

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.10.2017

PRONOUNCED ON : 10.10.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No. 259 of 2001

Devaraj @ Thiagarajan ... Appellant

Vs.

1. Rasa Gounder
2. Madhaiyan ... Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 21-12-1999 made in A.S.No.71 of 1999 on the file of the Sub Court, Bhavani, reversing the judgment and decree dated 19.01.1999 made in O.S.No.924/93 on the file of the Additional District Munsif Court, Bhavani.

For Appellant : Ms.Zeenath Begam
for D.Sivakumar

For Respondents : No appearance

JUDGMENT

Challenge in this Second Appeal is made to the Judgment and decree dated 21.12.1999 made in A.S.No.71/99 on the file of the Sub Court, Bhavani, reversing the Judgment and Decree dated 19.01.1999 made in OS.No.924/93 on the file of the Additional District Munsif Court, Bhavani by the defendant.

2. The suit laid for permanent injunction.

3. The parties are referred to as per the ranking in the Trial Court.

4. The case of the plaintiffs in brief is that the suit property originally belonged to Mohamad Habib and in respect of the suit property the plaintiffs and Mohammad Habib and his son N.H.Basha had entered into the lease on 06.06.1988 on an yearly basis, fixing the lease amount at Rs.1,250/- and the lease period is for four years and the plaintiffs have paid the lease amount of Rs.5,000/- and thereby the plaintiffs were inducted into the possession of the suit property on 06.06.1988 itself and thus they are in possession and enjoyment of the suit property as the cultivating tenants and accordingly, paying necessary electricity charges. While so, Mohammad Habib and his family members attempted to trespass into the suit property and dispossess the plaintiffs and in this connection the plaintiffs had levied the suit in O.S.No.179/1991 against them and in that suit, a Commissioner had been appointed and noted the physical features of the suit property. The defendant has no manner of right or title over the suit property and the defendant illegally made hasty attempts to dispossess the plaintiffs from the suit property and in this connection,

the defendant set fire to the second plaintiff's house and in this connection a criminal case has also been registered against the defendant and the same is pending before the Judicial Magistrate Court, Bhavani and hence, the suit for permanent injunction.

5. The case of the defendant, in brief, is that after denying the lease arrangement pleaded by the plaintiff between them and Mohamad Habib and his son and also denying that the plaintiffs are in possession and enjoyment of the suit property and paying electricity charges etc., and also denying the averments that the defendant is attempting to trespass into the suit property illegally, according to the defendant, the plaintiffs are not in possession and enjoyment of the suit property at any point of time either as tenants or otherwise and have no legal right to be in possession and enjoyment of the suit property and hence, according to him, the suit is not maintainable and the suit, without any cause of action, is liable to be dismissed.

6. In support of the plaintiffs' case, PW1 has been examined and Exs.A1 to A11 were marked. On the side of the defendant's, DWs1 and 2 were examined and Exs.B1 to B16 were marked.

7. On a consideration of the oral and documentary evidence adduced and the arguments placed, the trial Court was pleased to

dismiss the suit. Aggrieved over the same, the plaintiffs have preferred the first appeal. The first Appellate Court, on a consideration of the rival contentions put forth by the respective parties and also on the assessment of the materials placed, set-aside the judgment and decree of the Trial Court and accordingly, allowed the appeal preferred by the plaintiffs and thereby granted the decree in favour of the plaintiffs as prayed for. Impugning the same, the defendant has filed the present second appeal.

8. The following substantial questions of law were framed for consideration in this Second Appeal at the time of admission.

1. Whether the finding of the appellate Court that the plaintiff was in possession of the suit property on the date of the suit are based on legal evidence?

2. Whether the judgment and decree of the Appellate Court that the plaintiff is entitled to injunction is vitiated by perversity?

9. From the averments made in the pleadings and the materials placed, it is found that the parties are not in dispute that the suit property originally belonged to Mohamad Habib. Now, it is the case of the plaintiffs that in respect of the suit property, they had entered into the lease agreement with Mohamad Habib and his son and thereby,

they were put in possession of the suit property and thus, according to the plaintiffs, they are enjoying the suit property as the cultivating tenants thereof under the lawful owner and while so, according to them, inasmuch as the defendant, without any authority, attempted to interfere with their possession and enjoyment in respect of the suit property, they have been necessitated to lay the suit for the relief of permanent injunction.

10. The defendant, in his written plea, has only pleaded that the plaintiffs are not in possession and enjoyment of the suit property as put forth by them and accordingly, the plaintiffs are not entitled to maintain the suit and hence, the suit is liable to be dismissed.

11. It is seen from the averments contained in the written statement that the defendant has not pleaded that he has title to the suit property as such and that, he is in possession and enjoyment of the suit property by way of any particular claim of title. He has only pleaded that the plaintiffs are not in possession and enjoyment of the suit property as put forth by them and hence, the plaintiffs are not entitled to maintain the suit.

12. As adverted above, it is not in dispute that the suit property originally belonged to Mohamad Habib. Now, the plaintiffs have

pleaded that they have entered into the lease arrangement with Mohamad Habib and his son on 06.06.1988 and the said lease is for a period of four years and accordingly, they are put in possession and enjoyment of the suit property by the lawful owner. With reference to the same, it is found that the plaintiffs have marked the copy of the lease deed exhibited as Ex.A1. Further, according to the plaintiffs, they have been paying necessary electricity charges in respect of the suit property, pursuant to the above said lease arrangement and they have also marked the electricity bills as Exs.A2 to A9. It is not in dispute that the above said documents only pertain to the suit property. It is further case of the plaintiffs that inasmuch as the owner, viz., Mohamad Habib and the defendant as well as the others attempted to interfere with their possession and enjoyment of the suit property, they were constrained to lay the suit against them in O.S.No.179/1991 and O.S.No.44 of 1998 and in the above said proceedings, it is found that the plaintiffs were granted the order of injunction projecting their possession and enjoyment of the suit property against the concerned persons. It is thus found that the plaintiffs have prima facie established that they were put in possession and enjoyment of the suit property by the lawful owner Mohamad Habib and accordingly, enjoying the suit property as the tenants thereof.

13. As seen above, it is not the case of the defendant that he

has acquired any title to the suit property and thereby, put in possession and enjoyment of the same. With reference to the claim of title and possession of the suit property, it is found that the defendant has made attempts to adduce evidence with reference to the same and in this connection, some documents have also been pressed into service on his behalf. However, as rightly held by the Courts below, when there is no plea made by the defendant claiming title to the suit property and the possession thereof in the written statement by one way or other, it is found that sans pleas, no amount of evidence adduced by the defendant could be looked into. Accordingly, it is found that the Courts below have rightly discarded the evidence projected by the defendant sans pleas. With reference to the same, the above determination of the Courts below for not accepting the defendant's case cannot be faulted in any manner.

14. It is mainly contended by the counsel for the defendant that the plaintiffs have not established that they are in possession and enjoyment of the suit property on the date of the suit and the lease arrangement projected by them had expired even prior to the filing of the suit. By way of this argument, it is found that the defendant has admitted that at one point of time, the plaintiffs were put in possession and enjoyment of the suit property as tenants thereof under Ex.A1 by the lawful owner Mohamad Habib.

15. As adverted above, following the same, when Mohamad Habib and others including the defendant attempted to interfere with the possession and enjoyment of the plaintiffs in respect of the suit property, it is found that the plaintiffs had laid civil proceedings against them as narrated above and in those proceedings, the plaintiffs were granted the order of injunction preventing them from disturbing the plaintiffs' possession and enjoyment as the tenants thereof. In such view of the matter, when it is found that the plaintiffs had been inducted into the possession of the suit property as the tenants at one point of time, particularly, just before laying of the suit and thereafter, when it has not been established that the lawful owner had taken possession of the suit property from the plaintiffs in the manner known to law, it is found that, as pleaded by the plaintiffs', they continue to be in possession and enjoyment of the suit property and accordingly, when their possession and enjoyment was sought to be interfered with by the owner Mohamad Habib and others illegally, it is found that they had instituted necessary civil actions against them and also obtained favourable order in their favour. In such view of the matter, the contentions put forth by the defendant's counsel that the plaintiffs have not established their possession and enjoyment of the suit property on the date of the suit as such cannot be accepted in any manner. As rightly found by the first Appellate Court, the documents

projected by the plaintiffs' marked as Exs.A1 to A11 seen cumulatively, in the absence of any plea put forth by the defendant that he has valid title to the suit property and in possession and enjoyment of the suit property as such, it is found that the defendant, without having any better title to the suit property, cannot be allowed to interfere with the possession and enjoyment of the plaintiffs qua the suit property. Therefore, it is found that the first Appellate Court has rightly accepted the plaintiffs' case holding that they have established their possession and enjoyment of the suit property on the date of the suit and thus, they are entitled to maintain the suit for relief of permanent injunction as against the defendant. The reasonings and conclusions given by the first Appellate Court for upholding the plaintiffs' case cannot be termed as without any legal basis or vitiated by perversity. In such view of the matter, it is found that the first Appellate Court, has rightly, based on materials placed, in the proper assessment of the same both on facts as well as on legal aspects, giving sound and cogent reasons, had accepted the plaintiffs' case and in such view of the matter, the judgment and decree of the first Appellate Court do not call for any interference.

16. In the light of the above discussions, in my considered opinion, the questions of law formulated at the time of admission of the second appeal are not really questions of law and so, I hold that

there is no substantial question of law involved in the second appeal
In any event, the substantial questions of law formulated at the time
of admission of the second appeal are answered in favour of the
plaintiffs and against the defendant.

17. In conclusion, Judgment and decree dated 21-12-1999 made
in A.S.No.71 of 1999 on the file of the Sub Court, Bhavani, reversing
the judgment and decree dated 19.01.1999 made in O.S.No.924/93 on
the file of the Additional District Munsif Court, Bhavani are confirmed.
Resultantly, the Second Appeal is dismissed. No costs. Consequently,
connected miscellaneous petition, if any, is closed.

10.10.2017

Index : Yes/No

Internet:Yes/No

sms/sli

To

1.The Sub Court,
Bhavani.

2. The Additional District Munsif Court,
Bhavani.

T.RAVINDRAN,J.

sms/sli



Pre-delivery Judgment in
S. A.No. 259 of 2001

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