

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1149 of 2002

Natarajan ... Appellant/Defendant/Appellant

Vs.

Ramamoorthy ...Respondent/plaintiff/Respondent

PRAYER: The Second Appeal has been filed under Section 100 of C.P.C. to set aside the Judgment and Decree dated 10.12.2001 passed by the Subordinate Court at Mettur in A.S.No.22/2001 confirming the Judgment and Decree of the District Munsif-cum-Judicial Magistrate Court, Omalur dated 04.08.2000 in O.S.No.239/1996.

For Appellant : Ms.Mythili Suresh
for M/s.Sarvabhauman Associates

For Respondent : No appearance

J U D G M E N T

The unsuccessful appellant/defendant, who lost the case before the lower court as well as the lower appellate court has filed the present second appeal before this court.

2. The case of the plaintiff is as follows:

The properties are the ancestral properties of the appellant and his brothers. The joint family property was divided by oral partition between the plaintiff and his two brothers before 40 years back. The suit property was allotted to the plaintiff in the oral partition and hence the plaintiff is the absolute owner for the suit property from the date of partition. The plaintiff is paying the kist for the suit property and other revenue taxes and accordingly, the tax and other receipts stands in the name of appellant. The respondent has no right, title or interest over the suit property. He was allowed to occupy a portion of the property before five years from the filing of the suit and taking advantage of the allotment of small portion of the thatched house in the east corner of the suit property, the defendant approached the appellant on

23.04.1992 to sell the suit property to him to a low price. Since the same was refused by the plaintiff and due to the enmity between them, he tried to trespass the suit property on 25.04.1992 with the rowdy elements to disturb the peaceful possession and enjoyment of the plaintiff. However, the plaintiff, in order to prevent the defendant, filed a suit for permanent injunction against the defendant.

3. The sum and substance of the written statement of the defendant is as follows:

The defendant denied the title of the plaintiff as well as the oral partition between the plaintiff and his brothers. There are several properties available to the plaintiff's family. Since the elder brother of the family and other brothers are employed in Madras, the plaintiff was allotted to look after the entire properties belonging to the family. He was employed in the Taluk Treasury Office, Omalur. Even during the life time of plaintiff's father, the suit property and other properties were leased out to the father of the defendant. Subsequent to the death of the father of the plaintiff, the plaintiff and his mother leased out the same to the father of the defendant. During the life time of the father of the defendant, the defendant also joined to cultivate the land along with his father. After the death of his father, the defendant and his brother Ramalingam continued to cultivate the properties lease out to their father including the suit property.

4. At the time of filing of the suit, defendant was cultivating 1.20 acres of punja lands and his brother is cultivating about 1 acre of nanja lands. Both are paying periodical lease amounts regularly. As the plaintiff employed under the revenue department he was able to see that no entry of lease particulars is carried out in the revenue records. Even today, the defendant is in possession and cultivation of the suit property and there was enmity to the adjacent owner for which the plaintiff developed enmity with the defendant in order to wreck vengeance, the plaintiff filed a suit against the defendant.

5. After considering the evidence of PWs and DWs and other documents, the lower court decreed the suit in favour of the respondent/plaintiff. Aggrieved by the same, the appellant/defendant preferred the appeal before the lower appellate court and it also confirmed the decree granted by the lower court and as against the concurrent finding, the present second appeal is filed.

6. At the time of admission, this court has framed the following substantial questions of law:

"1. Whether the lower appellate court is correct in law in assuming that the appellant had admitted the respondent's possession especially when there is no evidence on record to justify such conclusion?

2. When as per Sections 101 to 103 of the Evidence Act, the plaintiff/respondent is duty bound to establish his case and when the respondent has failed to do so, whether the courts below are correct in law in decreeing the suit as prayed for?"

7. Learned counsel appearing for the appellant would submit that there is no dispute with regard to the occupation of the residential house in the suit property, for which, the defendant marked the house receipts in order to establish his possession of the properties and in the plaint, the respondent/plaintiff himself admitted the house property situated in the south corner were leased out to the defendant. It is presumed that the defendant is in possession of the entire properties as a lessee. However, no document was produced either registering leasehold right or any lease agreement registered with the revenue department by the plaintiff.

8. No one represented on behalf of the respondent. However, this court decided to proceed the case based on the available materials. Admittedly, there is no dispute with regard to the title of the property. The property belongs to the plaintiff which was acquired by the oral partition through his brother and the entire revenue records stands in his name with regard to the suit schedule property. The suit schedule property is an agricultural land. Except house receipts, there is no other document to show his lessee right or registered himself as the lessee in the Revenue Department.

9. In the absence of any valuable materials, I do not find any error in the orders passed by the lower court as well as the lower appellate court.

In view of the above, the substantial questions of law are answered against the appellant. The second appeal fails and accordingly, the same is dismissed. The Judgment and Decree dated 10.12.2001 passed by the Subordinate Court, Mettur in A.S.No.22/2001 confirming the Judgment and Decree of the District Munsif-cum-Judicial Magistrate Court, Omalur dated 04.08.2000 in O.S.No.239/1996, is confirmed. No costs.

Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

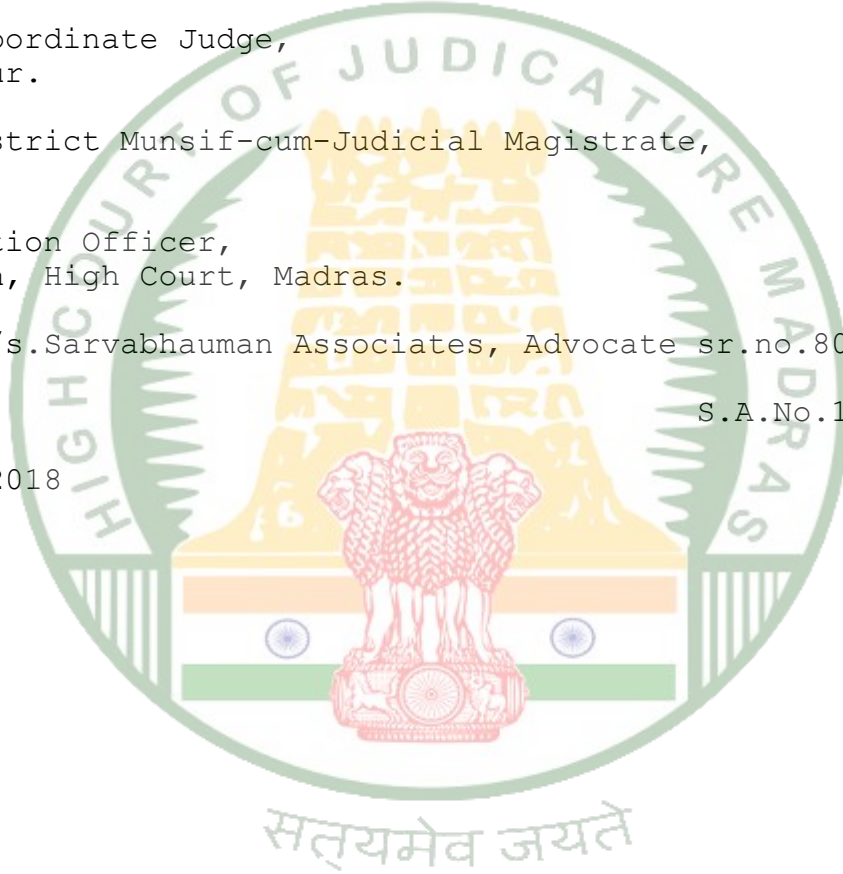
To

1. The Subordinate Judge,
Mettur.
2. The District Munsif-cum-Judicial Magistrate,
Omalur.
- 3.The Section Officer,
VR Section, High Court, Madras.

+lcc to M/s.Sarvabhauman Associates, Advocate sr.no.8086

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