

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.11.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1951 of 2003
and
C.M.P.No.6388 of 2018

1. P. Karuppan

2. N. Ramani ... Appellants /
Defendants 1 and 2

-vs-

1.M/s. Sathasivam Motor Transport,
Private Ltd, Erode,
Rep. by its Managing Director
S. Madanan ... 1st Respondent /
Plaintiff

2.V.V.Chinnasamy,

3.R. Rukumani

4.V. Kumarasamy

5.M. Poonusamy

6.S.C. Parimala

7.C.S. Sundaram ... RR2 to 7 /
Defendants 3 to 8

PRAYER:

Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 15.03.1999 made in A.S.No.4 of 1998 on the file of the learned Principal Sub Judge, Erode, reversing the Judgment and Decree dated 24.12.1997 made in OS.No.1170/1995 on the file of the learned II Additional District Munsif (full Additional Incharge), Erode.

For Appellants : Mr.N. Manokaran

For Respondents : Mr. Babu Rangasamy for R1
: Given up for R 2 to 7

JUDGMENT

The above Second Appeal arises against the Judgment and Decree in A.S.No.4 of 1998 on the file of the learned Principal Sub-Judge, Erode, reversing the Judgment and Decree made in O.S.No.1170/1995 on the file of the learned II Additional District Munsif, Erode.

2. The facts in brief that are necessary for the disposal of the Second Appeal are as follows:-

Plaintiff case:

The suit property which was originally a vacant site belonged to one Krishnasamy Mudaliar who leased out the same to the 1st respondent/tenant. Thereafter, it appears that there was a Partition Suit in O.S.No.330 of 1972, in which the properties were allotted to the share of the 6th and 7th respondents herein. From respondents 6 and 7 herein, the appellants herein / defendants 1 and 2 and respondents 2 to 5 herein, had purchased the property. It was the case that subsequent to their purchase, the appellants started interfering in the 1st respondent's peaceful possession and enjoyment of the suit properties. Therefore, 1st respondent was constrained to file the suit O.S.NO.1170/1995 for a bare injunction restraining the appellants and respondents 2 to 7 herein, from interfering with their possession and enjoyment of the suit property except by due process of law. The 6th and 7th respondents herein had not contested the suit and the written statement which was filed by the 1st appellant, was adopted by the 2nd appellant and respondents 2 to 5 herein.

Written Statement:

The appellants and respondents 2 to 5 would contend that there was no landlord-tenant relationship between them and the plaintiff/1st respondent herein, and that the suit property at the time of their purchase, was a vacant site. There was no construction in the portion purchased by the appellants and respondents 2 to 5 herein and they have taken possession of the same. The landlord-tenant relationship existed only between the 1st respondent/plaintiff and the said Krishnasamy Mudaliar. It was also their contention that the lease was with one Shanmugam and not with the 1st respondent/plaintiff company. Their case was that the 1st respondent/plaintiff was the trespasser and therefore, not entitled to any protection by way of any interim injunction.

Trial Court:

The learned District Munsif, Erode had framed two issues and two additional issues. The additional issues that were framed are as follows:

a) whether the plaintiff was in lawful possession of the suit schedule property? and

b) whether there was a landlord tenant relationship existing between the 1st respondent/plaintiff and the defendants?

The learned District Munsif, after a detailed enquiry and relying upon the various admissions of PW1 that they were no longer running transport business and that the lease agreement between Krishnasamy Mudaliar and Sadhasivam had come to an end within 5 years and that apart, the Trial Court also held that after taking property on lease, the said Sadhasivam had sub-leased the property to the 1st respondent company, contrary to the terms of the lease. The Trial Court held that the 1st respondent/plaintiff was a trespasser and therefore, not entitled to the protection of discretionary relief of injunction.

The Appellate Court:

The 1st respondent/plaintiff took the matter on appeal before the learned Principal Sub Judge, Erode, in A.S.NO.4 of 1998. The Lower Appellate Court reversed the Judgment of the Trial Court on the ground that when the Advocate Commissioner had visited the suit property, he had found indications that the business was still functional. Further, the learned Judge had also taken into account the fact that the 1st respondent/plaintiff had been put in lawful possession of the property under a Lease Deed of the year 1959 and therefore, he cannot be considered as trespasser. Challenging the said Judgment and Decree, the appellants who are defendants 1 and 2 in the suit are before this Court.

3. The substantial Questions of law framed at the time of admission are as follows:

"(i) Whether the findings of the First Appellate Court is based on evidence and whether the evidence is based on pleadings and more particularly in view of the decision of 1988 Supl. SCC.710 and 1998 (2) SCC. 295?

(ii) Whether the documents which is filed on behalf of the plaintiff is relevant for the purpose of this case to prove his possession on the date of the suit?

(iii) Whether the findings rendered by the first Appellate court is contrary to the evidence, especially when he evidence of P.W.1. supported the case of the Defendants?

(iv) Whether the suit is maintainable in law, when the plaintiff company has no legal existence on the date of the suit?"

4. When the matter came up for admission, pending Second Appeal, a petition in CMP221/2009 was filed by the third parties seeking to implead themselves as respondents 8 and 9 in the Second Appeal on the basis that subsequent to the Judgment and Decree passed in the First Appeal, they had purchased the entire suit properties from the 1st appellant/1st defendant and respondents 2 to 5. This Court, by order dated 14.03.2018 was pleased to dismiss the said petition. Thereafter, the 1st respondent has come forward with the petition in CMP No.6388 of 2018 to permit them to withdraw the suit. This petition was vehemently opposed by the 2nd appellant on the ground that the matter had come up for final hearing on 24.03.2018 and thereafter, the appellants counsel had argued and the matter was adjourned about 7 times. Thereafter, this petition has been filed. This petition according to the 2nd appellant, was filed only with the ulterior motive of protracting the proceedings, as the 1st respondent/plaintiff has inducted some other persons into the property and in order to protect the said persons, is seeking to withdraw the suit and consequently to set at naught, the findings of the Trial Court. The appellants also argued that if at this stage, the suit is allowed to be withdrawn, then the findings of the Appellate Court would hold good. This Court, is inclined to agree with this submission of the appellants and therefore not inclined to grant permission to the 1st respondent to withdraw the suit. This Court directed the parties to argue the Second Appeal.

5. Mr. N. Manoharan, appearing for the appellant had pleaded that the 1st respondent was not carrying any business even on the date of filing of the suit, which factum has been dealt with in very great detail by the learned District Munsif, Erode, in his Judgment dated 24.12.1997. The learned counsel would rely upon the findings that have been given by the Trial Court for the additional issues framed therein, in which the learned Judge has drawn extensively from the evidence of PW1 about the fact that the business had closed down and that the bus service had also stopped as early as on 31.12.1986. The learned Judge had also placed reliance on the findings to the effect that the route permit having also not been extended and therefore, effectively no business was being carried out from the petition premises and therefore, had come to the conclusion that the plaintiff/1st respondent herein was not entitled to an order of injunction.

6. It is seen that the Lower Appellate Court had not taken into consideration these specific admissions by the 1st respondent, but has allowed the appeal only on the ground that when the Advocate Commissioner had visited, there was traces of

transport business being carried out as there were tyre marks in the property. The Appellate Court had erred in placing reliance on the evidence of Advocate Commissioner's report to grant the order of eviction. The learned Judge has failed to take into consideration the fact that the Commissioner's report cannot be the basis for fixing possession. The learned Judge has totally given a go-by to the admission of PW1 to the effect that for the past 10 years, no business has been carried out in the premises. Therefore, the Judgment and Decree of the learned Principal Sub judge, Erode, granting an injunction on the basis of possession is erroneous and liable to be set aside. I answer the Substantial Question of Law No.1. in favour of the appellants. Even in the affidavit filed in support of CM..P.No.6388 of 2018, the 1st respondent/plaintiff has stated as follows:

"I state that the petitioner's company is not doing any business now in the suit property and the suit property is no longer needed for the company's business. It is therefore seen that the 1st respondent is not in possession of the suit property."

7. It is seen that the First Appellate Court has passed its Judgment more on the pleading than the findings available on record both oral and documentary and therefore, as per the judgment of the Hon'ble Supreme Court reported 1998 (2) SCC 295 [Mehrunnisa [Smt] and others Vs. Visham Kumari [Smt] and another], it calls for interference by this court.

8. As regards the Substantial Questions of Law 2,3 and 4, it is seen that the Appellate Court has not taken into consideration the evidence of PW1 which clearly shows that they were no longer enjoyment and possession and the learned Judge has proceeded to allow the appeal on totally irrelevant considerations and documents that have been filed on the side of the 1st respondent/plaintiff and the same does not advance case to possession. It is also seen that the 1st respondent company had even stopped its operation much prior to the filing of the suit. However, there is no evidence to show that the 1st respondent company had wound up. The evidence of PW1 which admits that they are non-functional and the affidavit in support of C.M.P.No.6388 of 2018 which clearly prove that the 1st respondent is not in possession of the suit. Therefore, the Substantial Questions of Law 2 to 4 is answered in favour of the appellant. In these circumstances, the suit which is filed by the 1st respondent company is very much maintainable and the Substantial Question of Law No.4 is answered against the appellants.

9. In the result C.M.P.No.6388 of 2018 is dismissed and the Second Appeal No.1951 of 2003 is allowed and the Judgment

and Decree in A.S.No.4 of 1998 on the file of the learned II Principal Sub Judge, Erode is reversed the Judgment and Decree in O.S.No.1170 of 1995 on the file of the learned II Additional District Munsif, Erode is confirmed. There shall be no order as to costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

jrs

To

1. The Principal Sub-Judge, Erode.
2. The II Additional District Munsif, Erode.

Copy to

The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.N. Manoharan, Advocate sr 77171.

+1 CC to Mr.A.K. Kumarasamy, Advocate sr 76971.

S.A.No.1951 of 2003
and
C.M.P.No.6388 of 2018

KS (CO)
SP(10/01/2019)

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