

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.278 of 2018
and
C.M.P.No.7120 of 2018

A.Raju ... Appellant/2nd Respondent

Vs.

A/M Ramanathaswamy Thirukkcoil
Rameswaram by its joint
Commissioner/Executive Officer,
Rameswaram Town,
Taluk and Munsif ... Respondent/Plaintiff

Second Appeal filed under Section 100 of C.P.C against the judgment and decree of the learned Subordinate Judge, Mannargudi dated 23.08.2013 passed in A.S.No.07 of 2012 confirming the Decree and Judgment of the learned District Munsif Court, Thiruthuraipoondi dated 15.09.2011 passed in O.S.No.90 of 2006.

For Appellant : Mr.S.Nagarajan

JUDGMENT

The Second Appeal is filed against the judgment and decree dated 23.08.2013 passed in A.S.No.07 of 2012 on the file Subordinate Court, Mannargudi, confirming the Decree and Judgment of the District Munsif Court, Thiruthuraipoondi dated 15.09.2011 passed in O.S.No.90 of 2006.

2.The appellant is the second defendant in O.S.No.90 of 2006 on the file of the District Munsif Court, Thiruthuraipoondi. The respondent filed the said suit for mandatory injunction to demolish the terrace portion put up by the defendants in the suit property. According to the respondent, the respondent is the owner of three acres of coconut grove and the first defendant was lessee for the enjoyment of yield of coconut grove. The first defendant without obtaining any permission from the respondent, permitted the appellant to put up the super structure in the suit property. Appellant has no right to put up

superstructure. The respondent came to know about the superstructure in the year 2005, obtained permission from the Commissioner of HR&CE Department and filed suit for the relief stated above. The executive officer is authorised to file a suit as per scheme decree dated 05.03.1960. The first defendant died pending suit. The defendants 3 to 7 were impleaded as legal heirs of the first defendant. The second defendant filed written statement and the same was adopted by the defendants 3 to 7. According to the appellant, the grand father of the appellant and the first defendant one Balappan was the lessee of coconut grove. After his death, the first defendant, who is the son of, one of the sons of Balappan became lessee. The appellant is son of another son of Balappan. As a legal heirs of Balappan, they are having the right on the lease granted by the respondent. The appellant got oral permission from the respondent and has put up superstructure. It is not correct to state that the respondent came to know about the superstructure only in the year 2005. The superstructure was put up in the year 2002. The officials of the respondent regularly come to the suit property to collect the lease amount. The executive officer has no authority to file the suit and the suit is barred by limitation and prayed for dismissal of the suit.

3. Based on the pleadings, Trial Court framed necessary issues. Before the learned Judge, one Dhanasekaran, was examined as P.W.1 on behalf of the respondent and marked three documents as Exs.A1 to A3. The appellant was examined as D.W.1 and two other witnesses namely Balasubramanian and Marimuthu as D.Ws.2 and 3. The learned Trial Judge considering the pleadings oral and documentary evidence, dismissed the suit holding that the appellant has no right to put up the superstructure. Against the said judgment, the appellant filed A.S.No.7 of 2012 on the file of the learned Subordinate Judge, Mannargudi. The first Appellate Judge considering the points for consideration, pleadings, materials on record and the judgment of the trial court, dismissed the appeal.

4. Against the said judgment and decree dated 23.08.2013 in A.S.No.7 of 2012, the present Second Appeal has been filed.

5. Learned counsel appearing for the appellant contended that the Courts below failed to consider the following:

(i). The grandfather of the appellant and the first defendant was the original lessee.

(ii). After the death of his grandfather, his son, father of the appellant constructed the thatched house with big brick house and was living along with the family members including appellant.

(iii). After the death of the appellant's father, the appellant and his mother were living in the thatched house.

(iv). Appellant has spent amount to replace thatched

roof often and therefore, the appellant replaced the thatched roof by RCC roof.

(v).The appellant obtained permission from the respondent who gave oral permission.

(vi) The learned counsel for the appellant stated that the appellant is paying property tax and electricity charges and he relied on the judgment of this Court reported in 2005 (2) LW 220 [Kamalambal and A.Jayapal Vs. A/M Renuka Devi Amman Temple, Vijayapuram, Thiruvavarur Taluk and Munsif. Rep. by its Executive Officer] in support of his contentions. In the said decision, while considering Section 108(p) of the Transfer of Property Act, in a suit filed by the Temple (Respondent in Second Appeal) alleging that the defendant who is a lessee had removed the tiled roof of the building and changed it into concrete roof, Mandatory injunction of demolition was sought on the ground that changing the tiled roof is not permissible under Section 108 (p) of the Transfer of Property Act, this Court held that it is only one form of permanent structure that was converted into another form of permanent structure. This was not prohibited by Section 108 (p) of Transfer of Property Act nor does it expect the consent of a lessor and it was further held that no damage had been made to the building at the risk and cost of the plaintiff Temple therein. After all, it is only an improvement to the building and no damage was either alleged, pleaded or proved. This Court also observed that demolishing a permanent building would no way cause any advantage to the plaintiff, but in the alternative, it will only become added asset to the temple. There is no benefit for either of the parties in such demolition and hence the suit was liable to be dismissed by this Court while Second appeal was allowed.

6.Heard learned counsel for the appellant and perused the materials available on record.

7.From the materials placed on record, it is seen that the appellant has not proved that his grandfather Balappan was a lessee of the respondent's coconut grove. The appellant also failed to prove that his father put up thatched house. On the other hand, in his cross examination as D.W.1, he admitted that first defendant, was the lessee and the same was not changed in the name of the appellant. No approval was obtained to put up superstructure. No permission was obtained from Panchayathars or any other authority for constructing the building.

8.The courts below considering the submissions of the appellant and the property tax receipt and electricity receipt for payment of charges were subsequent to filing of the suit, rejected the contention of the appellant. The appellant admitted that the coconut grove belongs to the temple. The respondent has produced and marked documents to show that the

executive officer has the authority to file suit. The appellant contended that he put up the superstructure in the year 2002 with oral permission of the respondent and the suit filed in the year 2006 is barred by limitation. The appellant has not produced any document before the Courts below to show that he put up superstructure in the year 2002. The Courts below have considered the failure on the part of the appellant to prove that superstructure was put up by him in the year 2002 and rejected the contention of the appellant that the suit is barred by limitation. In my considered view, the judgment relied on by the learned counsel for the appellant is not applicable to the facts of the present case. The findings of the Courts below are findings of the facts and no substantial question of law has arisen to decide the Second Appeal.

9. In the result, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge, Mannargudi.
2. The District Munsif, Thiruthuraipoondi.
3. The Section Officer,
VR Section,
High Court, Madras 600 104.

+1cc to Mr.S.Nagarajan, Advocate SR.No.31146 dt.12.7.2018

EV(CO)

sm:28.6.2018

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