



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.12.2018

Coram:

The Honourable Dr.Justice G.JAYACHANDRAN

Second Appeal No.955 of 2004
& C.M.P.No.292 of 2011

1. M.Thiyagarajan,
2. M.Panchatcharam,
3. Lakshmi,
4. Lakshmanan,
5. Saravanan,
6. Devaki ... Appellants/ Appellants/Plaintiff 2 to 7

Vs.

Anbagam Arivagam School
for Deaf and Dumb Children,
Kottatheru, Mayiladuthurai,
Town, rep.by its Proprietor,
M.Gnanasambandham ... Respondent/ Respondent /Defendant

PRAYER: This Second Appeal has been filed under Section 100 of Civil Procedure Code, praying against the judgment and decree dated 03.03.1999 made in A.S.No.54 of 1994 on the file of the Court of the Additional Subordinate Judge, Mayiladuthurai, confirming the Judgment and decree dated 15.02.1994 made in O.S.No.598 of 1989 on the file of the Court of the District Munsif, Mayiladuthurai.

For Appellants : Mr.P.Anbarasan
For Respondent : Mr.A.Muthukumar

J U D G M E N T

Heard the learned counsels for the appellants and the respondent

2. The plaintiffs who lost the suit before both the Courts below are the appellants.

3. The contention of the appellants is that the respondent herein has encroached a portion of property, which was leased out to them by the Mayuranatha Swamy Devasthanam. Hence the suit for bare injunction not to disturbs their lawful possession.

4. The claim of the plaintiffs not been found correct by the Courts below. Both Courts have relied on Ex.A.1 which is the suit Register extract relied by the defendant to arrive at the said decision.

5. From perusal of the Suit Register extract O.S.No.30 of 1961, it indicates that the landlord Mayuranatha Swamy Devasthanam has initiated proceedings against the plaintiff predecessors for recovery of possession and have taken delivery of the suit portion land under E.P.No.73 of 1964 as early as 10.02.1964. Thereafter, the property has been leased out to the defendant herein. From the record, it has been found that the defendant is in lawful possession, based on the lease executed by the true owner.

6. The contention raised by the learned counsel for the appellants that the plaintiff are in possession of the property since 1948 found false in view of Ex.A.1. The further contention that the Ex.A.1 and other documents relied by the defendant are subsequent to the suit, so the Courts below ought not to have relied upon it also held not sustainable, since, the suit extract which is relied by the defendant is the reflection of the events which took place pursuant to the suit O.S.No.30 of 1961. After taking delivery of the suit property, the Mayurantha Swamy Devasthanam has leased out the property under Ex.B.2, to the defendant and this has been spoken by the defendant DW.2 a staff of the Devasthanam.

7. Thus, the Court below has rightly held that the suit land was not in possession of the plaintiff, which is well supported by documents.

8. In the light of the above facts, this Court finds no merit to interfere the concurrent finding of the Courts below. Hence, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

bsm

To,

1. The Additional Subordinate Judge, Mayiladuthurai, Nagapattinam

2.The District Munsif, Mayiladuthurai, Nagapattinam District.

3. The section officer,
VR Section,High court,Madras

+1cc to Mr.A.Muthukumar , Advocate SR.No. 88776

+1cc to Mr. P.Anbarasan , Advocate SR.No. 89023

Second Appeal No.955 of 2004

A.SK(19/02/2019)