

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :07.08.2017

Pronounced on :10.08.2017

Coram

The Hon'ble Dr. Justice G. Jayachandran

Second Appeal No.438 of 2001

1. The Parish Priest
St. Ignatius Church,
Akkaraikodiveri (Post) Village,
Kasipalayam (via)
Gobichettipalayam.
2. The Bishop,
Coimbatore Diocesis,
Society, Periyakodiveri,
Gobichettipalayam Taluk. ... Appellants/Appellants/
Defendants

/versus/

K.A. Muthusamy ... Respondent/Respondent/
Plaintiff

Prayer: Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Principal Sub Court, Gobichettipalayam made in A.S.No.64 of 1999, dated 26.09.2000 confirming the judgment and decree of the District Munsif Court, Gobichettipalayam made in O.S.No. 304 of 1994 dated 30.07.1999.

For Appellants : Mr. M. Narayanaswamy

For Respondent : Mrs. P. T. Ramadevi

J U D G M E N T

The appellants herein are the defendants in the suit filed for permanent injunction suffered the concurrent finding at the hands of the Courts below, the present appeal is preferred.

2. At the time of admission, this Court has formulated the following Substantial Question of Law for consideration:

Whether the Courts below are correct in decreeing the suit for perpetual injunction when no evidence was let in on the side of the plaintiff to prove his case?

3. On going into the facts of the case, this Court finds that the appellants herein are the title holder of the suit property. Admittedly, the respondent herein was cultivating the suit land as tenant under the appellants. While the case of the respondent/plaintiff is that he is a registered cultivating tenant under the defendants as declared under R.P.No.5/71 and he is regularly paying the lease to the landlord. While so, on 05.06.1994, the 1st defendant through his henchmen tried to disturb the peaceful possession of the plaintiff. Hence, the suit for injunction.

4. The suit resisted by the appellants on the averments that the respondent was cultivating the tenant in the suit property till 1992. He defaulted in paying rent since 1990. During the month of April, 1992, he voluntarily delivered the possession to the appellants. Thereafter, the appellants have removed 47 palm trees and disposed it of, which the respondent never objected. Later, on ill-advice of some third parties, the plaintiff has filed the frivolous suit.

5. The trial court framed the following issues:

1. Whether the plaintiff is entitled for permanent injunction?
2. What relief the plaintiff is entitled to?

6. Additional Issues:-

1. Whether the plea of defendants that the plaintiff surrendered tenancy is true or not?
2. Whether the defendants are in possession and enjoyment of the suit property?

7. Since the defendants in their written statement have accepted the tenancy relationship and pleaded surrender of possession. The defendants was asked to let in evidence first. Accordingly, two witnesses were examined on behalf of the defendants and two exhibits were marked as Exs.B1 and B2. In the course of cross examination of DW1-Dhanaraj, the plaintiffs have marked five documents viz., Exs.A1 to A5 which are the certified copies of Adangal for the fasli Years 1398 to 1402 which is equivalent to 1989 to 1993.

8. The plaintiff has not chosen to let in any oral evidence. Taking note of the fact that no evidence to show that the plaintiff has surrendered the possession, during the month of April 1992 as pleaded by the defendants and contrarily, Ex.A5 indicates that the plaintiff was in possession and cultivating the land till the year 1993, the trial Court has allowed the suit.

9. On appeal, the lower appellate Court has confirmed the judgment and decree of the trial Court and granted injunction restraining the appellants from interfering with the peaceful possession of the respondent herein, without due process of law. Under these circumstances, the second appeal is laid to decide the Substantial Question of Law mentioned above.

10. The short point involved in this case and canvassed by the learned counsel appearing for the appellants is that the plaintiff, who sought for injunction has not mounted the witness box to prove his case. Relying upon adangal, the Courts below have accepted the case of the plaintiff regarding possession. When there is no evidence let in on the side of the plaintiff to prove his possession, decree of injunction ought not to have been granted.

11. Per contra, the learned counsel appearing for the respondent submitted that in the written statement, the defendants have admitted the possession of the plaintiff. Since they have accepted tenancy and pleaded the surrender of possession, the burden of proof got shifted on the defendants. Therefore, the trial Court asked the defendants to prove their case. The defendants, who pleaded that in the month of April 1992, the respondent surrendered the tenancy and left the possession of the property, on assessing the evidence, the Courts below have rightly disbelieved the case of the defendants and allowed the suit granting the relief of injunction. Further, Exs.A1 to A5 being the revenue records kept in the department clearly establishes the case of the plaintiff that before filing the suit, he was in possession and cultivating the land. Therefore, only on proper application of mind and law, the Courts below have granted injunction, which need not be disturbed.

12. The submissions made by respective counsels in the light of the exhibits, deposition and judgment rendered by the Courts below considered. On perusal of the written statement, it could be seen that it is very clearly stated by the defendants that till April 1992,

the plaintiff was tenant under them in respect of the suit schedule property. The account book and the evidence of DW2 that the plaintiff vacated the land and permitted the defendants to cut down 47 palm trees which is properly accounted, are sufficient to show that the plaintiff had no objection for the same. Therefore, even in the absence of any documentary evidence, the surrender of possession ought to be presumed.

13. If there is no Ex.A1 to A5 placed for consideration, the above submission may carry merit. But, in this case, Exs.A1 to A5 indicate that till 1993, the plaintiff was in possession and cultivating the land. No doubt, the plaintiff has referred the registration of his name as cultivating the tenant in R.P.5/71 and no document is filed in support of the same. But, the admission of DW1 regarding the registration of plaintiff as cultivating the tenant makes no further evidence required to prove the admitted facts. Further, the inconsistency between the evidence of DW1 and DW2 regarding the query about who is currently in possession of the property as tenant, probablises the case of the plaintiff.

14. The learned counsel appearing for the appellant strongly emphasized that when the person, who pleads the possession has not chosen to give testimony before the Court, his conduct has to be suspected and merely based on the admission of the defendants and the weaknesses of the defence pleadings, the decree of injunction ought not to have been granted.

15. When a party to the proceeding admits certain facts in their pleadings, then the burden of proof shifts. Though the admission may not be a conclusive proof, it will act as estoppel against the maker under Section 31 of the Indian Evidence Act. In this case, the defendants in their written statement has admitted the landlord tenant relationship. Though the plaintiff has not placed on record any evidence pertaining to record of tenancy, the fact of tenancy is proved both by admission as well as Exs.A1 to A5. Hence, the burden of proof shifted on the defendants to establish that there was default in payment of tenancy from 1990 and during the month of April 1992, the plaintiff has voluntarily surrendered the possession.

16. On deep scrutiny of deposition of DW1 and DW2 and Exhibits relied upon by the defendants, except the ocular evidences of DW1 and DW2, one could not find any other evidence to probablise the plea that after 1992, the plaintiff was not in possession of the suit property.

Contrarily, the evidence is available to show plaintiff was in possession in the year 1992. Ex.A5, which is in favour of the plaintiff is the document admitted through DW1 and it cannot be ignored. The evidence of DW1, who claims to be a person administrating the defendants' property during the years 1990 to 1997, not able to say, who is in possession of the property after 1993. Whereas, the DW2 claims that his brother is in possession of the suit property for more than 20 years, which makes his testimony unbelievable since it is totally inconsistency to the plea of the first defendant, who admits that the plaintiff was in possession till 1992.

17. The Hon'ble Supreme Court in the judgment of Kapil Corepacks Private Limited vs. Harbans Lal (since deceased) through LRs reported in (2010) 8 SCC 452, has listed down the nature of admission in the civil proceedings as under:-

"18. The object of Order 10, Rule 2 is not to elicit admissions. Nor does it provide for or contemplate admissions. The admissions are usually contemplated:

(i) in the pleadings (express or constructive under Order 8, Rule 5 of the Code);

(ii) during examination of a party by the Court under Order 10, Rule 1 of the Code;

(iii) in answers to interrogatories under Order 11, Rule 8 of the Code;

(iv) in response to notice to admit facts under Order 12, Rule 4 of the Code;

(v) in any evidence or in an affidavit, on oath; and

(vi) when any party voluntarily comes forward during the pendency of a suit or proceedings to make an admission."

18. In the light of Sections 31 and 58 of the Indian Evidence Act, 1872, when there is a categorical admission in the pleadings and in the deposition made by the landlord about the existence of tenancy relationship with the plaintiff and failure to prove the plea of surrender of possession, entitles the plaintiff to get protection of injunction till being vacated by due process of law. Therefore, this Court finds no error in the finding of the Courts below and no Substantial Question of Law involved in this case.

19. Hence, the Second Appeal is dismissed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1.The Principal Sub Ordinate Judge,
Gobichettipalayam

2.The District Munsif,
Gobichettipalayam.

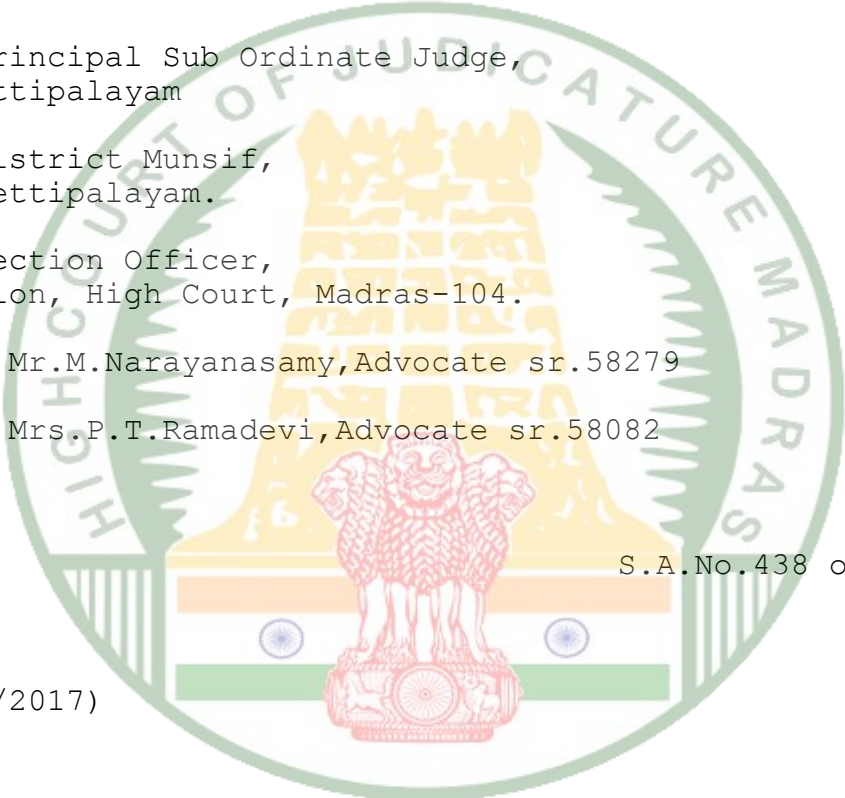
3.The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mr.M.Narayanasamy,Advocate sr.58279

+1cc to Mrs.P.T.Ramadevi,Advocate sr.58082

S.A.No.438 of 2001

ev(co)
ss(11/9/2017)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion standing in front of it. The lion is facing forward and is flanked by two smaller lions. Below the lion is a red wheel (Chakras) with a central hub. The entire emblem is set against a background of horizontal stripes in orange, white, and green. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular border around the emblem. Below the emblem, the motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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