

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :31.10.2017

PRONOUNCED ON :02.11.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.928 of 2001

1. Natarajan
2. Lakshmi

... Appellants/Defendants

Vs.

Ramakrishna High School,
Kodandapuram,
rep. by its Secretary,
Venkataparthasarathy,
Alangudi Village,
Sirkali Taluk and Munsif

... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Principal Sub Judge, Mayiladuthurai, made in A.S.No.27 of 1999 and cross appeal dated 16.08.1999 confirming the judgment and decree of the District Munsif Court, Sirkali, made in O.S.No.184/90 dated 28.01.1999.

For Appellants : Mr.S.Sounthar

For Respondent : No appearance

JUDGMENT

This second appeal is directed against the judgment and decree dated 16.08.1999 passed in A.S.No.27 of 1999 and cross appeal on the file of the Principal Sub Court, Mayiladuthurai, confirming the judgment and decree dated 28.01.1999 passed in O.S.No.184/90, on the file of the District Munsif Court, Sirkali.

2. The parties are referred to as per their rankings in the trial Court.

3. Suit for possession.

4. The case of the plaintiff in brief is that the suit A schedule property is endowed to the plaintiff's school and the

suit B schedule property forms part of the suit A schedule property and as such, the plaintiff school is entitled to the suit property and the defendants requested to lease the suit property to them for running vegetable vending business and the plaintiff acceded to the same and let out the suit property to the defendants, on a monthly rent of Rs.30/-, for a period of two years, on the basis of oral lease arrangement and after the completion of the two years, the defendants failed to handover the possession of the suit property and the suit property is required for the school and as the defendants did not pay the rent from 5.06.1989 to 10.04.1990, amounting to Rs.300/- and the defendants attempted to secure patta for the suit property from the revenue authority, though their attempts ended in vain, according to the plaintiff, terminating the tenancy of the defendants, by issuance of the quit notice and as the defendants repudiated the same by sending a reply with false allegations, accordingly, the suit has come to be laid.

5. The case of the defendants in brief is that it is false to state that the suit property is endowed to the plaintiff's school as claimed in the plaint and it is false to state that the suit property had been let out by the plaintiff on a monthly rent, for vending vegetables business at a monthly rent of Rs.30/- for a period of two years. On the other hand, the suit property located in poramboke land had been in occupation of the defendants for a longer period of time and accordingly, recognising their possession patta had been granted in their favour and the plaintiff suppressing these facts had taken steps and accordingly, patta granted in favour of the defendants had been cancelled and the application preferred by the defendants as regards the same is pending. The lease arrangement set out by the plaintiff is not true and it is only the defendants who have put up super structure in the suit property and living in the suit property as full owners thereof, by paying house tax receipts etc., and the defendants have also perfected the title of the suit property, by way of adverse possession and the quit notice sent by the plaintiff is not in accordance with law and hence, the plaintiff is not entitled to the recovery of the suit property and the suit is liable to be dismissed.

6. In support of the plaintiff's case PW1 has been examined and EXs.A1 to A17 were marked and on the side of the defendants DWs 1 to 4 were examined and EXs. B1 to B9 were marked.

7. On a consideration of the oral and documentary evidence, the Courts below were pleased to dismiss the suit laid by the plaintiff. As regards the certain findings rendered against the defendants, by the Courts below, the present appeal has been come to be laid by the defendants.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated:

1. Whether the respondent is entitled to recover possession of the suit property without proving title of settlor under Ex.A1?

2. Whether the judgments of the Courts below are vitiated by non-consideration of oral evidence on record? Whether the judgment of the Courts below are perverse?

3. Whether the respondent can claim right over the suit property, which is a natham jari land in possession of appellant in the absence of evidence to show that his right was recognised by the Government; Whether the appellant is deemed to be owner of the suit property in view of his possession over the suit natham jari property?

9. The suit is laid by the plaintiff for recovery of possession on the footing that it is the landlord of the suit property and the defendants are the tenants and as the defendants had not paid the rent as agreed to and as the suit property is required for the plaintiff's school, according to the plaintiff's case, terminating the tenancy of the defendants, it had issued a legal notice and the defendants repudiated the legal notice by sending a reply containing false allegations, hence, according to the plaintiff, it has been necessitated to lay the suit.

10. Disputing the tenancy pleaded by the plaintiff and setting up title in the suit property, the defendants have raised a defence that the suit property is situated in the poramboke land and they and their predecessors in interest had been in the occupation of the suit property as owners, thereby, putting up super structure and by paying house receipts, obtained patta etc., and the plaintiff not being the owner of the property and not let out the suit property to the defendants for rent, as pleaded by it and as the quit notice sent by the plaintiff is not valid, the defendants prayed for the dismissal of the suit.

11. It is found that to establish that the suit property had been endowed in favour of the plaintiff's school, the settlement deed dated 12.11.56 has been marked as Ex.A1 and with reference to the same, PW1, who had endowed the suit property in favour of the plaintiff school has tendered evidence as PW1. It is further found that the attempt on the part of the defendants to secure patta from the Tahsildar, Cuddalore was rejected, as

could be seen from the order marked as Ex.A3. However, it is found that the defendants were able to secure patta from the Tahsildar Sirkali, as seen from the document marked as Ex.B2. However, it is further found that the above said order has been cancelled subsequently, at the instance of the plaintiff, which could be seen from the order marked as Ex.A4. A perusal of the Exs.A3, A4 and B2 in conjunction, would go to show that as the suit property had been endowed to the plaintiff's school and accordingly, finding that it is only the school which has title to the suit property, it is seen that the revenue authority also recognising the ownership of the plaintiff, to the suit property had cancelled the patta granted to the defendants under Ex.B2. Further, it is seen that the plaintiff has also filed accounts books marked as Exs.B6 to B16, which would go to show that the plaintiff had been collecting rent towards the lease of the suit property in favour of the defendants for several years and the case of the defendants repudiating the same, did not find acceptance by the Courts below. As rightly determined by the Courts below, the documents marked as Ex.B6 to B16 are not found to be created on the same day, as put forth by the defendants and on the other hand, as seen from the above said documents, the entries had been entered into the accounts books for the rent paid by the tenants, namely the defendants in respect of the suit property to the plaintiff's school, recognising its ownership.

12. That apart, it has not been established by the defendants that the suit property is located in the poramboke land and further, as rightly determined by the first appellate court, it has not been established by the defendants, by acceptable and reliable evidence that the super structure put up on the suit property has been erected by the defendants. Merely because, the house tax receipts are in the name of the defendants that by itself would not lead to the conclusion that the super structure put up on the suit property is owned by the defendants, when it is clearly established by the plaintiff that the suit property had been endowed in its favour under Ex.A1 and with reference to the same, the evidence tendered through PW1 is found to be unimpeachable and it is further seen that recognising the ownership of the plaintiff to the suit property, the defendants had been paying rent to the plaintiff's school and when there is nothing on record, particularly in Exs.B6 to B16, that the rent reflected therein are paid only in favour of the site and not in respect of the super structure put up thereon, it is seen that only in respect of the superstructure put up in the suit property by the plaintiff, the defendants had been let on rent by the plaintiff's school which have come to be reflected in Exs.B6 to B16, therefore, it is found that the first appellate court has rightly, on the proper appreciation of the materials on record, held that the plaintiff has title to the suit property, both to the site as well as the super

structure put up thereon and the above said findings of the first appellate court do not, in any manner, call for interference from this court.

13. The plea taken by the defendants that they had perfected the title to the suit property by adverse possession, as rightly held by the Courts below, not established by the defendants by placing acceptable and reliable evidence. It is found that the defendants have been inducted in the suit property as tenants and when the tenancy is still continuing, the defence projected on the part of the defendants that they had perfected title to the suit property by adverse possession sans proof of the same as required by law, it is seen that the Courts below have accordingly negated the above plea of the defendants and the same do not warrant any interference.

14. The defendants counsel contended that recognising the entitlement of the defendants to the suit property, patta had been granted to them under Ex.B2. However, it is seen that the earlier attempt on the part of the defendants to obtain patta was negated under Ex.A3. It is further seen that patta order granted in favour of the defendants under Ex.B2, had been set-aside subsequently, as per the order marked under Ex.A4 and in such view of the matter, it is seen that inasmuch as the defendants have not placed any materials to hold that they have any right over the suit property, it is seen that their claim to obtain patta has also been negated. No material as such has been placed to show that as against the order passed, marked as Ex.A4, the defendants has preferred any appeal and further order has been passed in their favour with reference to the same.

15. On the other hand, as pointed out above, considering the entitlement of the plaintiff to the suit property, it is seen that recognising its ownership the revenue authority has also cancelled the patta granted in favour of the defendants and restored the ownership of the suit property, in favour of the plaintiff under Ex.A4.

16. The judgment and decree of the courts below had directed the dismissal of the suit. In such view of the matter, the present appeal preferred by the defendants only against the findings as such is found to be not maintainable in isolation. That apart, it is also not established by the defendants that the findings rendered by the Courts below, as against their case, are suffering from any infirmity and error and warrants interference as such. On the other hand, in the light of the above discussions, the findings rendered against the defendants are found to be in order and do not call for any interference as such, in this second appeal.

17. In the light of the above discussions, the findings rendered by the Courts below, as against the defence of the defendants are found to be correctly determined and the same do not warrant interference and accordingly, the substantial questions of law formulated in this second appeal are answered against the defendants.

18. In conclusion, the second appeal fails and is accordingly, dismissed. No Costs. Consequently, connected miscellaneous petitions, if any is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Sub Judge,
Mayiladuthurai,

2. The District Munsif
Sirkali

Copy to

The Section officer
VR Section, High Court, Madras.

+1 CC to Mr.S. Sounthar, advocate sr 78383

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