

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

Second Appeal No. 369 of 2016

1. M. Saraswati
 2. S. Rukamani
 3. S. Padmavati
- ..Appellants/Appelants/Plaintiffs

Vs.

1. A/M. Vadhaneeswara Swamy
Dewasthanam, Mayiladuthurai,
rep. by its Hereditary Trustee,
Dharmapuram Adheenakarathar,
Dharmapuram Adheenam,
Dharmapuram,
Mayiladuthurai Taluk and Munsif.

- 2.Boologarajan
- ..Respondents/Respondents/Defendents

Prayer: Second Appeal as against the judgment and decree dated 08.12.2015 in A.S. No. 22 of 2014 on the file of Additional Sub Court, Mayiladuthurai, confirming the judgment and decree dated 31.01.2014 passed in O.S.No. 6 of 2012 on the file of Additional District Munsif Court, Mayiladuthurai.

For Appellants :: Mr.P.B. Ramanujam

For Respondents :: No Appearance for R1
Mr.K. Govi Ganesan for R2

J U D G M E N T

The above second appeal arises against the judgment and decree dated 08.12.2015 passed in A.S.No.22 of 2014 on the file of the Additional Sub Court, Mayiladuthurai, confirming the judgment and decree dated 31.01.2014 passed in O.S.No. 6 of 2012 on the file of the Additional District Munsif Court, Mayiladuthurai.

2. The plaintiffs, who lost before the Courts below, are the appellants and the defendants are the respondents in this second appeal.

3. The plaintiffs filed the suit in O.S. No. 6 of 2012 for declaration, recovery of possession and mandatory injunction.

4. Originally, the predecessor-in-title of the plaintiffs, namely, one Murugaiya Pathar, was assigned the status of Paguthidar in respect of the suit property. The said Murugaiya Pathar had sub-let the suit property in favour of the 2nd defendant/2nd respondent herein. Subsequently, eviction proceedings were initiated by Murugaiya Pathar as against the 2nd defendant on ground of wilful default in payment of rent and also personal occupation, in R.C.O.P.No. 47/87, before the Rent Controller, Mayiladuthurai. Even during the pendency of the eviction proceedings, the said Murugaiya Pathar died. By order dated 10.01.1992, R.C.O.P. No. 47/87 was allowed, on the ground of wilful default. As against the same, the 2nd defendant preferred an appeal in R.C.A. No. 14/92 before the Appellate Authority, Mayiladuthurai, and the appeal was dismissed on 17.04.1995, confirming the eviction order. Challenging the same, the 2nd defendant preferred a revision petition in C.R.P. No. 1607/1995 before this Court and the said revision was allowed by order dated 17.03.1999 by accepting the adjustment of arrears of rent, for the repairs effected by the 2nd defendant and ultimately, it was held that there was no arrears of rent. Thereafter, the 1st defendant had recognised the 2nd defendant as Paguthidar to the suit property. Incidentally, permission was given to the 2nd defendant to put up construction. These events happened about two decades ago. After the demise of Murugaiya Pathar, there was a partition effected between the legal heirs of Murugaiya Pathar, namely, the plaintiffs. Based on the same, the suit was filed.

5. The Courts below, placing reliance upon Exs. B1 to B6, were pleased to hold that the recognition of the 2nd defendant as Paguthidar to the suit property, by the 1st defendant, has never been challenged, even during the lifetime of Murugaiya Pathar, who died on 03.09.1991. The R.C.O.P. proceedings initiated by him ended in the year 1999 and the partition between the family members of the plaintiffs took place in 2009. Neither, after the demise of Murugaiya Pathar nor after the conclusion of R.C.O.P. proceedings, did the plaintiffs take any steps to give paguthi to the 1st defendant temple. Further, the suit has been laid after a lapse of nearly 21 years, for recovery of possession. The Courts below held that when the plaintiffs had not taken any steps to claim paguthi right of the suit property in their favour, after the demise of Murugaiya Pathar nor had they paid any amount for paguthi to the 1st defendant temple and moreover, in the absence of any document to show that the paguthi right was continued in their favour, after the demise of Murugaiya Pathar, they could

not claim any paguthi right to the suit property, through the partition deed. Challenging the same, the present appeal has been filed.

6. At the time of admission of the second appeal, the following substantial questions of law arose for consideration:

"a. Whether a surrender of tenancy right can be implied when such theory is unknown to the provisions of the Transfer of Property Act, 1882?.

b. Whether the Courts below have not erroneously cast the burden of proof on the plaintiffs instead of calling upon the defendants to establish the alleged Surrender Deed?"

7. Though the learned counsel for the appellants contends that the appellants are entitled to claim paguthi right to the suit property, being legal heirs of Murugaiya Pathar, this Court is not inclined to accept the same. Findings are factual in nature. When Murugaiya Pathar himself did not challenge the recognition of the 2nd defendant as Paguthidar to the suit property, it is not open to the plaintiffs to do so, after a lapse of nearly two decades. There is no illegality in the permission granted by the 1st defendant temple in favour of the 2nd defendant to put up construction, pursuant to which, the 2nd defendant has also put up construction in the suit property. Besides, the plaintiffs are not paying any paguthi amount, which is being done by the 2nd defendant, in favour of the 1st defendant temple. There is no legal right, in favour of the plaintiffs, that, as a matter of right, they should be recognised as Paguthidar, that too, when they are not in physical possession of the suit property.

8. Thus, this Court finds no substantial question of law warranting interference with the judgment and decree of Courts below. Accordingly, the second appeal fails and the same is dismissed. No costs.

sd/

Assistant Registrar (CO)

/true copy/

Sub Assistant Registrar

nv

To

1.The Addl. Sub Court, Mayiladuthurai.

2. The Addl. District Munsif Court,
Mayiladuthurai.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.P.B.Ramanujam Advocate SR.No.3707.

+1cc to Mr.K.Govi Ganesan Advocate SR.No.4104.

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KJ(CO)
GN(13/02/2017)



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