



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18.01.2017

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The HONOURABLE MR.JUSTICE M.DURAISWAMY

**S.A(MD)No.741 of 2011
and M.P(MD)No.1 of 2011**

1.Ganesan
2.Ramamurthy

.. Appellants/Appellants/Defendants

Vs.

Mariappan

.. Respondent/Respondent/Plaintiff

Prayer:- Second Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 23.12.2010 made in A.S.No.64 of 2009 on the file of the Additional Sub Court, Kumbakonam, confirming the Judgment and Decree, dated 28.10.2008 made in O.S.No.172 of 2007 on the file of the I-Additional District Munsif Court, Kumbakonam.

For Appellants : Mr.R.Devaraj

For Respondent : Mr.T.V.Sivakumar

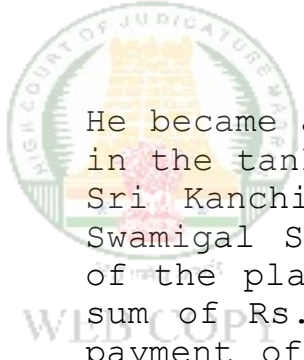
JUDGMENT

Challenging the Judgment and Decree passed in A.S.No.64 of 2009 on the file of the learned Additional Subordinate Judge, Kumbakonam, confirming the Judgment and Decree, dated 28.10.2008 made in O.S.No.172 of 2007 on the file of the learned I-Additional District Munsif, Kumbakonam, the defendants have filed the above Second Appeal.

2.The plaintiff filed a suit in O.S.No.172 of 2007 on the file of the learned I-Additional District Munsif, Kumbakonam, for permanent injunction restraining the defendants from in any interfering with the plaintiff's peaceful possession and enjoyment of the suit tank.

3.The brief facts of the plaintiff is as follows:-

According to the plaintiff, he is a lessee in respect of the suit tank and he is in possession and enjoyment of the same.



He became a lessee in respect of the suit tank for catching fishes in the tank and it is a permanent lease. The suit tank belongs to Sri Kanchi Kamakodi Peedathipathi Jagathguru Sri Sankarachariya Swamigal Shri Mutt, Kanchipuram. The lease was granted in favour of the plaintiff in the year 1979 and the plaintiff was paying a sum of Rs.40/- per fasli. The Mutt also issued receipts for due payment of the rents. That apart, the manager of the Mutt having been issued a certificate in favour of the plaintiff confirming the lease granted to him. The defendants, who are the younger brothers of the plaintiff, tried to interfere with the plaintiff's peaceful possession and enjoyment of the suit tank. Hence, the plaintiff has filed the above suit for injunction.

4.The brief facts of the defendants is as follows:-

According to the defendants, the fishery right was granted only in favour of the father of the plaintiff and defendants, namely Krishna Padayachi @ Krishnasamy Padayachi, and fishery right was not granted absolutely in favour of the plaintiff. Subsequent to the demise of the father of the plaintiff and defendants, the plaintiff and defendants were catching fishes in the suit tank by rotation ie., the custom and practice prevailing in the family of Krishna Padayachi @ Krishnasamy Padayachi. Further, the defendants have stated that suppressing the said arrangement in the family of Krishna Padayachi @ Krishnasamy Padayachi, the plaintiff has filed the suit as though he is absolutely entitled to the lease hold right in respect of the suit tank. According to the defendants, they are also entitled to catch fishes in the suit tank. In these circumstances, the defendants prayed for dismissal of the suit.

5.Before the trial Court, on the side of the plaintiff, four witnesses were examined and seven documents Exs.A1 to A4 were marked and on the side of the defendants, three witnesses was examined however no document were marked.

6.The trial Court after taking into consideration the oral and documentary evidences let in both parties decreed the suit. Aggrieved over the Judgment and Decree of the trial Court, the defendants preferred an appeal in A.S.No.64 of 2009 on the file of the learned I-Additional District Munsif, Kumbakonam and the lower Appellate Court also confirmed the Judgment and Decree of the trial Court. Aggrieved over the concurrent findings of the Courts below, the defendants have filed the above Second Appeal.

7.Heard Mr.R.Devaraj, learned counsel appearing for the appellants and Mr.T.V.Sivakumar, learned counsel appearing for the respondent.

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



"1) Whether the suit for injunction is maintainable without the relief of declaration more particularly when the appellants have denied the exclusive fishing right of the respondent in the suit property?

2) Whether the receipts stood in the name of the respondent (eldest son) would confer the exclusive right over the suit property in absence of lease deed in favour of the respondent?

3) Whether the findings of the Court below are perverse in not considering the depositions of D.W-1 to D.W-3 in a proper perspective? and

4) Whether the Ex.A-6 and Ex.A-7 have been created/filed only for the purpose of filing suit?"

9. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that there is no dispute with regard to the ownership of the tank which belongs to Sri Kanchi Kamakodi Peedathipathi Jagathguru Sri Sankarachariya Swamigal Shri Mutt, Kanchipuram. The plaintiff contended that the lease was granted in his favour in the year 1979 and he has been making a payment of Rs.40/- per fasli to the Mutt. However, the defendants contended that the lease was granted in favour of their father Krishna Padayachi @ Krishnasamy Padayachi and that after his demise, the plaintiff and defendants being the sons of the said Krishna Padayachi @ Krishnasamy Padayachi were catching the fish by rotation. Though the defendants have contended that they were catching the fish by rotation along with the plaintiff, they have not produced a single document to substantiate the said contention. That apart, the owner of the tank, namely the Mutt, issued Ex.A.6-certificate issued by the Manager stating that the lease was granted only in favour of the plaintiff. That apart, the rental receipts were also issued in favour of the plaintiff, which were also marked as Exs.A.1 to A.5. Ex.A.7 is the notice issued by the Mutt. The manager of the Mutt was also examined as P.W.4 and he also supported the case of the plaintiff stating that the lease was granted only in his favour. P.W.4 is the author of Ex.A.6. In the absence of any evidence produced by the defendants, the Courts below have concurrently dismissed both the suits. When the Mutt itself is supporting the case of the plaintiff, one cannot disbelieve the case of the plaintiff and give a finding in favour of the defendants. If the contention of the defendants are true, they could have produced the documents in support of their case. The Courts below have rightly decree the suit in favour of the plaintiff.



10. In these circumstances, I do not find any ground much less any substantial questions of law to interfere with the concurrent findings of the Courts below and the second appeal is liable to be dismissed. Accordingly, the second appeal is dismissed. However there shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Additional Sub Judge,
Kumbakonam.

2. The I-Additional District Munsif,
Kumbakonam.

+1 CC to M/s.R.DEVARAJ, Advocate, SR No. 3232.

+1 CC to M/s.T.V.SIVAKUMAR, Advocate, SR No.2916.

PS

PSM/PM-PN/06.02.2017/4P/5C

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