of tenancy, the Trial Court did not give any credence to this document. The first defendant who was examined as D.W.1, admitted that the lands were not under cultivation from 1986 and that the alleged tenancy was not recorded in tenancy records. The trial Court came to the conclusion that the plaintiffs have proved their case. Considering the fact that either the name of the defendants, or their predecessors in interest were not registered in the records of tenancy, as required to be maintained under Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969, the trial Court has also found that the defendants are not in enjoyment of the suit property as lessee. In view of the categorical findings of the trial Court on the issues relating to the right of tenancy and enjoyment pleaded by the appellants, the trial Court was perfectly justified in decreeing the suit, as prayed for.



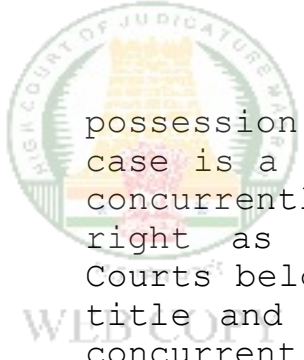
6. Appeal was filed by the defendants before the I Additional Subordinate Court in A.S.No.90 of 2009. The Lower Appellate Court also fell in line with the Trial Court and confirmed the Judgment and Decree of the trial Court. The appellants have also filed I.A.Nos.734 and 1154 of 2011 in the lower Appellate Court, for reception of additional documents and the said applications were seriously opposed by the plaintiff/first respondent. As against the concurrent Judgement of the Courts below, the Second Appeal is filed by the appellants/defendants 1 and 2 in the suit. The following substantial questions of law have been raised in the memorandum of grounds of Second Appeal.

" 1. Whether both Courts are correct in allowing the suit filed for bare injunction, without the relief of declaration, while the defendants have made a specific rival claim over the land in respect of his possession and enjoyment over the suit land as lessee?

2. Whether the orders of the lower Court passed in both suit and appeal are legally correct and proper denying the proper patta and field sketch of the suit land (which are still in force) issued by the Revenue Department in favour of the defendants side."

7. The first question of law does not impress this Court in view of the specific stand taken by the defendants in the written statement admitting the title of the plaintiffs. Since, there is no rival claim on the issue of title, the Civil Court need not decide title. Further, it is also settled that in such cases, the suit for bare injunction is maintainable without any relief for declaration of title.

8. The second question of law is on the legal implication of production of Patta in respect of the suit properties. When the defendant's claim itself is based on their right of tenancy, production of a document, namely, Patta is mischievous. The Patta is relied upon as a document of title, even without a plea of title. Section 116 of Indian Evidence Act creates a bar on the tenant to set up title in himself. No person who came into possession of any immovable property, either as lessee or as a licensee shall be permitted to deny the title of person who put him into possession as a tenant. If the denial is willful, the tenant also loses his right of tenancy by forfeiture. In other words, the document of Patta produced by the appellants does not help them to establish their plea of tenancy or to protect their possession. It is well settled that no amount of evidence can be produced without pleading. Further the appellants are not entitled to raise the new plea by referring to a stray document. Patta cannot also be accepted as a piece of evidence to prove the



possession ignoring the stand of the appellant. Patta in this case is a fraudulent document. Be that as it may both Courts' have concurrently held that the appellants have neither proved their right as cultivating tenant nor proved their possession. The Courts below have also found that the plaintiffs have proved their title and enjoyment. In such circumstances, having regard to the concurrent findings of the Courts below and the view expressed by this Court on the questions of law raised by the appellants, the second appeal is liable to be dismissed.

9. Accordingly, the Second Appeal is dismissed. However, no order as to costs. Consequently, connected Miscellaneous petitions are closed.

Sd/
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar.

To

1. The I Additional Subordinate Judge, Thiruchirappalli.
2. The III Additional District Munsif, Thiruchirappalli.

Copy to: The Section Officer,
V.R. Section/Record Keeper,
Madurai Bench of Madras High Court,
Madurai.

+1CC to M/S.V.Nagendran, Advocate, SR.No. 63859

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AM/MPA/SAR-3/22.11.2016/4P/5C