



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07.08.2017

Coram

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**The HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA**

S.A(MD)No.94 of 2014

and

M.P(MD)No.1 of 2014

1.Kumuthavalli (died)

2.Raja @ Srinivasan .. Appellants/Appellants/Defendants

(1<sup>st</sup> Appellant died and the second appellant is the legal heir of the first appellant is recorded vide order, dated 07.08.2017)

Vs.

Indirani

.. Respondent/Respondent/Plaintiff

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 06.01.2009 made in A.S.No.111 of 2006 on the file of the Principal Sub Court, Kumbakonam, confirming the Judgment and Decree, dated 19.10.2005 made in O.S.No.296 of 2004 on the file of the Principal District Munsif Court, Valangaiman at Kumbakonam.

For Appellants : Mr.M.R.S.Prabhu

For Respondent : Mr.M.Murugamannar

### JUDGMENT

The above second appeal arises against the Judgment and Decree, dated 06.01.2009 passed in A.S.No.111 of 2006, on the file of the Principal Sub-Court, Kumbakonam, confirming the Judgment and Decree, dated 19.10.2005 passed in O.S.No.296 of 2004, on the file of the Principal District Munsif Court, Valangaiman at Kumbakonam.

2.The defendants, who had lost before the Courts below, have preferred the above Second Appeal.

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3.There are two items of suit properties. Item No.1 is in Re.Survey No.302/8 to an extent of 0.40 cents and item No.2 is in



Re.Survey No.296/1 to an extent of 0.67 cents in Vadumangudi Village, Thiruvidadaimarudur Taluk. Admittedly, the suit properties belong to Arulmighu Mahalingaswamy Thirukovil and Thiruvidadaimarudur Adeenam.

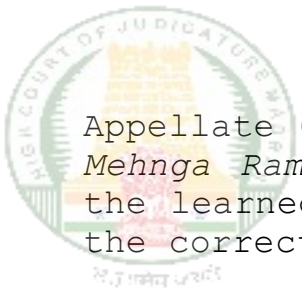
4.It is the case of the plaintiff that the said nanja lands have been in her enjoyment from 1982 as a lessee and has been paying the rent regularly. The land owner has also issued rent receipts. The name of the plaintiff has also been recorded as a tenant, as per the Record of the Tenancy Rights Act, in proceeding No.54/2003, dated 09.01.2004. The plaintiff has been in enjoyment of the property for more than 22 years without any disturbance. While so, the defendants, who have got no manner of right or title to the suit properties, attempted to disturb the peaceful possession of the plaintiff. The defendants have their residential house on the North of the first item of the suit property and lands on the East of the suit first item. Though there are two items mentioned in the plaint, in the prayer, the plaintiff had restricted her claim only with respect to the first item of the suit property seeking an order of permanent injunction against the defendants.

5.Resisting the suit, the defendants contended that the plaintiff is not a tenant under the Temple. However, the defendants admit that the suit lands belonging to Arulmighu Mahalingaswamy Thirukovil and Thiruvidadaimarudur Adeenam. The document produced by the plaintiff in Ex.A.1 is disputed and denied by the defendants. The rent receipts from Exs.A.2 to A.23 have also been denied by the defendants. It is contended by the defendants that only they have been in possession of the suit item No.1 for more than 35 years by cultivating sugarcane and produced the fertilizer distribution card and agreement made for the sugarcane factory in support of their contention.

6.The trial Court, after considering the oral and documentary evidence, held that the plaintiff is in possession of the property and granted a decree for injunction. Aggrieved by the same, the defendants preferred an appeal in A.S.No.111 of 2006, on the file of the Principal Sub-Court, Kumbakonam. The first Appellate Court also confirmed the decree granted by the trial Court. Aggrieved by the same, the present Second Appeal is preferred.

7.At the time of admission, only notice was ordered.

8.The learned counsel appearing for the appellants/defendants filed additional substantial questions of law. According to them, they had filed I.A.No.152 of 2009 before the first appellate court for reception of certain documents, namely the rent receipts and other documents, to show the possession of the defendants and they were not considered by the



Appellate Court. Placing reliance on *Gurudev Singh and others Vs. Mehnga Ram and another* reported in AIR 1997 Supreme Court 3572, the learned counsel for the appellants/defendants wanted to canvas the correctness of the same.

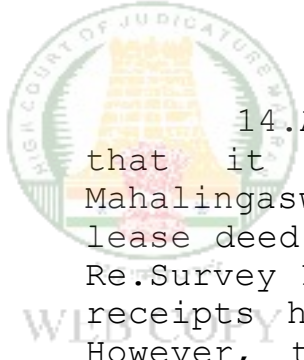
9. It is not in dispute that the order of the Appellate Court not considered the application under Order 41 Rule 27 C.P.C., cannot be challenged in the Second Appeal along with the Appellate Decree. However, the learned counsel appearing for the appellants/defendants has not produced even the copies of the documents before this Court. Hence, without even furnishing the documents, that ought to be marked, consideration of the same does not arise, unless and otherwise it is furnished.

10. The only question that has to be considered in the Second Appeal is whether the finding of the Courts below are correct with respect to the possession of the plaintiff.

11. As stated earlier, the plaintiff has not pressed the second item of the suit property and that only the first item of the property in Re. Survey No. 302/8 to an extent of 0.40 cents that is in dispute. The plaintiff has entered into a lease agreement on 01.07.1982 as per Ex.A.1 with Arulmighu Mahalingaswamy Thirukovil and Thiruvidaimarudur Adeenam and has been in possession of the property by paying rent. The plaintiff also has produced the proceedings of the Record of the Tenancy Rights Authorities.

12. It is contended by the learned counsel appearing for the appellants/defendants that on the North of the suit property in item No.1 is the house property of the defendants and on the East of the property, the lands being cultivated by the defendants.

13. Taking advantage of the contiguity of the lands, the defendants were trying to disturb the peaceful possession of the plaintiff. Though it is contended by the learned counsel appearing for the appellants/defendants that the rent receipts produced by the plaintiff under Exs.A.2 to A.23, related to some other lands and not pertaining to the suit lands, there is no rebuttable evidence produced by them. Even the RTR proceedings are also challenged by them contending that the same was obtained without notice, to the defendants. As the defendants claimed that they have been in possession ancestrally from the year 1953, without notice the plaintiff's name should not have been recorded in the Tenancy Right Register. It is the consistent case of the defendants that the grandfather of the second defendant was a lessee, which is evident from Exs.B.1 and B.2 and the Fertilizer lease record and also the agreement with the Arooran sugarcane Mills.



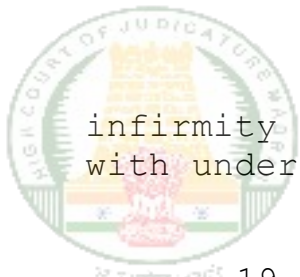
14.A perusal of Ex.A.1, dated 01.07.1982 would go to show that it is for the nanja lands belonging to Arulmighu Mahalingaswamy Thirukovil and Thiruvaidaimarudur Adeenam. The said lease deed specifically mentions about the suit first item, namely Re.Survey No.302/8 to an extent of 0.40 cents. Based on the same, receipts have been issued under Exs.A.2 to A.23 to the Temple. However, the grand-father of the second defendant had been in possession of the suit property from 1953. Thereafter, the possession continues with the family of the defendants as legal heirs of the said Ponnaiya Devar. Though the defendants claim to be in possession of the suit property for a period longer than the claim of the plaintiff, there is no scrap of paper produced to substantiate the same. Even in the evidence of D.W.1, the second defendant has admitted that he has not produced any documents to prove that he is in possession and enjoyment of the same. The second defendant also has admitted that the defendants are not the direct legal heirs of Ponnaiya Devar, though it is stated that the lease is in the name of his mother Kumuthavalli, if the same is not either stated in the written statement or even in the plaint averments. Though the defendants had admitted that he is not the lessee under the Temple, in the cross-examination, he had stated that the plaintiff has filed the suit colluding with the Temple. The said statement is unacceptable, as both the plaintiff and the defendant are admittedly claiming to be the lessees under the Temple.

15.Yet another contention raised by the defendants is that the plaintiff has not gone into the witness box, instead, her son has been examined as P.W.1 and therefore adverse interference has to be drawn against the plaintiff.

16.The learned counsel appearing for the appellants/defendants has relied on the Judgment of the Apex Court in *Iswar Bhai C.Patel @ Bachu Bhai Patel Vs. Harihar Behera and another* reported in 2000 (1) L.W 178, to reiterate the point that the plaintiff having not entered into the witness box and having not presented herself for cross-examination, an adverse presumption has to be drawn against her on the basis of principles contained in Section 114 of the Evidence Act.

17.In this case, the son of the plaintiff has gone into the witness box and the documents filed by the plaintiff along with the plaint itself would go to show that the plaintiff is the lessee of the suit property. Having failed to establish their right, the defendants have tried to disturb the possession of the plaintiff, though, failed in their attempt.

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18.The Courts below have concurrently held against the defendants. In the absence of any question of law arising for consideration, this Court is of the opinion that there is no



infirmity in the order passed by the Courts below to be interfered with under Section 100 of C.P.C.

19. Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

/True Copy/

Sd/-  
Assistant Registrar (CS-III)

Sub-Assistant Registrar

To

1. The Principal Subordinate Judge,  
Kumbakonam.

2. The Principal District Munsif,  
Valangaiman at Kumbakonam.

Ps  
RL/3C/5P/JC/SAR1/6/9/2017

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