

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
Second Appeal No.1018 of 2011

Kandasamy

.. Appellant/defendent

Vs.

Arulmigu Vedharanyeswara Swamy Devasthanam,
Rep. by its Executive Officer,
having his office at
Vedharanyam Town & Taluk,
Nagapattinam District. ... Respondent/Plaintiff

Second Appeal filed under Section 100 of the Code of Civil Procedure as against the judgment and decree dated 07.02.2011 in A.S.52 of 2010 on the file of Subordinate Judge, Nagapattinam, confirming the Judgment and Decree dated 30.06.2010 passed in O.S.No.43 of 2008 on the file of District Munsif-cum-Judicial Magistrate Court, Vedharanyam.

For Appellant : Mr.R.Murugabharathi
For Respondent : Mr.S.K.Rakhunathan

J U D G M E N T

The unsuccessful defendant before both the Courts below is before this Court by way of the present Second Appeal challenging the judgment and decree, dated 07.02.2011 made in A.S.No.52 of 2010 on the file of Subordinate Court, Nagapattinam, confirming the judgment and decree, dated 30.06.2010 passed in O.S.No.43 of 2008 on the file of District Munsif-cum-Judicial Magistrate Court, Vedharanyam.

2. Before the Trial Court, the plaintiff viz. Arulmighu Vedharanyeswara Swamy Devasthanam, which is the respondent herein, averred that they are the owner of the suit property, which is a tiled house bearing Old Door No.14 and New Door No.22 situated at Vedharanyam Town in Nagapattinam Road. The plaintiff-Devasthanam leased out the suit property to one Anuraj, son of Sarangapani, for a monthly rent of Rs.25/- and as a tenant, Anuraj was enjoying the suit property, but, he did not pay the rent regularly to the plaintiff-Devasthanam. Hence, the plaintiff-Devasthanam filed a suit before Thiruthuraipoondi District Munsif Court in O.S.No.291 of 1986 for eviction of the said Anuraj and the said suit was decreed in favour of the

plaintiff and on the strength of the said decree, the plaintiff-Devasthanam filed E.P.No.149 of 1996 before Thiruthuraipoondi District Munsif Court and took delivery of the suit property in a vacant condition on 28.11.1996 through the Senior Bailiff Vasudevan and the possession was handed over to one Ramesh, the then Executive Officer of the plaintiff-Devasthanam.

3. While so, in December 1996, the appellant/defendant illegally trespassed into the suit property by breaking open the lock and when the officials of the plaintiff-Devasthanam asked the defendant to vacate the suit property, he told them that after getting alternative accommodation, he will vacate the premises and by giving such lame excuse, the defendant continued to live in the suit property. Finally, in July 2004, when the Devasthanam officials took proper steps to evict the defendant from the suit property, the defendant told that he is in possession of the suit property under an arrangement with the previous tenant Anuraj and that if at all the Devasthanam wants to evict him, it can be done only by approaching the Court. Hence, the plaintiff-Devasthanam filed a suit in O.S.No.43 of 2008 seeking the relief of recovery of possession of the suit property from the defendant and a sum of Rs.18,000/- as past damages from the defendant and payment of Rs.500/- as future damages per month from the defendant, till the plaintiff takes possession of the suit property from the defendant.

4. It is the case of the defendant before the Trial Court that he is residing in the suit property for several years by paying rent to the plaintiff-Devasthanam and it is false to state that he trespassed into the suit property during December 1996. It is his contention that claim of future damages at Rs.500/- per month and the claim of a sum of Rs.18,000/- towards past damages, are not maintainable. According to the defendant, Arulmighu Aeri Sri Vidhyeswarar Swamy Temple is a private Temple and it does not belong to the plaintiff-Devasthanam and so, the plaintiff-Devasthanam has no title to the suit property.

5. The Trial Court, on a consideration of the entire oral and documentary evidence, decreed the suit in favour of the plaintiff-Devasthanam and directed the defendant to vacate the suit premises and hand over vacant possession of the same to the plaintiff and pay a sum of Rs.18,000/- as past damages, within a period of three months from the date of the judgment and also pay a sum of Rs.500/- per month as future damages, till the eviction of the premises. Aggrieved by the same, the defendant went on appeal before the Subordinate Court, Nagapattinam and the First Appellate Court, dismissed the appeal, thereby confirmed the judgment and decree of the Trial Court. Challenging the same, the defendant is before this Court.

6. The Second Appeal stood adjourned from time to time from 2011 and is being taken up for final hearing and disposed of by this judgment.

7. Learned counsel for the appellant contended that the Courts below failed to see that the respondent-Devasthanam did not produce any property Register or Patta to show that the suit property stands in the name of the respondent-Temple. According to the learned counsel, if the appellant/defendant is an encroacher of the suit property in 1996, then the respondent/plaintiff ought to have filed the suit immediately, instead they have filed the suit only in the year 2004. It is his further contention that the Senior Bailiff of Thiruthuraipoondi District Munsif Court, who is said to have handed over possession of the property, pursuant to the order passed in E.P.No.149/1996, was not examined as a witness. It is also his contention that none of the Exhibits filed by the appellant/defendant has been referred to by the Trial Court and that the concurrent judgments of the Courts below have got to be reversed.

8. In reply, learned counsel appearing for the respondent/plaintiff contended that it is totally incorrect on the part of the appellant/defendant to state that he was a tenant of the plaintiff-Temple. Moreover, he has not produced any document to prove his possession over the suit property. Learned counsel added that the defendant in his chief-examination has stated that one Samivelu was inducted as a tenant in the suit property by Shanmugam Chettiar and from the said Samivelu, the defendant took possession and enjoyment of the suit property on 09.07.1997 and rent in respect of the said property is being collected by Shanmugam Chettiar. Whereas, in the cross-examination, the defendant has stated that he took possession of the suit property from one Samivelu and that he is not aware from whom Samivelu took possession of the suit property and that he is not paying any rent in respect of the said property from the date he took possession of the same. Thus, according to the learned counsel, the appellant/defendant has taken inconsistent pleas and prayed for dismissal of the Appeal.

9. Heard the learned counsel on either side, gave careful consideration to their submissions and perused the material documents available on record.

10. The appellant/defendant claims to be a tenant of the respondent-Temple. According to the respondent/plaintiff, the appellant is a trespasser. It is clear from the evidence on record that the appellant/defendant has not produced a single document to prove his tenancy with the respondent-Temple. He has given contradictory statements in his chief and cross-

examination. In the original written statement, the appellant/defendant has pleaded that he is a tenant under the plaintiff-Temple from the year 1965 and that he has also executed a Rental Agreement in favour of the plaintiff-Temple. But, in the additional written statement, the appellant/defendant has pleaded that the plaintiff-Temple has no title to the suit property and that Arulmighu Aeri Sri Vidhyeswarar Swamy Temple alone has title to the suit property and its Managing Trustees, Ramanathan Chettiar, and his son Shanmugam, and his son Chandrasekaran alone have title to the suit property on behalf of the said Temple.

11. Even though the appellant/defendant has denied that he trespassed into the suit property in December 1996, the contention of the respondent/plaintiff that the appellant has illegally entered into the premises, cannot be brushed aside and by no stretch of imagination, the appellant can be treated as a tenant. Further, it is clear from the evidence that the appellant/defendant has not paid any rent to any one, much less to the respondent/Temple. Though it has been stated by the appellant/defendant at the time of trial that he will produce the rental agreement entered into in respect of the suit property, no document has been produced by him so far in that regard.

12. Further, the respondent/plaintiff has clearly established through Ex.A2, being the order passed in E.P.No.149/96, dated 28.11.1996, to show that one Anuraj was evicted from the suit property and possession of the same has been handed over to the plaintiff/Temple and it has not been let out on rent to any one, much less the appellant/defendant. The property tax in respect of the suit property marked as Ex.A3, also supports the case of the respondent/plaintiff.

13. When it is the case of the respondent/plaintiff that the appellant/defendant is a trespasser and the case of the appellant/defendant is that he is only a tenant, it is the duty cast upon the appellant/defendant to establish that he is a tenant, but he has failed to establish the same. Even though it is contended by the appellant/defendant that the documents filed by him have not been considered by the Courts below, it is seen that most of the documents are after the year 1997 and it has to be construed that the same have been created for the purpose of this case.

14. Thus, from the inconsistent stand taken by the appellant/defendant, it is clear that he had trespassed into the suit property and had never been a tenant with the respondent/plaintiff and he had not produced any document to prove the same. Hence, this Court finds no illegality or perversity in the findings of the Trial Court and the First

Appellate Court. There is no question of law, much less substantial question of law that arises for consideration in this Appeal.

In fine, the Second Appeal is dismissed, confirming the judgment and decree of the First Appellate Court and the Trial Court. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1. The Subordinate Judge, Nagapattinam.

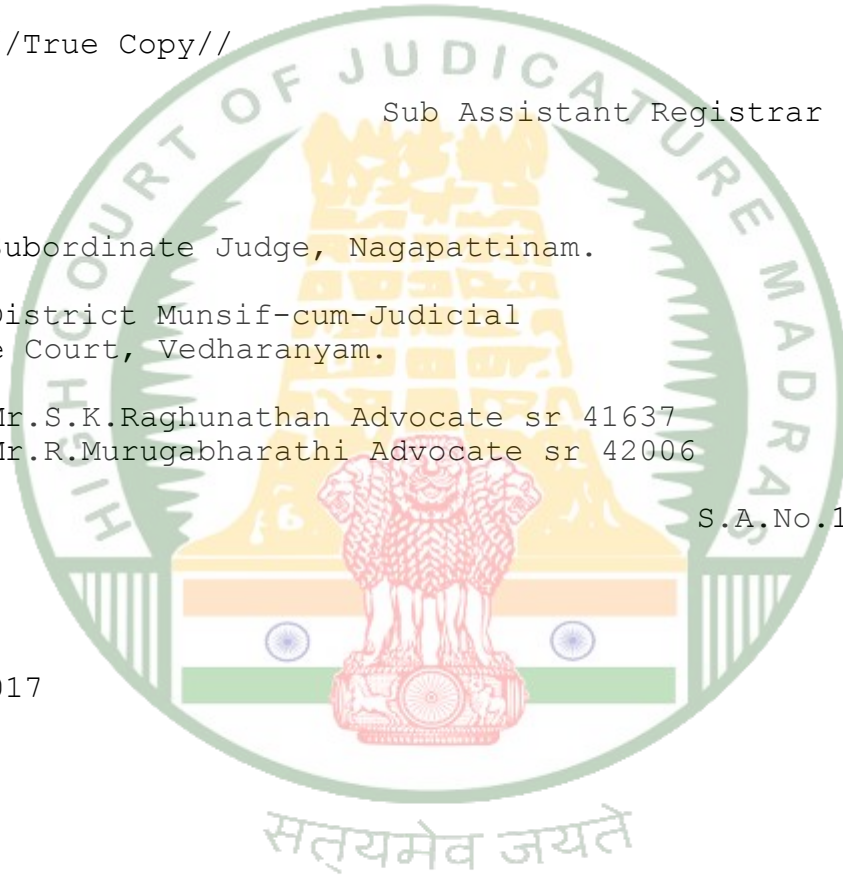
2. The District Munsif-cum-Judicial
Magistrate Court, Vedharanyam.

+1 cc to Mr.S.K.Raghunathan Advocate sr 41637

+1 cc to Mr.R.Murugabharathi Advocate sr 42006

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