



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2016

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Rev Appl(MD)No.25 of 2016
and CMP(MD)No.1342 of 2016

G.Thangaperumal

..Petitioner/Appellant

Vs.

1.Koilkannu
2.Singammal
3.Murugan

..Respondents/Respondents

Review Application filed under Order 47 Rule 1 of CPC to set aside the Judgment and Decree dated 19.08.2013 passed in SA(MD)No.313 of 2013 passed by this Court.

Prayer in SA(MD). 313/ 2013 :

Second Appeal filed under Section 1900 of CPC., against the judgement and decree dated 08.08.2012 passed in A.S.No.12/2009 by the Subordinate Judge, Srivillilputhur reversing the judgment and decree dated 12.09.2008 passed in O.S.No.236/2007 by the Principal District Munsif Court, Srivilliputhur.

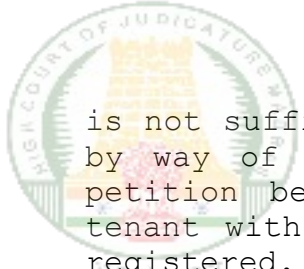
For Petitioner : Mr.B.Prahalad Ravi
for M/s.Hall Mark Associates
For R - 1 : Mr.P.Subburaj

ORDER

This Review Application has been filed against the Judgment and Decree dated 19.08.2013 passed in SA(MD)No.313 of 2013 by this Court.

2.The first respondent herein as plaintiff has instituted Original Suit No.236 of 2007 on the file of the trial Court for the relief of permanent injunction, wherein the present petitioner and respondents 2 and 3 have been shown as defendants.

3.It is averred in the plaint that the suit properties are comprised in Survey Nos.38/16, 42/11 and 42/13, totally measuring 75.0 ares and the same are situate in Kollankondan Village, Rajapalayam Taluk, Virudhunagar District. The suit properties are ancestrally belonged to one Pillayar Konar and during his life time, the father of the plaintiff by name Sundaram has taken the suit properties for lease. The lease amount has been fixed approximately. After the demise of father of the plaintiff, the plaintiff has been enjoying the suit properties. The approximate lease amount has been subsequently changed as two sacks of yielding. The said Pillayar konar has passed away prior to 30 years and his son by name Singana Konar has also passed away. The first defendant is the wife of Singana Konar and for the past 15 years she looked after the suit properties and she received lease amount approximately from the plaintiff. For the past 12 years, the defendants 1 and 2 are receiving lease amount from the plaintiff. The sisters of the second defendant have known the leasehold rights of the plaintiff over the suit properties. Since supply of water from the well which situates in the suit properties



is not sufficient, the plaintiff has used to irrigate the suit properties by way of taking water from his own well. The plaintiff has given a petition before the concerned Tahsildar so as to record his name as tenant with regard to suit properties and accordingly his name has been registered. During April 2007, the defendants 1 and 2 have represented the plaintiff that they are going to sell the suit properties to third parties. The second defendant has agreed to sell the suit properties in favour of the plaintiff for a sum of Rs.64,750/- and to that extent a consent letter has been given. The first defendant and her daughters have sold the suit properties in favour of the third defendant. Now the defendants have tried to disturb the peaceful possession and enjoyment of the plaintiff over the suit properties. Under the said circumstances, the present Suit has been instituted for the relief sought for in the plaint.

4. In the written statement filed on the side of the first defendant it is averred as follows:

The second defendant is the son of the first defendant. It is false to say that the plaintiff has been enjoying the suit properties as a tenant. The second defendant herein as plaintiff has instituted Original Suit No.628 of 2004 on the file of the Additional District Munsif Court, Srivilliputhur against the first defendant and her daughters for the relief of permanent injunction, wherein a counter claim has been made so as to divide the suit properties as per shares of the defendants therein. On 06.02.2007 the said Suit has been dismissed and with regard to counter claim, a preliminary decree for partition has been passed. The first defendant has not known about the registration of the name of the plaintiff in the record of tenancy register as a tenant. The first defendant and her daughters have sold their $\frac{3}{4}$ share in the suit properties in favour of the third defendant. It is false to say that on 15.09.2001 a consent letter has been given in favour of the plaintiff so as to sell the suit properties for a sum of Rs.64,750/- and there is no merit in the Suit and the same deserves to be dismissed.

5. In the written statement filed on the side of the third defendant it is averred that the suit Survey No.38/16 is ancestrally belonged to Pillayar Konar. It is false to aver that during life time of Pillayar Konar, the father of the plaintiff by name Sundaram has taken all the suit properties for lease on the basis of approximate lease amount. The second defendant herein as plaintiff has instituted Original Suit No.628 of 2004 on the file of the Additional District Munsif Court, Srivilliputhur for the relief of permanent injunction, wherein a counter claim has been made by the defendants therein and on 06.02.2007 in Original Suit No.628 of 2004 a preliminary decree for partition has been passed. The first defendant and her daughters have sold their shares in favour of the third defendant by virtue of the sale deed dated 26.04.2007 and since then the third defendant is in possession and enjoyment of the suit properties. It is false to aver that the second defendant has given consent letter to the plaintiff so as to sell the suit properties for a sum of Rs.64,750/-. There is no merit in the Suit and the same deserves to be dismissed.

6. On the basis of the divergent pleadings raised on either side, the trial Court has framed necessary issues and after considering both the oral and documentary evidence has dismissed the Suit. The Judgment and decree passed by the trial Court have been challenged in Appeal Suit No.12 of 2009 on the file of the first appellate Court.



7. The first appellate Court after hearing arguments of both sides and upon reappraising the evidence available on record, has allowed Appeal Suit No.12 of 2009 and thereby set aside the Judgment and decree passed by the trial Court and ultimately decreed the Suit to the extent that the plaintiff is entitled to get the relief of permanent injunction, till he is evicted under due process of law. Against the Judgment and decree passed by the first appellate Court, the petitioner herein as appellant has filed SA(MD)No.313 of 2013 on the file of this Court and this Court has framed necessary substantial questions of law.

8. After hearing arguments of both sides and upon perusing relevant records, this Court has dismissed the Appeal and thereby confirmed the Judgment and decree passed by the first appellate Court and in order to review the Judgment and decree passed by this Court, the present Review Application has been filed.

9. Before considering the rival submissions made on either side, it would be more useful to look into as to whether in Second Appeal, this Court has framed proper substantial questions of law and also necessary points for consideration and decided the same?

10. In SA(MD)No.313 of 2013, the learned counsel appearing for the petitioner/appellant/third defendant has raised the following points.

(a) The plaintiff has been examined as PW1 and during the course of cross examination his specific evidence is that he handed over possession of the suit properties to the first defendant and therefore, it is false to contend that the plaintiff has been enjoying the suit properties as a tenant on the date of filing of the Suit and the trial Court has rightly dismissed the same. But the first appellate Court without considering the clear admission made by the plaintiff, has erroneously decreed the Suit and therefore, the Judgment and decree passed by the first appellate Court are liable to be set aside.

(b) On the side of the plaintiff, Ex.A2, the proceeding of Rajapalayam Tahsildar has been marked, wherein it has been stated that the second defendant herein has given a valid consent to the effect that the plaintiff has been enjoying the suit properties as a tenant and the second defendant herein as plaintiff has already filed Original Suit No.628 of 2004 for the relief of perpetual injunction against the first defendant herein and her two daughters and in Original Suit No.628 of 2004 a counter claim has been sought for with regard to relief of partition and Original Suit No.628 of 2004 has been dismissed for default, whereas the said Suit has been decreed with regard to counter claim and by way of suppressing the preliminary decree of partition passed in Original Suit No.628 of 2004 and also by way of playing fraud, Ex.A2 has come into existence and the trial Court has rightly rejected the same. But the first appellate Court without considering the nature of defence put forth on the side of the defendants 1 and 3 and also the documents filed on their side, has erroneously decreed the Suit and therefore, the Judgment and decree passed by the first appellate Court are liable to be interfered with.



(c) Even though the second defendant herein as plaintiff has instituted Original Suit No.628 of 2004 for the relief of permanent injunction, in the plaint filed therein, no mention has been made to the effect that the present plaintiff has been enjoying the suit properties as a tenant and the first appellate Court has failed to look into the same.

11. After considering the divergent contentions raised on either side, this Court has found that the plaintiff is enjoying the suit properties as a lessee and thereby confirmed the Judgment and decree passed by the first appellate Court.

12. The learned counsel appearing for the review applicant has contended that this Court has not properly appreciated Ex.A2. Under the said circumstances, this Court has committed an error apparent on the face of the record and therefore, the Judgment and decree passed in SA (MD) No.313 of 2013 are liable to be reviewed.

13. Per contra, the learned counsel appearing for the first respondent has contended that this Court has elaborately dealt with in respect of Ex.A2 and ultimately found that the plaintiff has been enjoying the suit properties as a lessee. Under the said circumstances, this Court has not committed any error apparent on the face of the record and therefore, this Review Application is not legally maintainable and the same is liable to be dismissed.

14. The sum and substance of the contention put forth on the side of the review applicant is that this Court has not properly appreciated Ex.A2. In fact, with regard to Ex.A2, this Court has formulated point No.B and in paragraph - 18 of the Judgment it is observed as follows:

"Ex.A2 is a proceeding of Rajapalayam Tahsildar, wherein the second defendant has given a valid consent to the effect that the plaintiff has been enjoying the suit properties as a tenant. On the basis of the averments made in the petition given by the plaintiff coupled with the admission given by the second defendant, in Ex.A2 it has been clearly stated to the effect that the plaintiff has been enjoying the suit properties as a tenant."

15. Considering the fact that with regard to Ex.A2 this Court as well as first appellate Court have uniformly found that the plaintiff has enjoyed the suit properties as a tenant, it is need less to say that this Court has not committed any error apparent on the face of the record and further this Court has not omitted any point raised on the side of the review applicant in the Judgment passed in SA(MD) No.313 of 2013 and therefore, the present Review Application is liable to be dismissed.

16. In fine, this Review Application is dismissed. No costs. Connected CMP(MD) No.1342 of 2016 is closed.

Sd/-

Assistant Registrar(CS-I)

/True copy/



To

1 The Subordinate Judge,
Srivilliliputhur, Virudhunagar District.

2. The Principal District Munsif Court,
Srivilliliputhur, Virudhunagar District.

+1cc to Mr.P.Subburaj, Advocate in SR.24540

+1cc to Mr.B.Prahalad Ravi for M/s.Hall Mark Associates, in SR.25552

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mj

PBK/AN-MP 23.05.2016 ::5P-5C: