

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated: 23.02.2017****CORAM****The HONOURABLE MR.JUSTICE M.DURAISWAMY****S.A(MD)No.521 of 2013****and****C.M.P(MD)No.12227 of 2016**

Murugan

.. Appellant/Appellant/Defendant

Vs.

Kallugumalai Maruthuvar Samuthaya Sangam,
[Regd No.55/93],
Through its President,
Poomari,
Kallugumalai,
Kovilpatti Taluk,
Thoothukudi District.

.. Respondent/Respondent/Plaintiff

Prayer:- Second Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 31.07.2012 made in A.S.No.2 of 2012 on the file of the Sub Court, Kovilpatti, confirming the Judgment and Decree, dated 12.10.2011 made in O.S.No.60 of 2010 on the file of the District Munsif, Kovilpatti.

For Appellant : Mr.S.Pon Senthil Kumaran

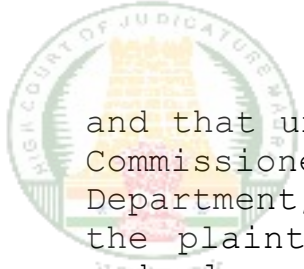
For Respondent: Mr.N.Subramanian

JUDGMENT

Challenging the Judgment and Decree, dated 31.07.2012 passed in A.S.No.2 of 2012 on the file of the Sub Court, Kovilpatti, confirming the Judgment and Decree, dated 12.10.2011 passed in O.S.No.60 of 2010 on the file of the District Munsif, Kovilpatti, the defendant has filed the above Second Appeal.

2.The plaintiff filed the suit in O.S.No.60 of 2010 on the file of the District Munsif, Kovilpatti, for recovery of possession.

3.The case of the plaintiff is that the property belongs to Kallugumalai Arulmighu Kallugasalamoorthy Thirukovil Dhevasthanam



and that under Ex.A.1 order dated 12.03.1985, passed by the Deputy Commissioner of Hindu Religious and Charitable Endowment Department, the possession was given to the plaintiff. In turn, the plaintiff has leased out the suit property to the defendant and also entered into a lease agreement on 24.04.2006 with the defendant. The defendant was running a hotel in the suit property. After the expiry of the lease period on 09.03.2009, since the plaintiff required the suit property for their community association, they requested the defendant to vacate the premises. However, the defendant failed to vacate the premises. Further, according to the plaintiff, the defendant has not paid the rent for more than 7 months. In these circumstances, the plaintiff filed the suit for recovery of possession.

4.The defendant contended that he has entered into an agreement of sale with the Dhevasathanam and therefore, the plaintiff has no right to evict him from the suit property. The further contention of the defendant is that the suit is liable to be dismissed on the ground of non-joinder of necessary party, namely Dhevasthanam.

5.Before the trial Court, on the side of the plaintiff, P.W.1 was examined and twelve documents Exs.A1 to A12 were marked and on the side of the defendant, D.W.1 was examined and five documents Exs.B.1 to B.5 were marked.

6.The trial Court after taking into consideration the case of both parties decreed the suit. Aggrieved over the Judgment and Decree of the trial Court, the defendant preferred an appeal in A.S.No.2 of 2012 on the file of the Sub Court, Kovilpatti and the lower Appellate Court also confirmed the Judgment and Decree of the trial Court and dismissed the appeal. Aggrieved over the concurrent findings of the Courts below, the defendant has filed the above Second Appeal.

7.The appellant has raised the following substantial questions in the Second Appeal:-

"1) Whether the Courts below are right by decreeing the suit as respondent/plaintiff itself being the lessee of suit schedule property has no authority to file the suit?

2) Whether the Courts below are right by decreeing the suit, when the same is bad for non-joinder of necessary parties?

3) Whether the first Appellate Court has erred by not deciding the appeal as mandated under Order 41 Rule 31 of C.P.C?

<https://hcservices.ecourts.gov.in/hcservices/>

4) Whether the Courts below have erred by allowing the suit when the plaintiff has no locus standi to file the



same?

5) Whether the Courts below have erred by not appreciating the evidence in proper perspective?"

8. Heard Mr.S.Pon Senthil Kumaran, learned counsel appearing for the appellant and Mr.N.Subramanian, learned counsel appearing for the respondent.

9.The learned counsel appearing for the appellant mainly contended that the suit is liable to be dismissed on the ground of non-joinder of necessary party and that there is no privity of contract between the plaintiff and the defendant.

10.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 in order to establish that the suit property was handed over to the plaintiff, they produced Ex.A.1 document which is an order passed by the Deputy Commissioner of Hindu Religious and Charitable Endowment Department. Before the said document, possession of the suit property was given to the plaintiff. After taking possession of the property, the plaintiff leased out the suit property to the defendant. The defendant has been paying the monthly rents only to the plaintiff. The plaintiff has not claimed title over the suit property. Admittedly, the suit property belongs to Dhevasthanam. The claim of the plaintiff is that they leased out the suit property to the defendant and since they required the property for their own use and occupation, they filed a suit for eviction by producing proper evidence. The plaintiff also established that the defendant was a tenant under them and in these circumstances, Dhevasthanam is not a necessary party for the adjudication of the dispute. If the plaintiff had claimed any right or title over the suit property, in that case, the Dhevasthanam is a necessary party. Since the plaintiff has not claimed any right or title over the suit property, the suit filed by them against the defendant is very much maintainable. So far as the privity of contract between the plaintiff and the defendant is concerned, the plaintiff established that the defendant is a tenant under them and had been paying the monthly rents. On the contrary, though the defendant has contended that he is a tenant under the Dhevasthanam he has not produced any evidence in support of his contention. In the absence of any evidence to show that the defendant is a tenant under the Dhevasthanam, the Courts below have rightly rejected the said contention. For the reasons stated above, based on the oral and documentary evidences let in by the parties, the Courts below have rightly decreed the suit.

11.In these circumstances, I do not find any ground much
<https://hccases.ecourt.gov.in/cases/> 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(CO)

/True Copy/

Sub Assistant Registrar

To

1.The Sub Judge,
Kovilpatti.

2.The District Munsif,
Kovilpatti.

3.THE RECORD KEEPER,
V.R SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1cc to Mr.S.SUBBIAH, Advocate in SR. No.10999

+1cc to Mr.S.PON SENTHIL KUMARAN Advocate in SR.No.10178

PS

JS/PM/PN/20.03.2017/4P-6C

S.A (MD) No.521 of 2013
and
C.M.P (MD) No.12227 of 2016
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