

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2017

PRONOUNCED ON : 22.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.282 of 2011

Nadana Sabapathy

... Appellant

Vs.

1.Mesakannu (deceased)
2.Gunasundari
3.Balraj
4.Devasundari
5.Gnanasundari

.... Respondents

(RR2 to 5 brought on record as LRs
of the deceased sole respondent
vide order of this court dated
11.01.2017 made in
CMP Nos.19435 & 19436 of 2017
in S.A.No.252 of 2011 by TRNJ)

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 16.09.2010 made in A.S.No.5 of 2010 on the file of the Subordinate Court, Chidambaram, reversing the Judgment and Decree dated 21.11.2008 made in O.S.No.147 of 2001 on the file of the District Munsif Court, Chidambaram.

For Appellant : Mr.S.Sathish Rajan
For Respondents : Set exparte Nos. 2 to 5

JUDGMENT

Challenge in this second appeal is made by the plaintiff against the judgment and decree dated 16.09.2010 made in A.S.No.5 of 2010 on the file of the Subordinate Court, Chidambaram, reversing the Judgment and Decree dated 21.11.2008 made in O.S.No.147 of 2001 on the file of the District Munsif Court, Chidambaram.

2.The Second Appeal is admitted and the following

substantial question of law is formulated for consideration in this Second Appeal:

Whether the judgment and decree of the first appellate court in dismissing the suit laid by the plaintiff are based upon the perverse findings and misdirected against the evidence on record?

3.The suit has been laid by the plaintiff for permanent injunction.

4.The suit property is stated to be an extent of acres 4.97 cents situated in R.S.No.575. The plaintiff claims that he has taken out lease of the suit property under oral lease from Mohammed Naina Maracair about 17 years back for a period of one year and even after the expiry of the lease period, according to the plaintiff, he remains to be in the possession and enjoyment of the suit property as a cultivating tenant i.e., a tenant holding over and in this situation, it is alleged that the defendant alleging to be owing and possessing an extent of acres 1.33 cents in the suit survey number on the basis of an agreement of sale attempted to interfere with the possession and enjoyment of the plaintiff in respect of the suit property and hence according to the plaintiff, he has been necessitated to lay the suit.

5.The defendant's version is that he had taken out lease of an extent of acres 1.33 cents in the suit survey number from Hauwa Nachi about 40 years back and cultivating the said extent and thereafter, measuring the rent to Mohammed Naina Maracair, the successor in interest of Hauwa Nachi. Further, according to the defendant, the remaining extent in the suit survey number is in the possession and enjoyment of the plaintiff and it is the case of the defendant, that it is only the plaintiff, who is attempting to grab his extent of the property in the suit survey number which is in the possession and enjoyment of the defendant by filing the suit and hence the suit is liable to be rejected.

6.Inasmuch as the plaintiff has laid the suit claiming the relief of permanent injunction on the basis of the oral lease from Mohammed Naina Maracair and when the above case of the plaintiff, has been stoutly disputed by the defendants, it is for the plaintiff to establish that he is in the possession and enjoyment of the suit property as described in the plaint. As adverted to earlier, the suit property is stated to be an extent of 4.97 cents in R.S.No.575. In the above said survey number, the defendants claim to be in the possession and enjoyment of acres 1.66 cents, also under the lease from Hauwa

Nachi and thereafter, under Mohammed Naina Maracair.

7. The plaintiff mainly relies upon four receipts said to have been issued in his favour by the landlord for giving the lease to him, but the above said lease receipts are seriously challenged by the defendant. Despite the same, the plaintiff has not evinced any interest to establish the authenticity of the said receipts to enable the court to hold that the entire extent in the suit survey number had been leased out to the plaintiff orally by Mohammed Naina Maracair. Two receipts namely, Ex.A1 and A4 are said to be issued by Mohammed Naina Maracair and the other receipts Ex.A2 and A3 are said to be issued by Kamal, the Power of Attorney agent of Mohammed Naina Maracair. However, when the above said documents are contested, it is for the plaintiff to establish that they pertain to the suit property as described in the plaint and only in recognition of the plaintiff cultivating the suit property as a lessee, he had paid the lease amount to the landlord under the above said documents. However, with reference to the same, as rightly found by the first appellate court, no reliable evidence has been placed by the plaintiff. No acceptable reason has been given by the plaintiff for not examining the authors of the above said receipts namely Exs.A1 to A4. The plaintiff claims to be a cultivating tenant of the suit property. However, to evidence that the plaintiff has been cultivating the suit property as a tenant, no revenue record as such has been produced depicting the name of the plaintiff as a cultivating tenant in respect of the suit property.

8. Per contra, the defendant has marked Ex.B1, to evidence that it is he who is cultivating an extent of acre 1.66 cents in the suit survey number as a cultivating tenant. The trial court has disbelieved Ex.B1 on the footing that under the column landlord, the name of Hauwa Nachi has been mentioned, which according to the trial court could not be correct as Hauwa Nachi had expired long back. However, the fact remains that the defendant's name has been recorded as a cultivating tenant in the revenue record marked as Ex.B1 and in such a position, to say that the same would not be a true document merely because the landlord's name is not correctly mentioned in the same, as such cannot be accepted.

9. As seen earlier, it is the definite case of the defendant, he has taken out lease of acre 1.66 cents only from Hauwa Nachi and accordingly it is seen that Ex.B1 has come to be issued in favour of the defendant. On the other hand, the lease receipts marked as Exs.A1 to A4 are not shown to be genuine documents by the plaintiff by examining the authors of the same. Further, the documents Exs.A1 to A4, do not co-relate that the lease amount paid under the same are in respect of the entire

extent in the suit survey number. Similarly, it is found that even Ex.A5 kist receipt would not advance the case of the plaintiff as it also does not disclose that the plaintiff had paid the kist for the entire extent in the suit survey number when it is found it has been admitted by the defendant himself that excluding acre 1.66 cents in the possession of the defendant, the remaining extent in the suit survey number is in the possession of the plaintiff. In such view of the matter, from Ex.A5 in isolation, we cannot hold and determine that the same had been issued in respect of the entire extent in the suit survey number. Other than Ex.A1 to A5, no other acceptable document has been placed by the plaintiff to show that he is in possession and enjoyment of the suit property as a cultivating tenant as claimed by him. Particularly, the plaintiff has not cared to examine his landlord or any other revenue official to establish that he is a cultivating tenant in respect of the suit property. Adungal extract has not been filed. Record of tenancy register has not been filed. The documents filed are not found to be co-related to the suit property. The plaintiff having come forward with the suit should stand or fall on the strength of his own case. He cannot be allowed to take advantage of the weakness of the defence version and thereby attempt to succeed in his case de hors any acceptable and reliable evidence on his part.

10.The learned counsel for the plaintiff contended that when it is admitted that excluding acres 1.66 cents it is only the plaintiff, who is in the possession and enjoyment of the remaining extent in the suit property, on that basis alone, the court should accept the plaintiff's case. However, when according to the plaintiff, he is in the possession and enjoyment of the entire extent in the suit survey number and when that case of the plaintiff is not established by supporting materials, the plaintiff's case cannot be acceded to. The first appellate court has rightly on the basis of the proper appreciation of the evidence on record and also giving proper findings and conclusions rejected the plaintiff's case.

11.Accordingly, the substantial question of law formulated in this second appeal is answered against the plaintiff.

12.In conclusion, the second fails and accordingly is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

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Sub Assistant Registrar

To

1.The Subordinate Court,
Chidambaram

2. The District Munsif Court,
Chidambaram

Copy to

The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.Satish Rajan, Advocate, S.R.No.11070

MG(CO)
RS(15/03/2017)

order in
S. A.No. 282 of 2011



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