



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 14.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Appeal Suit (MD) No.83 of 2013

T.P.Mayavan

... Appellant / Defendant

-Vs-.

1.Sowcar Gopaldass Dwarakadas Family Trust Estate,
Rep. by its Managing Trustee,
G.D.Ramadoss (Expired) G.R.Dwarkadas.

2.Sowcar Gopaldass Dwarakadas Family Trust Estate,
Rep. by its Present Managing Trustee G.D.Gokuldoss.

... Respondents / Plaintiff

(2nd respondent brought on record as the present Managing Trustee and ranked as the successor of the deceased 1st respondent vide order dated 17.10.2016 made in C.M.P.(MD)No.8918 of 2016 in A.S. (MD) No.83 of 2013. by BGJ)

Prayer: Appeal Suit filed under Section 96 of Civil Procedure Code, against the judgment and decree of the learned First Additional District Judge, Thiruchirappalli, dated 23.01.2009 in O.S.No.30 of 2004.

For Appellants : Mr.N.Anantha Padmanaban
For Respondents : Mr.T.S.R.Venkataramana

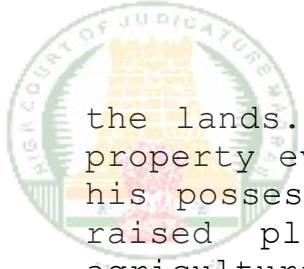
JUDGMENT

This appeal has been filed by the defendant in the suit in O.S.No.30 of 2004 (Originally O.S.No.635 of 1996) on the file of the First Additional District Judge, Tiruchirappalli.

2.The plaintiff / respondent filed a suit in O.S.No.30 of 2004 for directing the appellant to pay a sum of Rs.8,40,000/- with future interest and for consequential relief.

3.The case of the plaintiff / respondent in the suit are as follows:

3.1.The suit property belongs to the plaintiff trust. The plaintiff has filed a suit in O.S.No.164 of 1992 for recovery of possession (Renumbered as O.S.No.31 of 2004). The defendant though claimed to be the cultivating tenant in respect of the suit property, it is false. The defendant was only given a license to use the suit property in order to raise coconut thope. The defendant cannot claim that he is a cultivating tenant, since he is not exercising / contributing physical labour for the cultivation of



the lands. The defendant is continued in possession of the suit property even after the expiry of the period of license and hence, his possession is unlawful. The defendant through labourers has raised plantain crops by utilising the whole property for agricultural activities. In such circumstances, the defendant is liable to pay damages for use and occupation of the suit property. The income from the suit property though will not be less than Rs.21,000/- per acre, per annum, only a lesser amount is claimed.

4.The suit was contested by the defendant mainly on the ground that the defendant is a cultivating tenant liable to pay rent at Rs.400/- per acre and that the income from the lands is very meagre and that the exorbitant rent at the rate of Rs.21,000/- per acre per annum cannot be accepted. The defendant also raised some objections with regard to the development of the land by the defendant. The plaintiff filed another suit for recovery of possession of the suit property and for mesne profits in O.S.No.164 of 1998 (later numbered as O.S.No.31 of 2004) and another suit for permanent injunction regarding the usufructs from trees. All the suits were disposed of by a common judgment.

5.The trial Court on an analysis of the entire evidence on record found that the defendant must have earned not less than Rs.10,000/- per acre per annum and that the claim of Rs.8,40,000/- though on the higher side directed the defendant to pay the plaintiff at the rate of Rs.3,000/- per acre per annum i.e., Rs.2,17,800/- with future interest thereof. Aggrieved by the judgment and decree of the trial Court, the above appeal has been preferred by the defendant. The suit for recovery of possession and for future mesne profits was decreed by the trial Court with a direction to deduct a sum of Rs.2,40,000/- from the mesne profit payable by defendant to the plaintiff. The suit for injunction was dismissed. No appeal has been filed against the decree for recovery of possession.

6.Since the suit filed for recovery of possession was decreed and there is no further appeal, the judgment and decree of the Court below have become final regarding all other issues except the issue with regard to the quantum of damages for use and occupation of the suit property by the defendant. The trial Court in the present case has fixed the quantum after elaborately discussing the pleadings and evidence both oral and documentary in a proper perspective. It is not in dispute that an extent of 24.2 acres was in the possession and enjoyment of the defendant. Though the possession of the defendant initially was lawful subsequently after the expiry of the license, his possession became unlawful and hence, the defendant is liable to pay damages for use and occupation of the suit property. When the liability is by way of damages, the actual income that was derived by the defendant may not be relevant but the loss that was caused to the plaintiff by way of income will be more relevant. The defendants

disputed the quantum mainly on some inconvenience that are not appeared to be on any permanent basis. As against the claim of Rs.10,000/- per acre the lower appellate Court has granted only a sum of Rs.3,000/- per acre per annum. Since the finding that the defendant is liable to pay mesne profits at the rate of Rs.3,000/- per acre per annum has become final, the defendant is estopped from claiming any reduction. In such circumstances, the admission of the defendant relied upon by the lower Court is sufficient to uphold the decree of the trial Court in favour of plaintiff in the present suit. Since the trial Court has considered the relevant materials and fixed the liability, I do not find any compelling circumstances to interfere with the reasons of the trial Court. Having regard to the above facts and circumstances, the appeal deserves dismissal and hence, dismissed with costs.

MEMORANDUM OF COSTS

Appellant(	) Costs	Rs.	P.
Stamp for Vakalatnama		10.00	
Advocate's fee on Rupees	Senior Fees	21715.00	
	Junior Fees	7238.00	
Translation and Printing/ Typing charges	..	Nil	
To be paid to the Appellant/Petitioner by the Respondent		28953.00	

Sd/-
Assistant Registrar (CS-II)
/True copy/

Sub Assistant Registrar

ENCL:-COST MEMO XEROX COPIES

To
The First Additional District Judge, Thiruchirappalli.
+1 CC to M/s.T.S.R.VENKAT RAMANA, Advocate, SR No.80701.
SRM
PSM/CM-MSA/28.02.2017/3P/3C

Judgment made in
Appeal Suit (MD) No.83 of 2013
14.12.2016