

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 23.02.2018****PRONOUNCED ON : 28.02.2018****CORAM****THE HONOURABLE MR.JUSTICE T.RAVINDRAN****S.A.No.1777 of 2003**

The Executive Officer,
Arulmighu Sri Dharmaraja
Throupathi Amman Koil,
Cuddalore.

...

Appellant

Vs.

Ramadoss Naidu

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 10.10.2002 passed in A.S.No.70 of 2002 on the file of the Additional District Court (Fast Track Court No.2) Cuddalore, moulding the relief and thereby partly allowing the appeal filed against the Judgment and Decree dated 26.04.2000 passed in O.S.No.472 of 1998 on the file of the District Munsif Court, Cuddalore.

For Appellant : Mr.K.Rajasekaran

For Respondent : Mr.S.T.Raja

JUDGMENT

This second appeal is directed against the the Judgement and Decree dated 10.10.2002 passed in A.S.No.70 of 2002 on the file of the Additional District Judge (Fast Track Court No.2) Cuddalore, partly allowing the appeal preferred against the Judgment and Decree dated 26.04.2000 passed in O.S.No.472 of 1998 on the file of the District

Munsif Court, Cuddalore.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for permanent injunction.

4. The case of the plaintiff, in brief, is that the suit property belonged to the defendant and that, the same had been leased out to the plaintiff's father about 20 years ago and accordingly, the plaintiff's father took possession of the suit property on lease and had been enjoying the same as the lessee by remitting the annual lease and after the demise of the plaintiff's father, it is only the plaintiff, who is cultivating the suit property by contributing his physical labour, while so, the plaintiff learnt that the defendant has taken steps for leasing out the suit property by way of public auction and the defendant is not entitled to lease the suit property to another, when the plaintiff is in lawful possession and the trees laid by the plaintiff in the suit property are lying and therefore, according to the plaintiff, he has been necessitated to lay the suit against the defendant for the relief of permanent injunction restraining the defendant from leasing out the suit property by way of public auction and disturbing his possession and enjoyment of the suit property and grant such further or other reliefs as the court may deem fit and necessary.

5. The case of the defendant, in brief, is that the suit laid by the

plaintiff is not maintainable either in law or on facts and it is true that the suit property had been taken on lease by the plaintiff eight years ago and enjoying the same as the lessee. However, as per the rules of the defendant, the suit property is let on lease by way of public action every year and accordingly, the defendant has taken steps to lease out the suit property by way of public auction and the same cannot be prevented by the plaintiff and the plaintiff cannot claim to be the lessee of the suit property on a permanent basis and contrary to the terms of the lease, the plaintiff has raised long term crops and on that ground alone, the plaintiff is liable to be evicted from the suit property and if the property is let on lease by way of public action, the defendant would get more income and therefore, the plaintiff is not entitled to obtain the reliefs sought for and the suit is liable to be dismissed.

6. In support of the plaintiff's case, PW1 has been examined and Exs.A1 to 6 were marked. On the side of the defendants, DW1 has been examined and no documentary evidence has been marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the suit. On appeal, the first appellate Court, on an appreciation of the materials placed on record, was pleased to partly allow the appeal and granted the relief in favour of the plaintiff

injuncting the defendant from disturbing his possession and enjoyment except under due process of law and accordingly, disposed of the matter in favour of the plaintiff. Impugning the same, the present second appeal has been preferred.

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

" (i) Whether the lower appellate Court is justified in moulding the relief and granting an injunction in the absence of any evidence and pleadings?

(ii) Whether the lower appellate Court can mould the relief to such extent that it completely change the character and nature of the suit?"

9. It is not in dispute that the suit property belonged to the defendant. It is further seen that the factum of the suit property having been taken on lease by the plaintiff's father and thereafter by the plaintiff as such is not controverted by the defendant in the written statement. In fact, the defendant has admitted that the plaintiff has taken the suit property on lease from the defendant. The fact that the plaintiff has been enjoying the suit property as a lessee could also be evidenced from the

lease receipts marked by the plaintiff as Exs.A1 to A5. Therefore, it is established by the plaintiff that as on the date of the suit, it is he, who has been in possession and enjoyment of the suit property as the lessee thereof.

10. It is found that the defendant has taken steps as per rules to lease out the suit property by way of public auction and challenging the same, the plaintiff has come forward with the suit contending that thereby the defendant is attempting to disturb his possession and enjoyment of the suit property unlawfully. It is the case of the defendant that only as per the rules, they are bringing the suit property for lease by way of the public auction and the same could not be prevented by the plaintiff. To that extent, it is found that the first appellate Court has accepted the case of the defendant. However, considering the fact that admittedly, the suit property is in the possession and enjoyment of the plaintiff as the lessee on the date of the suit and even prior to the same and considering the grievance raised by the plaintiff, it is found by the first appellate Court that the plaintiff is the cultivating tenant of the suit property and as such, the plaintiff cannot be evicted from the suit property except under due process of law. The fact that the plaintiff is the cultivating tenant of the suit property has been clearly averred in the plaint and the same has not been repudiated by the defendant in the written statement as such. As earlier seen, the defendant has admitted

that the suit property had been taken on lease by the plaintiff and accordingly, enjoying the same for several years. In addition to that, it is also found that considering the fact of the enjoyment of the suit property by the plaintiff as the cultivating tenant thereof, the competent authority has, accordingly, recorded the name of the plaintiff as the cultivating tenant of the suit property in his proceedings and the said order has come to be marked as Ex.A6. From Ex.A6, it is found and made clear that the plaintiff is the cultivating tenant of the suit property and declared to be so by the competent authority and as such, it is found that his possession could not be disturbed except under due process of law.

11. The contention has been put forth by the defendant that the plaintiff had acted contrary to the terms of the lease arrangement and also not paid the lease amount regularly and committed default and therefore, the plaintiff is not entitled to retain the possession of the suit property permanently by contending that he has taken the suit property on lease. Accordingly, it is determined by the first appellate Court, in the light of the admitted possession of the suit property as on date by the plaintiff as the cultivating tenant thereof and so holding, also considering the document marked as Ex.A6, the first appellate Court has determined that in case, the defendant is of the opinion that the plaintiff is not entitled to retain his status of the cultivating tenant of the suit property henceforth, it is always open to them to take appropriate action against

the plaintiff as provided under law with reference to the same. As above seen, the first appellate Court has also determined that the plaintiff is not entitled to prevent the defendant from putting the property in public auction for the purpose of leasing out the same to the third parties. On appeal, it is seen that the first appellate Court, considering the facts and circumstances of the case at hand, accordingly, decided and disposed of the matter holding that the plaintiff's possession and enjoyment of the suit property should not be disturbed by the defendant except under due process of law and on the above said limited ground, granted the relief of permanent injunction in favour of the plaintiff. It is found that the above moulded relief granted by the first appellate Court in favour of the plaintiff cannot be held to be against the provisions of law, particularly, when it is noted that the plaintiff has established his status to remain in the suit property as the cultivating tenant thereof and the option is also given to the defendant to evict the plaintiff from the suit property in accordance with law. In such circumstances, I do not find any reason to interfere with the grant of the above said moulded relief by the first appellate Court in favour of the plaintiff.

12. In the light of the above reasons, it is found that considering the materials placed on record coupled with the pleadings set out by the respective parties, the first appellate Court is found to be justified as per law in granting the necessary reliefs in favour of the plaintiff and by way

of the same, it is found that the first appellate Court has not deprived the defendant from dispossessing the plaintiff from the suit property and all that, it had decided is that the defendant is entitled to dispossess the plaintiff from the suit property in accordance with law and in such view of the matter, the substantial questions of law formulated in this second appeal are accordingly, answered in favour of the plaintiff.

In conclusion, the second appeal fails and accordingly, is dismissed. Considering the facts and circumstances at hand, there is no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

28.02.2018

Index : Yes / No

Internet : Yes / No

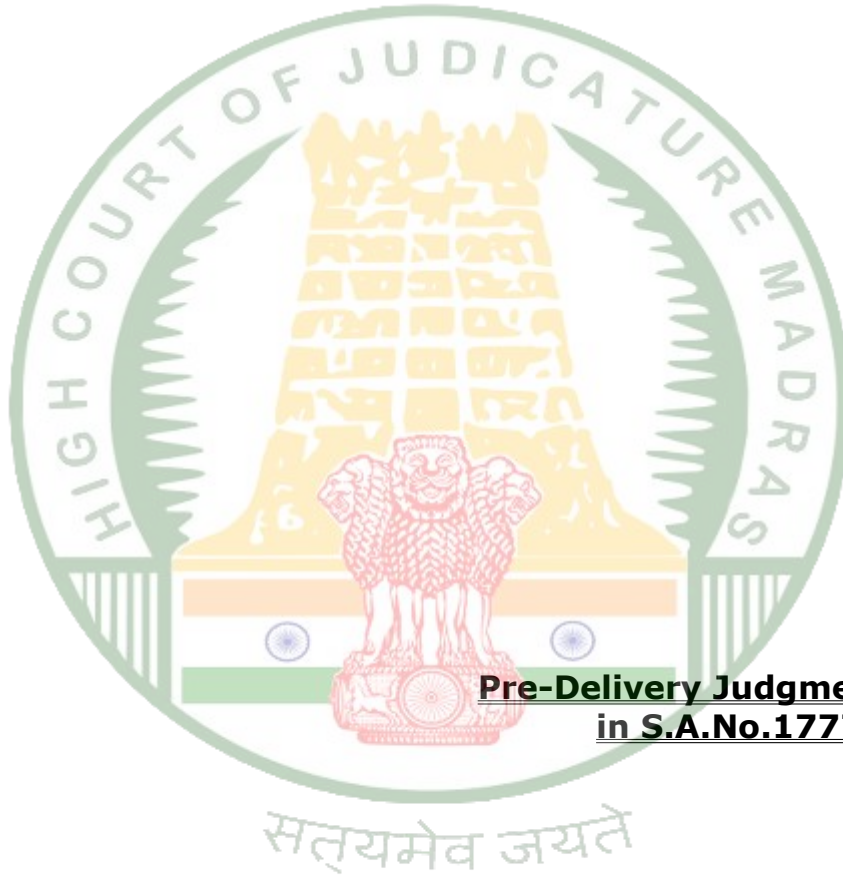
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To

- 1.The Additional District Court (Fast Track Court No.2)
Cuddalore.
2. The District Munsif Court, Cuddalore.
3. The Section Officer, V.R.Section, High Court, Madras.

T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.1777 of 2003**

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