

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.08.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAM

Second Appeal No.639 of 2008
& C.M.P.No.20786 of 2016

Karunanithi
S/o.Dhanagopal
Sandrorpalayam Village,
Sandrorpalayam Post,
Cuddalore District. Appellant/Appellant/Plaintiff

Vs.

V.Shanmugham Chettiar,
S/o.Udayatha Chettiar,
Seeman Thottam,
No.3, Pallivasal Lane,
Cuddalore O.T.Respondent/Respondent/Defendant

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, praying to set aside the order and decree passed by the learned Principal Subordinate Judge, Cuddalore, dated 16.12.2006 made in A.S.No.48 of 2006 has confirmed the impugned order dated 30/01/2006 in O.S.No.668/2004 passed by the Learned Additional District Munsif, Cuddalore.

For Appellant : Mr.V.Virumandi

For Respondent : Mr.B.Muralidharan

J U D G M E N T

The plaintiff in O.S.No.668 of 2004 is the appellant. The said suit was filed by him, seeking a decree for permanent injunction contending that his father became a tenant under the defendant in the year 1979, as per the oral agreement reached between them. Since the plaintiff's father became aged, he requested the plaintiff to continue the cultivation as a lessee under the defendant. According to the plaintiff, he has been continuing as a lessee. He has been measuring 25 Kalams of paddy per year as the proceeds for the lease. On the above contentions, the plaintiff sought for decree of permanent

injunction restraining the defendant for interfering his possession.

2. The defendant resisted the suit contending that there is no relationship of landlord and tenant between the plaintiff's father and the defendant. Therefore, the lease claimed itself is not true. It is contended that one Prabakaran became tenant of the property and has been paying the lease paddy to the defendant till June 2004.

3. The Courts below, on appreciation of the evidence on record, had concluded that the plaintiff has not established his possession by any evidence worthy credibility. On the above conclusion, the Courts below have dismissed the suit holding that the plaintiff has not established his claim that his father was a tenant under the defendant and since his father became old, the plaintiff has continued as a lessee. The plaintiff did not file any documents to prove his possession. Aggrieved, the plaintiff has come forward with this Second Appeal.

5. Notice of motion was ordered on 25.04.2008 and the respondent entered appearance.

6. The respondent has filed an application in C.M.P.No.20786 of 2016 under Order 41 Rule 27 of Civil Procedure Code, to receive a document as additional evidence. The document that has been sought to be produced is an order passed by the Tenancy Record Officer made under Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969 (Act 10 of 1969).

7. It is seen from the said order that after filing of the Second Appeal, the appellant had approached the Record Officer seeking to record himself as a tenant of the property, which is the subject matter of the present suit. The application has been rejected by Record Officer vide order dated 27.12.2013.

8. The learned counsel for appellant concedes that the appellant has not challenged the said order. The said document, which has emanated after filing of the appeal, is a proceeding under a statute and a competent authority has passed the order and the same is sought to be produced as an additional evidence.

9. I am satisfied, that the said document is relevant to decide the dispute between the parties to the lease. Hence,

the application in C.M.P.No.20786 of 2016 is allowed. The order of the Record Officer dated 27.12.2013 is received in evidence and marked as Ex.B.2.

10. Heard Mr.V.Verumandi, learned counsel appearing for the appellant and R.Muralidaran, learned counsel appearing for the respondent.

11. The learned counsel for the appellant, despite his best efforts is unable to make out any substantial question of law. Both the Courts below, on analysis of both oral and documentary evidence, have concluded that the appellant has not established his possession. Apart from the above, the appellant has also suffered an order against him which has been passed by the competent authority under Act 10 of 1969. Therefore, I find no substantial question of law, in order to enable this Court to entertain this appeal under Section 100 of Civil Procedure Code.

12. Hence, the Second Appeal is dismissed without being admitted. No Costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

bsm/rli

To

1.The Principal Subordinate Judge, Cuddalore.

2.The Additional District Minsif, Cuddalore.

+1cc to Mr.S.Radha Gopalan, Advocate, S.R.No.58189

Second Appeal No.639 of 2008

NMI (CO)

GSP (09/10/2018)