

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

Second Appeal No. 453 of 2015
and
M.P. No. 1 of 2015

Narayanan ... Appellant/Respondent/Plaintiff

vs.

Rajendran ... Respondent/Appellant/Defendants

PRAYER : This Second Appeal is filed under Section 100 C.P.C., against the Judgment and decree passed in A.S.No. 7 of 2014 dated 23.12.2014 on the file of the court of Subordinate Judge, Chidambaram, reversing the Judgment and Decree passed in O.S.No.21 of 2009 dated 20.12.2012 on the file of the Court of District Munsif cum Judicial Magistrate, Portonova.

For Appellant ... Mr. A. Muthukumar
For Respondent ... Mr. M. Sivavarthanam

J U D G M E N T

This Second Appeal arises out of the Judgment and decree passed in A.S.No. 7 of 2014 dated 23.12.2014 on the file of the court of Subordinate Judge, Chidambaram, reversing the Judgment and Decree passed in O.S.No.21 of 2009 dated 20.12.2012 on the file of the Court of District Munsif cum Judicial Magistrate, Portonova.

2. Brief facts of the case is as follows :-

The plaintiff is the appellant in this appeal. The appellant filed a suit in O.S. No.21 of 2009 before the District Munsif cum Judicial Magistrate, Portonova, for permanent injunction. The suit property measuring an extent of 0.04.0 ares, out of 0.61.0 ares, is under occupation of the appellant's father for about 50 years. After his death, the appellant is in possession and enjoyment of the suit property. He has put up thatched hut with brick walls and has electric connection, in his name. He also planted 6 tamarind & coconuts trees, raised

and reared them. According to the appellant/ plaintiff, the respondent a person of the same village, who has no right to interfere with the peaceful possession of the appellant, attempted to disturb the appellant and plucked the tamarind fruits. So, the appellant filed the original suit against the respondent.

3. The respondent/ defendant filed his written statement in the suit, denying the averments made in the plaint. It has been contended by the respondent/ defendant that the suit property belongs to Arulmigu Angala Parameshwari Temple, which has been constructed and maintained by his ancestors. According to the respondent, he is the hereditary trustee of the temple. In the temple land many families are residing for monthly rent, including the appellant herein. He further contended that the tamarind and coconut trees, belong to the temple. Since the appellant failed to pay the monthly rent, the respondent/ defendant questioned the appellant and hence he has filed a false suit. Therefore, the respondent/ defendant sought the trial court to dismiss the suit.

4. The trial Court framed issues based on the pleadings. During the course of trial, the plaintiff examined himself as P.W.1, another witness as P.W.2 and marked Exs.A1 to A6. On the side of the defendants, the 1st defendant examined himself as D.W.1 along with two more witnesses and marked documents as Exh.B1 to B13. During cross examination, the defendant admitted that the plaintiff/ appellant is in possession of the suit property. By considering the oral and documentary evidences of both sides, the trial court decreed the suit in favour of the plaintiff/ appellant. Challenging the said judgement and decree passed by the trial court, the defendant/ respondent filed an Appeal Suit in A.S. No.7 of 2014 before the Sub Court, Chidambaram.

5. The first Appellate Court after formulating points for determination and on the basis of the depositions and evidences, accepted the claim of the defendant and allowed the appeal for the reason that the plaintiff/ appellant has to establish his case, on his own and not based on the crucial admissions of the defendant/ respondent. Further, the plaintiff/ appellant has not proved his possession of the suit property by producing necessary documents. Challenging the said judgement and decree, the appellant/ plaintiff has filed the present Second Appeal.

6. At the time of admission, this Court has framed the following substantial questions of law :

- a) When the Defendant admits the plaintiff's possession of the suit property both in his

written statement as well as in evidence whether the Lower Appellate Court erred in law in dismissing the suit for permanent injunction ?

- b) Is the admission made by the defendant in his written statement as well as in evidence with regard to the plaintiff's possession of the suit property not enough for granting a decree for permanent injunction ?
- c) When the suit was filed on the basis of possession only, whether the Lower Appellate Court erred in law in holding that the plaintiff had not approached the Court with clean hands i.e., suppressing the title of the defendant ?

After notice to the learned counsel for both the parties, the following additional question of law has been framed:

" Whether the suit is maintainable in the absence of the defendant/ respondent contests the suit in the representative capacity as a trustee of the Temple ? "

7. It is seen that during cross examination the respondent/ DW1 has admitted that the appellant/ plaintiff is in possession of the suit property and the same is also admitted in his written statement filed in the suit. The trial court has considered the oral and documentary evidences and the deposition of DW1, which clearly states that the plaintiff is in possession of the property. Since the possession of the appellant/ plaintiff is not disputed, the relief prayed in the suit for permanent injunction, was allowed. However, the appellant/ plaintiff had filed the suit against the respondent/ defendant in the individual capacity and the respondent has also contested the suit in the individual capacity. The respondent has also approached the Appellate Court, in individual capacity and not as a trustee of the temple. The issue to declare the title of the respondent/ defendant as a hereditary trustee in respect of the suit property, cannot be gone into, in the present suit filed by the appellant/ plaintiff, since the said plea is not raised in the present suit.

8. As the respondent/ defendant has been made as a party in the suit only in the individual capacity and not in the representative capacity for the temple, the suit is not maintainable. Therefore, the additional question of law is framed by this Court. Both the parties have not disputed the said question of law, since the suit has been filed against the respondent/ defendant in the individual capacity and not in the capacity of a trustee of the temple. Hence, without answering

the other questions of law on merits, this Court answers the additional question of law, raised on the question of maintainability of the suit. In view of the above, the judgement and decree passed by both the courts below are set aside and the suit in O.S.No.21 of 2009 and the appeal in A.S. No. 7 of 2014 are dismissed. The issues involved in the suit is left open to the parties, to be raised in the appropriate suit.

9. Accordingly, the Second Appeal is dismissed. Consequently, the connected Miscellaneous petition is closed. No costs.

s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Subordinate Judge, Chidambaram.
2. The District Munsif cum
Judicial Magistrate,
Portonova

+1 CC to M/a. A. Muthukumar, Advocate sr 65525.

+1 CC to M/a. M. Sivavarthanam, Advocate sr 65369.

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GMI (CO)
SP(11/01/2018)

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