

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1468 of 1999

1. Vaiyapuri @ Pavadaisamy
 2. Nagappan
 3. Rajendran
 4. Kannaiyaram
- ... Appellants/Defendants

Vs.

Mallika ..Respondent/plaintiff

PRAYER: The Second Appeal has been filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 09.07.1999 made in A.S.No.266/1998 on the file of the District Court, Nagapattinam reversing the Judgment and Decree dated 19.08.1998 in O.S.No.83/1996 on the file of the Subordinate Judge's, Mayiladuthurai.

For Appellants : Mr. P. Dinesh Kumar
for M/s.Sarvabhauman Associates

For Respondent : Mr.E.Senthil kumar
for M/s.Sampath kumar Associates

J U D G M E N T

Suit for permanent injunction restraining the defendants, their men and agents from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property measuring to an extent of 5 acres 0.44 cents (2.01.5 hectares) in R.S.No.159/3, 79-A Thiruvankadu, Sirkali Taluk, in which, the lower court has dismissed the injunction. However the lower appellate court has allowed the injunction suit filed by the plaintiff.

2. The unsuccessful defendants, who lost the case before the lower appellate court have filed this second appeal.

3. For the sake of convenience, the parties are referred to as per the rankings in the lower court.

4. The averments contained in the plaint, in brief, are as

follows:

a) The suit property belonged to Arulmigu Parama Sivanantha Saraswathi Swamigal Adheenam attached with Sri Kanchi, Kamakodi Peedam, Sri Sankaracharyar Swamigal Mutt, Kancheepuram. Hereinafter the Mutt is called as 'Adheenam '.

b) The Adheenam is being managed by power agent cum Sri Kariyam. The same are cultivable Nanja lands. Originally granted cultivating rights to one Srinivasa Padayachi. The said one Srinivasa Padayachi has got no male issues. After his demise, his grandson through the only daughter of him by name Ravichandran, has taken over the lands and cultivated the same as a cultivating tenant. But he fell in large arrears. Hence, the Adheenam has filed an application for eviction before the Revenue Court Mayiladuthurai in petition No.1188/1995. Since Ravichandran failed to comply with the interim order of the Revenue Court, eviction order was passed against him. Thereafter, landlord has enforced the eviction order in E.P.No.166/1996 and taken over possession of the lands after removing Ravichandran from physical possession. Thereafter, the lands were given to the plaintiff for the purpose of cultivation on 17.08.1996 and the same is called 'Uzaipu oppandum' (Labour contract) and the Adheenam allowed the plaintiff in the possession of the lands. Pursuant to the agreement, the plaintiff has deposited a sum of Rs.50,000/- as EMD on 19.08.1996. After receipt of EMD, the Adheenam is also issued a receipt in favour of plaintiff. In order to establish his physical possession, the adangal and other revenue records are also produced along with plaint. After taking possession of the lands, the plaintiff is cultivating lands.

c) While being so, the defendants herein are utter strangers in respect of the suit property is concerned. Further the plaintiff's brother-in-law is being elected for the post of Panchayat Board Ward Member. The defendant herein is attached with the different political parties. The local panchayat President and the defendants herein are affiliated to the same political party. They created lot of troubles to the plaintiff's enjoyment. With the object in view and from 22.10.1996, the defendants herein attempted to irrigate the remaining portion. Immediately the matter was reported to the Mutt. On 24.10.1996, the Manager of the Mutt has also made a complaint to the Superintendent of Police, Nagapattinam. However, the local president is abetting the defendants. As against the high in manner of the President, the villagers complained to the District collector and others since no action was taken. Aggrieved by the same, the plaintiff filed a suit for permanent injunction restraining the defendants from anyway interfering with the peaceful possession and enjoyment of the suit property.

5. The averments contained in the written statement, in

brief, are as follows:

a) The case of the defendants is that the suit property belonged to Adheenam originally it was cultivated by one Srinivasa Padayachi, who had no male issues and after his demise, his grandson through his only daughter of him by name Ravichandran had taken over the lands and had cultivated the same as a cultivating tenant under the Adheenam. The said Ravichandran has not paid rents to the Adheenam. Hence, the Adheenam had filed an eviction petition in petition No.1188/1995.

b) The said Srinivasa Padayachi had taken the land from Adheenam on behalf of the family and he was cultivating the same and even through his life time, the defendants along with their father was helping him in the cultivation and all of them were doing joint cultivation of the property. After the life time of Srinivasa Padayachi, the defendants continued to remain in possession of the suit property and infact, the defendants' paternal uncle Srinivasa Padayachi executed a Registered Will dated 15.10.1987 stating that the abovesaid property should be taken by the defendants by referring to the same as lands which have been leased out to the family. In fact, from 1987 onwards, the defendants and one Nagarathinam, the son of another paternal uncle were cultivating the property and they have also measured leased paddy to the Adheenam. During 1996, the defendants cultivated an extent of 4 acres of suit property by showing ADT 38 paddy and on the date of suit, it was 51 days old and one acre was not cultivated. In fact, for the purpose of cultivation, they had also sunk a filter point with an oil engine. Similarly, Nagarathinam had also sunk a filter point for the purpose of cultivation. In fact 30.10.1996, when the cultivation was going on, the plaintiffs, and with her men and sought to interfere with their possession and a police complaint was lodged and thereafter, at the intervention of elders, the peace Muchalika was entered between the plaintiff and the defendants.

c) While being so, the defendants had also filed a suit along with their brother Nagarathinam against Ravichandran in O.S.No.201/1996 on the file of the District Munsif Court, Sirkazhi. Pending suit, the plaintiff filed a suit against the defendants. Accordingly, after perusal of the documents and records and after hearing the parties, the lower court had dismissed the suit. However, the lower appellate court, on an erroneous consideration has allowed the plaintiffs' case. As against the order of the lower appellate court, the present second appeal is filed.

6. In trial, the plaintiff examined herself as PW1. The Manager of the Adheenam was examined as PW3 and VAO as PW4. On her side, four witnesses were examined and Exs.A1 to A7 were marked. On the side of the defendants, the second defendant examined himself as DW1 and also examined three witnesses on his

side and marked Exs.B1 to B9.

7. This court, while entertaining the appeal, has framed the following substantial questions of law:

1. Whether the lower appellate court is correct in law in granting a decree for injunction essentially when the respondent/plaintiff has failed to prove her possession on the date of the suit?
2. Whether the lower appellate is correct in law in relying upon Ex.A.4 to A.6 which are proceedings initiated against person whose status as the heir of the deceased cultivating tenant was negatived in the suit O.S.No.125/1987 on the file of the Sub-Court, Mayiladuthurai filed by him seeking a declaration that he is the legal heir?

8. Learned counsel for the appellants would submit that admittedly the Adheenam had executed a lease deed in favour of Srinivasa Padayachi. The said Srinivasa Padayachi during his life time has executed a Will in favour of the defendants by virtue of a Registered Will. One Ravichandran had also filed a suit in O.S.No.125/1987 before the Sub-Court, Mayiladuthurai, against the defendant and others, who claimed to be the legal heirs of Srinivasa Padayachi through his daughter's son and the said suit was dismissed and ended in favour of the defendants by virtue of the dismissal order, the defendants are the legal heirs of Srinivasa Padayachi. Accordingly, he is entitled for cultivating the lands after the demise of Srinivasa Padayachi. In order to prove his possession, the defendants averred in the written

statement that after the death of Srinivasa Padayachi, the defendants and Nagarathinam have irrigated sunk filter point in the suit property. Thereafter, they cultivated the land and leased patta in favour of Adheenam. Without considering the abovesaid facts, the lower appellate court has allowed the appeal filed by the plaintiff which is unsustainable and erroneous. However, the lower appellate court failed to consider that Ravichandran is not a legal heir and any revenue proceedings initiated by the Adheenam will not bind on the defendants since the competent civil court has granted decree in favour of the defendants. Contrary to the decree, the revenue proceedings initiated by the Adheenam is binding on the appellants /defendants.

9. Per contra, learned counsel appearing for the respondent/plaintiff would submit that admittedly, the lease was granted to one Srinivasa Padayachi. After the demise of

Srinivasa Padayachi his daughter's son, Ravichandran was cultivating the land but he failed to pay the rent in favour of Adheenam and thereby Adheenam initiated proceedings and that revenue proceedings were marked as Exs.A2 to A6. After the revenue proceedings, the Adheenam initiated proceedings against Ravichandran. In the proceedings, the Adheenam had taken possession through appropriate authority. After possession, the Adheenam had executed lease deed (labour contract) in favour of the plaintiff and the same was marked as Ex.A1 and after analysing the facts and on perusal of the records, the lower appellate court has granted decree in favour of the plaintiff. Hence, the well considered order need not be interfered with the second appeal since the defendants did not raise any substantial question of law before this court.

10. On perusal of the materials and the findings of the lower court as well as the lower appellate court, it is seen that admittedly the entire suit property was owned by Adheenam and initially Adheenam granted lease deed in favour of Srinivasa Padayachi and lease receipts were marked as Exs.B2 to B7. After the death of Srinivasa Padayachi, his daughter's son Ravichandran took possession and cultivated land. Since Ravichandran failed to pay the rent in favour of Adheenam, Adheenam instituted the revenue proceedings against Ravichandran in petition No.1188/1995. the Revenue Court passed order in favour of Adheenam and thereafter that Adheenam filed a execution proceedings to implement the revenue court order. Accordingly, the execution proceedings ended against Ravichandran and the revenue authority handed over the possession to the Adheenam. After obtaining possession from the revenue authorities, the Adheenam executed labour contract in favour of the plaintiff. The said labour contact was marked as Ex.A1. On perusal of Ex.A1, it is seen that Adheenam granted lease in favour of the plaintiff the nanja lands to an extent of 5 acres 0.44 cents (2.01.5 hectacres) in R.S.No.159/3, 79-A Thiruvankadu.

11. Apart from the above revenue proceedings initiated by the Adheenam as against the Ravichandran, Exs. A4 to A6 were marked. On perusal of Ex.A1, it is seen that plaintiff has paid Rs.50,000/- as EMD in favour of the Adheenam and the said receipt was marked as Ex.A2.

12. On perusal of the exhibits filed by the respondent/plaintiff, it is clearly revealed that Adheenam had executed a lease deed in favour of the plaintiff and other revenue proceedings also shows that Adheenam has taken over the possession and thereafter, the possession was handed over in favour of the plaintiff. However the defendants did not

establish any of the documents as if he is in possession of the property. In order to prove his possession, the defendants filed a petition before the lower appellate court under Order XLI Rule 27 and the additional documents were marked as Ex.A8 to Ex.A10. On perusal of the Court proceedings which were marked as Ex.A8 to Ex.A10 before the lower Court clearly establish that one Ravichandran impleaded as legal heir of Srinivasa Padayachi in O.S.No.105 of 1976 on 10.02.1988. The said Ravichandran filed a Civil Revision Petition in C.R.P.No.517 of 1998 and on 26.02.1998 the said C.R.P was dismissed confirming the eviction passed against the Ravichandran at the instigation of the Adheenam and against that, the said Ravichandran who claim to be legal heir of Srinivasa Padachi filed M.P.No.1 of 1997 before the Revenue Court for restoring his possession and the same was rejected on 04.08.1998. All these documents clearly establish that Adheenam was in possession of the property and subsequently, Adheenam executed a lease deed in favour of the respondent/plaintiff.

13. In view of the above circumstances, I do not find any error in the order passed by the lower appellate court and accordingly, the substantial questions of law are answered against the appellants.

In the result, the second appeal is dismissed and the Judgment and Decree dated 09.07.1999 made in A.S.No.266/1998 on the file of the District Court, Nagapattinam reversing the Judgment and Decree dated 19.08.1998 in O.S.No.83/1996 on the file of the Subordinate Judge's Court, Mayiladuthurai, is confirmed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-iii)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

gv

To

1. The District Judge,
Nagapattinam.
2. The Subordinate Judge,
Mayiladuthurai.

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Copy to:
The Section Officer,
V.R. Section,
High Court, Madras.(2 copies)

+1cc to Mr.SAMPATHKUMAR & ASSO. Advocate, S.R.No. 20846
+1cc to Mr.Sarvabhauman ASSO. Advocate, S.R.No. 20883

S.A.No.1468 of 1999

MG (CO)
TR(16/04/2018)



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