

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.09.2018

DELIVERED ON : 05.12.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.815 of 2003

1.R. Srinivasan (died)
2.Ramani Bai
3.S.Govindaraj
4.S. Narayanan
5.Venkatalakshmi ...Plaintiff/Appellant/Appellant

-Vs-

1.Salem Diocese Society
rep. by Bishop of Salem,
Salem - 636 007.
2.The President,
The Dharmapuri Diocese Society,
rep. by his Power of Attorney
Rev. Fr.P. Xavier ...Defendant/Respondent/
/Respondent

(Appellants 2 to 5 brought on record as legal representatives of the deceased sole appellant vide order of this Court dated 17.06.2010 made in C.M.P.Nos.593 to 595 of 2010)

(2nd respondent impleaded vide order of this Court dated 23.12.2014 in C.M.P.No.294 of 2011 in S.A.No.815 of 2003)

PRAYER :- Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the learned Principal District Judge, Dharmapuri at Krishnagiri dated 09.04.1999 in A.S.No.11 of 1998 confirming the Judgment and Decree of the learned District Munsif -cum- Judicial Magistrate of Uthangarai dated 17.12.1997 in O.S.No.401 of 1995.

For Appellants : Mr.V. Nicholas

For Respondents : Mr.Mahmud Sheriff for R1
- No appearance

Mr.R.Abdul Mubeen for R2

JUDGMENT

The Appeal arises against the Judgment and Decree in A.S.No.11 of 1998 passed by the learned Principal District Judge, Dharmapuri at Krishnagiri, confirming the Judgment and Decree passed by the learned District Munsif -cum- Judicial Magistrate, Uthangarai in O.S.No.401 of 1995 which emanates from the suit filed by the appellant herein for a bare injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit properties.

2.The plaintiff is the appellant before this Court. The parties are referred to as in the same array as in the suit.

3.Plaintiff's case:

The plaintiff would state that he is a tenant under the defendant in respect of a house and shop bearing Door Nos.34 and 35, Cuddalore Main Road, Uthangarai Town. It is his case that he had been inducted as a tenant pursuant to a lease Muchilika on 07.02.1970 and that he has been in exclusive possession of the suit property since then and there was a thatched roof with a brick wall in existence in the suit property. The plaintiff would contend that it was put up by him and the defendant just paid the rents for the thatched house and receipts have been issued for the same. The plaintiff would contend that the defendant had refused to receive the rents constraining him to file H.R.C.O.P.No.1 of 1988 on the file of the learned Rent Controller, Harur, for depositing the rents. The learned Rent Controller, Harur, was pleased to allow this petition holding that the plaintiff was the tenant under the defendant. The plaintiff would further submit that when he attempted to put a new roof over the existing building by removing the thatched roof, the subordinates of the defendant tried to take forceful possession of the suit property on 25.04.1995 and they also attempted to prevent him from putting up a new roof over the brick wall. The plaintiff would state that he is entitled to be in possession and enjoyment of the suit property until he is evicted by due process of law and therefore, he has come forward with the suit.

4.Defendant's Case:

The defendant herein denied the landlord-tenant relationship and the lease Muchilika dated 07.02.1970. The defendant would submit that they had filed a suit O.S.No.812 of 1967 on the file of the learned District Munsif, Krishnagiri, against the father of the plaintiff one Ramanatha Chetty and others, who were the tenants under the defendant in respect of the suit property and other portions. The said suit was decreed by a Judgment and Decree dated 06.01.1972. This Decree was executed in R.E.P.Nos.20 of 1979 and 483 of 1984 in and by which the

defendant had taken possession of a major portion of the properties except the suit property. The said execution petition R.E.P.No.483 of 1984 was transferred from the District Munsif Court, Harur, to the District Munsif -cum- Judicial Magistrate, Uthangarai and renumbered as R.E.P.No.5 of 1995 and the same is pending. Despite the decree for eviction of the plaintiff's father, the plaintiff's father had set up the plaintiff to file R.C.O.P.No.1 of 1988 and the present suit.

5. In fact, after April 1992, there was no amount deposited by the plaintiff towards monthly rentals. Therefore, the defendant prayed for dismissal of the suit, since the plaintiff was not in possession of the property.

6. Trial Court:

The plaintiff apart from examining himself as P.W.1 had examined two other witnesses and marked Ex.A.1 to Ex.A.14. The defendants had examined D.W.1 and marked Ex.B.1 to Ex.B.8. The learned trial Judge had framed four issues, the second issue was whether the plaintiff was a tenant under the defendant in respect of the suit property. The trial Court, taking note of the earlier proceedings between the defendant and the father of the plaintiff returned a finding that the plaintiff was not in legal possession of the suit property and therefore, there was no landlord - tenant relationship between the parties and therefore, the plaintiff was not entitled to decree for injunction. The learned Judge ultimately dismissed the suit.

7. Appellate Court:

Challenging the said order, the plaintiff filed A.S.No.11 of 1998 on the file of the learned Principal District Judge, Dharmapuri at Krishnagiri and the learned Judge also came to a conclusion that there was no landlord - tenant relationship between the plaintiff and the defendant and that the plaintiff was not in possession of the suit property and it was only his father, who had been in possession of the property. In the result, the Appellate Court has dismissed the application and confirmed the Judgment and Decree of the trial Court.

8. Second Appeal:

Aggrieved by the said Judgment and Decree, the plaintiff has filed the above Second Appeal.

9. At the time of admission, this Court had framed the following Substantial Questions of Law:

"(a)When the materials on record clearly establish that the plaintiff is in possession and enjoyment of the suit property and as such his possession should be protected and safeguarded, whether the Courts below are correct in declining to grant a decree in favour of the plaintiff and thereby allows the defendant to take the law into his own hands for the forcible dispossession of the plaintiff?

(b)Even assuming that the plaintiff is not a tenant, but he is in possession of the suit property, whether the defendant can be allowed to take possession from the plaintiff without resorting to due process of law?."

10.Heard Mr.V. Nicholas, learned counsel appearing for the appellants and Mr.R.Abdul Mubeen, learned counsel appearing for the respondents 2 and perused the material available on record.

11.The suit is one for an injunction and the plaintiff has come forward with a specific case that he has been put in possession of the suit property pursuant to a lease Muchilika dated 07.02.1970 and that he has been in possession and enjoyment of the property since then. It was also his contention that he has been depositing the rents into Court. The defendant has filed documents to show that it was the plaintiff's father, who was in possession of the property and that the proceedings to evict his father taken place in the year 1967 and that they had also obtained decree in their favour. It is therefore not known as to how and when the plaintiff has already taken steps to evict the plaintiff's father from the suit property they would enter into a fresh agreement with his son. The defendant has not let in any evidence to prove his case that he has been inducted as a tenant and that he is in possession of the same as a tenant lawfully under the defendant. In these circumstances, I do not find any infirmity whatsoever in the Judgment and Decree of the Courts below.

12.The plaintiff who has come to Court with a specific case having failed to prove the same cannot be allowed to contend that his possession should be protected, especially, when it is not a legal possession and not with the permission of the landlord. I answer the Substantial Question of Law No.1 against the appellant.

13.Further, I wish to submit that the plaintiff has not proved that he is in possession of the property and that the defendant was evicting him. It is seen that the defendant had instituted the proceedings for recovery of possession against the defendant's father and obtained a Decree. Therefore, the

plaintiff who is not in legal possession of the suit property cannot be allowed to raise the contention more particularly when the defendant has obtained a decree to evict their tenant, the plaintiff's father. Substantial Question of Law No.2 is therefore answered against the appellant.

Hence, this Second Appeal stands dismissed. There shall be no order as to costs.

mps

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Judge,
Krishnagiri,
Dharmapuri District.

2.The District Munsif -cum- Judicial Magistrate,
Uthangarai.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.R.Abdul Mubeen, Advocate, SR.No.83464
+1cc to Mr.V.Nicholas, Advocate, SR.No.83353

S.A.No.815 of 2003

Kak(03.10.2019)

Kak(14/10/2019)

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