

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2017
PRONOUNCED ON:09.01.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.1428 of 2002

Ramalingam Pillai ... Appellant/Plaintiff

Vs.

Muthaiya Pillai Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree made in A.S.No.107 of 2001 on the file of the Court of the Principal Sub-Judge, Mayiladuthurai dated 12-03-2002 in reversing the judgment and decree made in O.S.No.148 of 1995 on the file of the court of Additional District Munsif, Mayiladuthurai dated 29-10-2001.

For Appellant : Mr.A.Muthukumar

For Respondent: Mr.s.Parthasarathy
for Mr.J.Ramakrishnan

J U D G M E N T

In this second appeal challenge is made to the judgment and decree dated 12-03-2002 passed in A.S.No.107 of 2001 on the file of the Principal Subordinate Court, Mayilladuthurai reversing the judgment and decree dated 29.10.2001 passed in O.S.No.148 of 1995 on the file of the Additional District Munsif Court, Mayiladuthurai.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for permanent injunction.

4.The case of the plaintiff in brief is that the suit properties belong to Sri Ramasamy Koil, Thiruvizhunthur, Mayiladuthurai and the plaintiff's father Balasubramanian pillai was cultivating the suit properties as its cultivating tenant and after his death, the plaintiff had been in possession and

enjoyment of the suit properties as the cultivating tenant by contributing his physical labour and during the life time of the plaintiff's father, a similar extent of land had been taken by the father from the temple, in the name of the defendant and accordingly it is only the plaintiff who has been in possession and enjoyment of the suit properties and following the dispute between the plaintiff and the defendant and taking advantage of the mistake committed by the V.A.O in the records, the defendant attempted to interfere with the possession and enjoyment of the plaintiff, in respect of the suit properties and hence the suit.

5.The case of the defendant in brief is that the suit is not maintainable either in law or on facts. It is incorrect to state that after the death of the father, the plaintiff had been in possession and enjoyment of the suit properties as the cultivating tenant, the plaintiff of course is enjoying the suit properties excepting 0.43 cents situated in R.S.54/2-B and the above said 0.43 cents is under the cultivation and enjoyment of the defendant and accordingly the defendant had executed the lease chit in favour of the owner namely the temple in the year 1958 itself and the plaintiff has not measured any rent for the suit properties, the defendant is the recorded tenant in respect of the above said extent of 43 cents in the suit properties i.e., in R.S.No.54/2B and such being the possession there is no need for the defendant to disturb the plaintiff's possession and enjoyment of the suit properties and hence the suit is liable to be dismissed.

6.At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

(i)When no notice was issued to the plaintiff or predecessor-in-interest for the proceedings initiated by the defendant under Act 10 of 1969. Whether lower Appellate Court not erred in law in holding that the defendant is a cultivating tenant for 43 cents in S.No.254/2B?

(ii)When the defendant claims that he is in possession of only 43 cents in second item of the suit property out of the total extent of 1 acre and 68 cents without any particulars regarding boundaries, whether the lower Appellate Court not erred in law in holding that the defendant is in possession of the same?

7. In support of the plaintiff's case, P.Ws.1 to 3 were examined. Exs.A1 to A8 were marked. On the side of the defendant, D.Ws.1 and 2 were examined. Exs.B1 to B7 has been marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit as prayed for. On appeal, the first appellate court had, on a re-appreciation of the materials, set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the defendant, dismissed the suit laid by the plaintiff. Assailing the same, the present second appeal has come to be laid.

9. There are three items of the suit properties. As regards the items 1 and 3 of the suit properties, there is no doubt and thus it is found that it is only the plaintiff who is in possession and enjoyment of the items 1 and 3 of the suit properties. As regards the item No.2 of the suit properties, it has been admitted by the defendant that the plaintiff is in possession and enjoyment of the said item also except 0.43 cents in the said item. On the other hand, according to the plaintiff, it is only he, who is in possession and enjoyment of the entire extent of the second item of the suit properties located in R.S.No.54/2B. Though the defendant claims to be in possession and enjoyment of 0.43 cents in above said survey number, he has given out the boundaries within which, the said 0.43 cents is located. Very baldly, the defendant has come forward with the case that he is in possession and enjoyment of 0.43 cents in R.S.No.54/2B.

10. In this matter, there is some dispute as to the actual extent comprised in R.S.No.54/2B as to whether it is 1.68 acres or 1.64 acres. Be that as it may from the document marked as Ex.A1, the lease deed executed by the plaintiff's father in respect of the suit properties in favour of the owner namely the temple, it is found that the entire extent in R.S.No.54/2B is shown to be in possession and enjoyment of the plaintiff's father, from whom, the plaintiff claims to be in possession and enjoyment of the same. The defendant has not disputed the position that originally the father had been in possession and enjoyment of the suit properties as the cultivating tenant under the temple. From Ex.A2, the receipt issued by the temple in favour of the plaintiff, though it has come to be issued after the institution of the suit, it is found that, it is only the plaintiff who has paid the rent in respect of the disputed survey number namely the second item of the suit properties. Similarly, from Ex.A3 and A4, it is found that the temple had initiated proceedings against the plaintiff as

regards the disputed survey number namely 54/2B where in also the total extent is clearly mentioned as 1.68 acres. The correction noted in the extent as found in Ex.A3 has been set right by the order of the concerned authority marked as Ex.A4. In addition to that from the fertilizer supply card marked as Ex.A5, it is found that it is only the plaintiff, who has been in possession and enjoyment of the entire extent in R.S.No.54/2B though the total extent has been mentioned as 1.65 in the said document. The receipts marked as Ex.A6 to A8 also support entire the plaintiff's case.

11.As above seen, the defendant claims only to be a cultivating tenant of an extent of 43 cents in the second item of the suit properties. However, with reference to the above claim, there is no acceptable material as such. Though the defendant claims to have executed the lease deed in favour of the temple in respect of the above said extent marked as Ex.B1, there is no correct mention of the sub division number in the said document. However, there is a mention of the correct sub division in Ex.A1, the date on which Ex.B1 has also come to be executed and therefore it is seen that from Ex.B1, we cannot safely conclude that the defendant is in possession and enjoyment of 43 cents in R.S.No.54/2B as claimed by him. Ex.B2 also would not serve the case of the defendant to safely conclude he his in possession and enjoyment of 43 cents as its cultivating tenant in R.S.No.54/2B as there is no clear description of the above said survey number in the document. The documents marked as Exs.B4 to B6 would go to show that proceedings had been initiated by the temple against the defendant, in respect of 0.80 cents in R.S.54/2B. When it is not even the case of the defendant that he is in possession and enjoyment of 0.80 cents in the above said survey number, it is found that the above said documents could not be rightly accepted for holding that he is in possession and enjoyment of 43 cents in the above said survey number as pleaded by him. If the defendant had given the boundaries of the alleged 43 cents said to be in his possession and enjoyment, there could have been some useful co-relation from the description of the properties given in the documents placed by the defendant. However, as above noted, the defendant has not given the boundaries of 43 cents said to be in his possession.

12.The other document upon which the defendant solely relies upon is the extract issued by the Zonal Deputy Tashildar Mayiladuthruai holding that the defendant, as per record, is the cultivating tenant on 43 cents in R.S.54/2B. However, in the said document, it has not been clearly mentioned as to on what basis the defendant had been recorded as the cultivating tenant of the disputed extent of 43 cents. In this connection, the proceedings of the concerned authority has not been marked.

That apart as rightly argued by the plaintiff's counsel, it is not been established that due notice has been given to all the parties concerned including the plaintiff before recording the name of the defendant as the cultivating tenant in respect of the disputed 43 cents. In such view of the matter, merely from the entries found in the record of tenancy rights, it cannot be held that a particular person, whose name had been entered in the said register, is the cultivating tenant of the disputed property and in this connection the plaintiff's counsel placed reliance upon the decisions reported in 2009 (2)L.W669 [Joseph Nadar and 3 others Vs. Victor Suvisesha Muthu and 2 others] and A.I.R 1980 Madras 169 (FB) [Periathambi Gounder Vs. The District Revenue Officer, Coimbatore and others]. From the above said decisions it can be seen that merely because the defendant's name had been recorded in the approved record, the same by itself cannot be the basis for presuming that he is the cultivating tenant of the said extent in the absence of any other valid material to hold that he is in possession and enjoyment of the actual extent of the property concerned. In so far as this case is concerned, when the documents projected by the defendant are not useful to uphold his claim of possession and enjoyment of the disputed 43 cents in R.S.No.54/2B as the cultivating tenant and when Ex.B3 has not come to be issued or shown to be issued after issuing notice to all concerned particularly the plaintiff, it is found that, in the light of the above said decisions, mere recording of the name of the defendant in the concerned record by itself would not lead to the conclusion that he is in possession and enjoyment of the disputed extent of 43 cents as the cultivating tenant. As above seen, with reference to the same to the above case of the defendant there is no acceptable and convincing material at all placed to hold that he is in possession and enjoyment of the said extent as put forth by him.

13.In the light of the above discussions, the first appellate court has erred in law in holding that the defendant is the cultivating tenant of 43 cents in R.S.No.254/2B merely on the basis of Ex.B3 alone when the same is not been shown to be issued after the issuance of notice to all concerned including the plaintiff. In the absence of any reliable material to show that the defendant is in possession and enjoyment of 43 cents in the second item of the suit properties particularly by showing the boundaries within which the same is located and also sans any valid document that prove that the same is in his possession and enjoyment, it is found that the first appellate court has erred in holding that the defendant is in possession and enjoyment of the disputed 43 cents in the second item of the suit properties. Accordingly, the substantial questions of law formulated in the second appeal are answered in favour of the plaintiff and against the defendant.

14.In conclusion, the judgment and decree dated 12.03.2002 passed in A.S.No.107/2001 on the file of the Principal Subordinate Court are set aside and the judgment and decree dated 29.10.2001 passed in O.S.No.148 of 1995 on the file of the Additional District Munsif Court are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition , if any, is closed.

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Sd/-

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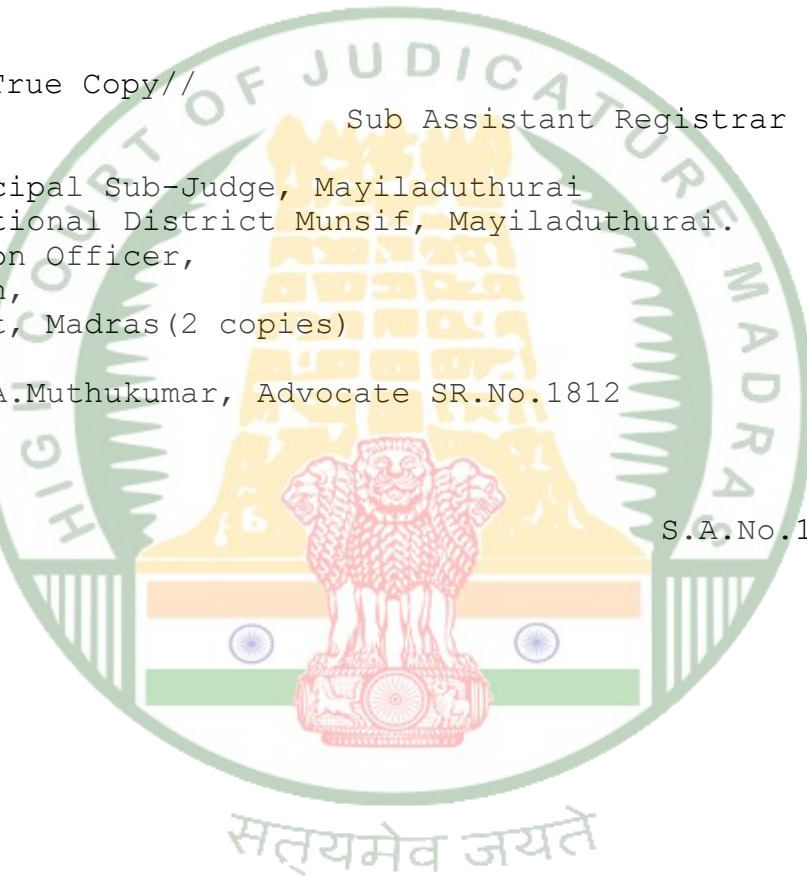
- 1.The Principal Sub-Judge, Mayiladuthurai
- 2.The Additional District Munsif, Mayiladuthurai.
- 3.The Section Officer,
VR Section,
High Court, Madras (2 copies)

+1cc to Mr.A.Muthukumar, Advocate SR.No.1812

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NMI (CO)

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