

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

S.A.No.397 of 2015

A.K.Mani

... Appellant

Versus

1.Lalitheswari
2.K.M.Senthil
3.Nagalakshmi
4.Gayathri

... Respondents

Second Appeal filed under Section 100 of Civil Procedure Code to set aside the decree and judgment dated 1.3.2014 passed in A.S.No.60 of 2013 on the file of the Subordinate Court, Sathyamangalam, Erode District reversing the decree and judgment dated 10.7.2013 passed in O.S.No.11 of 2010 by the District Munsif Court, Sathyamangalam, Erode District by allowing the second appeal.

For Appellant ... Mr.I.C.Vasudevan

For Respondents ... Mr.N.Narayanasamy

JUDGMENT

The appellant/plaintiff filed the suit for the relief of permanent injunction against the respondents/defendants. The brief facts of the case is as follows:-

2. According to the plaintiff, originally the property belonged to Karuppayammal who is the paternal grandmother of defendants 2 to 4. The aforesaid Karuppayammal and the plaintiff entered into an oral lease in respect of the suit property for an annual rent of Rs.15,000/-. On 10.11.2009, they had executed a registered lease deed for a period of 5 years with an annual rent of Rs.15,000/-. The plaintiff was in possession and enjoyment of the suit property since 2003. The respondents/defendants did not take care of Karuppayammal and her husband. Karuppayammal borrowed Rs.1,50,000/- from the plaintiff on two different dates and had executed two promissory notes. After the

death of Karuppayammal, the respondents / defendants have tried to forcibly evict the plaintiff from the suit property. Therefore, the plaintiff filed an application before the Tenancy Recording Officer, Sathyamangalam for recording him as a cultivating tenant of the suit property. Therefore, he filed the suit before the trial Court.

3. The respondents/defendants have filed a written statement before the trial Court stating that the aforesaid Karuppayammal's brother Periya Karuppagounder had executed a registered settlement deed on 31.01.1960 in favour of Karuppayammal settling the properties in her favour and reserving life interest in the suit property. The specific condition imposed in the said document of settlement shows that the aforesaid Karuppayammal shall not encumber or alienate the suit property during her life time and her male heirs alone are entitled to succeed to the properties after her death. Karuppayammal's only male legal heir Muthugounder predeceased her on 24.01.1993. The defendants are the only legal heirs of Muthugounder. The appellant/plaintiff, taking advantage of the age and illiteracy of Karuppayammal, has created the alleged lease deed and promissory notes. In the trial Court, on the plaintiff's side P.W.1 and P.W.2 were examined and Exs.A.1 to Ex.A.7 were marked and on the defendants side D.W.1 was examined and Exs.B.1 to Ex.B.7 were marked.

4. The learned counsel appearing for the appellant submitted that the trial Court after considering the evidence let in on the side of the plaintiff and the defendants, decreed the suit. Challenging the judgment and decree, the defendants have filed the appeal before the first appellate Court in A.S.No.60 of 2013 before the Subordinate Court, Sathyamangalam. The above said appeal was allowed setting aside the judgment and decree passed by the trial Court. Challenging the said judgment & decree of the appellant/plaintiff is before this Court.

5. The following questions of law have been raised by the appellant.

1. Whether the lease deed Ex.A.1 executed by the owner of the land could be relied on by the appellant to prove his possession in a suit for bare injunction based on possession irrespective of the fact that whether the lessor had the power of making encumbrance or not?
2. Whether the Court below was correct in taking into consideration of the part of the contents of the document Ex.A.1 ignoring the other part to decide the factum of earlier lease of the appellant in the suit property?

3. Whether the suit for bare injunction based on possession could be dismissed for the reason that the lessor had no right of encumbrance as per the settlement deed Ex.B1 especially when the execution of the document was not denied by the respondent?

6. The learned counsel for the appellant submitted that relying upon Ex.A1, wherein Karrupayammal had executed a lease deed in favour of the appellant/plaintiff, after the execution of the said lease deed the appellant/plaintiff was deemed in possession of the property, even though, based on oral lease, the appellant/plaintiff has been in possession of the suit property from the year 2003. Subsequently Karrupayammal executed Ex.A.1 lease deed in favour of the plaintiff/appellant on 10.11.2009. On the basis of that the appellant/plaintiff had filed a petition before the Tenancy Recording official to declare him as the cultivating tenant of the suit property. In the meantime, the appellant also filed the present suit in O.S.No.11 of 2010 before the District Munsif Court, Sathyamangalam, Erode. The trial Court, considering the Ex.A1 executed by Karupayammal and also the evidence of plaintiff and DW1, came to conclusion that the aforesaid Karupayammal was living at her Kasipalayam residence and Karupayammal and her husband were uncared of by the defendants and therefore she executed a lease deed on 10.11.2009 in favour of the plaintiff. Therefore the trial Court has come to a conclusion that the lease deed executed by Karupayammal is valid and binding between the parties and further it has been discussed that the defendants are not in possession and enjoyment of the property therefore, the relief as prayed in the said suit should be granted. However, the first Appellate Court has misinterpreted the settlement deed and rejected the case of the plaintiff stating that Karupayammal had no power to execute the lease deed in favour of the plaintiff/appellant, even though during her lifetime the lease deed was executed and the plaintiff/appellant was in possession of the suit property. Even assuming that the said Karupayammal has no authority to execute the lease deed, in the light of the settlement deed the plaintiff/appellant has been in possession, but in the capacity of encroacher only, therefore, the plaintiff/appellant is entitled for the relief, as the defendants cannot dispossess the plaintiff/appellant except under due process of law. Hence the first Appellate Court erred in reversing the decree and judgment passed by the trial Court.

7. Per contra, the learned counsel for the respondents would submit that the first Appellate Court had considered the Ex.A1 and it has held that as per the settlement deed executed

in favour of Karupayammal, she was given only a life estate with a condition that she should not encumber or alienate the suit property till her life time and it should go to her male heirs only after her life time. Therefore the contention of the respondents is that the lease deed executed under Ex.A1 by Karupayammal is invalid and has no binding effect on the defendants. Therefore the first Appellate Court has rightly rejected the validity of the lease deed executed by Karupayammal in favour of the plaintiff/appellant.

8. The next contention of the learned counsel for the appellant/plaintiff is that the plaintiff has been in possession of the suit property from 2003 and subsequently by virtue of lease deed under Ex.A.1 executed by Karupayammal has been in possession of the said suit property. Therefore the defendants cannot dispossess the plaintiff/appellant without recourse to the law.

9. To prove his case, the plaintiff/appellant has marked the document Ex.A1 and the documents Ex.A.4, Ex.A.5, Ex.A.6 to show that the plaintiff/appellant was in possession of the suit property. It is seen from the said documents that there was an agreement entered into between the plaintiff/appellant and the sugar mill to sell the sugarcane cultivated in the property. Merely producing such documents cannot establish his case, as the plaintiff/appellant has to prove that the appellant has been in possession of the property. Had the appellant been in possession of the property, he would have filed the revenue documents namely Adangal and Chitta before the trial Court to show his possession. But the documents marked by the plaintiff/appellant are all only subsequent to the filing of the suit. It is seen from the records that the appellant/plaintiff filed IA No.33/10 before the trial Court, originally an order of injunction has been granted and subsequently it is seen from the order passed by the trial Court that this injunction already granted was not extended. The said endorsement was made on 19.10.2010 and the application was closed. A perusal of the said endorsement made on 19.10.2010 would show that till the disposal of the suit, the appellant/plaintiff has not got the benefit of interim injunction, therefore, it clearly shows that if the petitioner has been in possession, he would have got the benefit of the interim order pending disposal of the suit. Therefore the first Appellate Court has held that the appellant/plaintiff was not in possession of the suit property and also not entitled to get any relief of injunction. Therefore, the contention of the appellant is liable to be rejected and the substantial questions of law raised by the appellant are to be answered against the appellant.

10. In view of the above said facts and circumstances of

the case, second appeal fails and accordingly second appeal is dismissed. No order as to costs.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

dpq

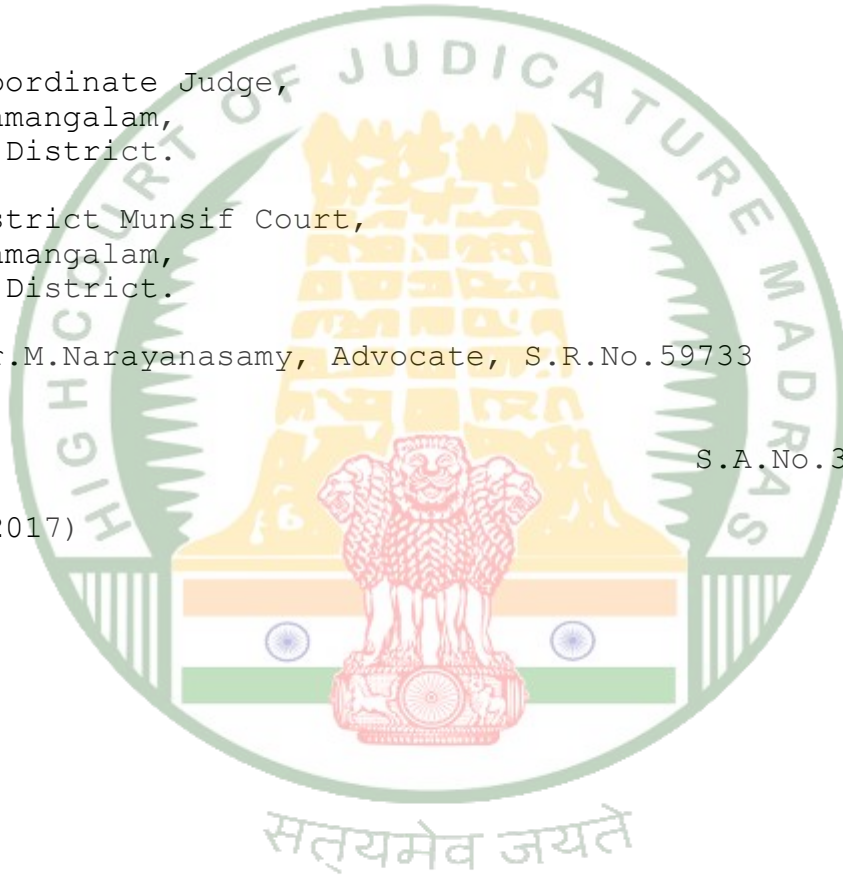
To

1. The Subordinate Judge,
Sathyamangalam,
Erode District.
2. The District Munsif Court,
Sathyamangalam,
Erode District.

+1cc to Mr.M.Narayanasamy, Advocate, S.R.No.59733

S.A.No.397 of 2015

RK(CO)
GN(17/11/2017)



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