



S.A.No.2117 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.2117 of 2002

Sita ... Appellant/Defendant
No.2

Vs.

1.Dhanasekar ... Respondent/Plaintiff
2.Rajamanickam
3.Rajalakshmi ... Respondents/
Defendant Nos.1 & 3

PRAYER: Second Appeal filed under Section 100 Civil Procedure Code against the Judgment and Decree dated 19.02.2002 made in A.S.No.36 of 2001 passed by the learned Principal Subordinate Judge, Nagapattinam reversing the Judgment and Decree dated 25.06.1999 made in O.S.No.12 of 1997 passed by the learned District Munsif, Nannilam.

For Appellant : Mr.K.s.Vaithianathan for
Mr.K.Chandrasekar

For Respondents : No appearance

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J U D G M E N T

This Second Appeal is filed against the Judgment and Decree dated 19.02.2002 made in A.S.No.36 of 2001 passed by the learned Principal Subordinate Judge, Nagapattinam partly reversing the Judgment and Decree dated 25.06.1999 made in O.S.No.12 of 1997 passed by the learned District Munsif, Nannilam.

2.The second defendant is the appellant who lost the case before Lower Appellate Court filed this present Second Appeal before this Court.

3.The sum and substance of the plaint averments is as follows:

The suit schedule property situated in Mappillaikuppam Village and the said property is belonged to Arulmigu Kailasanathar Swamy Temple. In the year 1983, the Administrative Officer of Kailasanathar Swamy Temple executed a lease deed in favour of the first defendant. Thereafter, the first defendant approached the plaintiff in order to construct the common house. For the acceptance the plaintiff paid



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Rs.15,000/- to the first defendant for construction of house.

Thereafter, the first defendant constructed the house in the suit schedule property. Thereafter, the first defendant grabbed the premises along with his mother, third defendant, since, the plaintiff was working in Telephone Exchange at Kutralam, who is not able to construct a house at the suit schedule property. However for the suit schedule property the local authorities assigned door No.6A. The suit property was commonly enjoyed by the first defendant along with his mother, third defendant. A small hut was put up by one Ponnukannu Mudaliar in the portion of the above said property. In the year 1981, the above said Ponnukannu Mudaliar left the village. Even in the year 1983, the suit properties are vacant site and the hut put up by one Ponnukannu Mudaliar was destroyed. Thereafter, the first defendant constructed a house and is residing there. While being so, the second defendant who is none other than the daughter of Ponnukannu Mudaliar filed a case in R.C.O.P.No.5 of 1985 against the first defendant and the third defendant.

4.After the trial, the Rent Control Tribunal passed an eviction



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order against the first and third defendant. Aggrieved by the same, without the knowledge of the plaintiff, the first defendant and the third defendant preferred an appeal before the Appellate Court.

5. Therefore, the plaintiff filed a suit for declaration to stop the eviction proceedings initiated by the second defendant. Thereby, the plaintiff filed a suit for partition and that the eviction proceedings not binding on the plaintiff and his claim of 50% of the share of the suit schedule property. The first and third defendant set ex-parte by the Lower Court. However, the second respondent contested the case.

6. The sum and substance of the written statement filed by the second defendant is as follows.

In order to decide the right of the second defendant who succeeded in the RCOP No.5 of 1985, the plaintiff filed a suit in O.S.No.12 of 197 at the time of eviction proceedings initiated by the second respondent. The third defendant is the mother of the plaintiff and the first defendant. The second defendant's father one Ponnukannu Mudaliar obtained the lease hold rights from the temple authorities of Kailasanathar Swamy Temple. After obtaining the lease



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hold right the second defendant's father construct a house and gave the house for rental purpose to the first and third defendants. Since the first and third defendants failed to pay the rental, thereby the second respondent initiated a Rent Control Proceedings against the first and the third defendants. After trial, the Rent Control Tribunal passed an eviction order in favour of the second respondent. Aggrieved by the same, the plaintiff, the first and the third defendants filed an appeal before the lower appellate court. The lower appellate court also confirmed the order passed by the Rent Control Tribunal. Aggrieved by the same, the plaintiff filed a suit in O.S.No.12 of 1997 which was dismissed and against the same A.S.No.36 of 2001 was filed which was allotted in favour of the plaintiff by allowing the appeal in part and granted 50% of the share in favour of the plaintiff and confirmed the order passed by the Rent Control Tribunal. Aggrieved by the same, the second defendant filed the present appeal before this Court.

7.At the time of admission this Court framed the substantial question of law as follows:

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1. Whether the Courts below is right in coming to the conclusion that neither the High Court in CRP No.2643 of 1996 nor Rent Control Authorities below have decided about either of identity of Door No.6 and 6A or about the ownership of the property, especially when this Hon'ble Court has categorically held in the said CRP that Rent Control Authorities have rightly appreciated the fact and hence come to a definite conclusion that the appellant herein is the landlord and the right of the building was recognised by the third respondent who is noneless than the mother of respondents 1 and 2?

2. Is the lower court is right in deciding the question of title of Door No.6A when it has been found categorically in the prior proceedings that Door No.6 and 6A are one and the same?

3. Is the lower court is right in coming to the conclusion that there was a fresh lease in favour of the second respondent by the temple for the site when admittedly either Ponnukannu Mudaliyar nor the appellants have at any time surrendered their rights of tenancy to the temple?

8. The learned counsel for the appellant submitted that the suit



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schedule property belongs to Ponnukannu Mudaliyar, who is none other than the father of the second defendant. The said Ponnukannu Mudaliyar obtained the lease hold rights from the temple authorities of Kailasanathar Swamy Temple, after obtaining the lease hold rights of the land, the second defendant's father construct a house in the year 1981, thereafter the said Ponnukannu Mudaliyar gave the said house to the first and third defendants for rental purpose. After the death of the said Ponnukannu Mudaliyar, the second defendant succeeded the lease hold right from her father, thereafter she collected the rent from the first and third defendants. However, the first and third defendants failed to pay the rent, thereby, the appellant/second defendant initiated the rent control proceedings against the plaintiff, his brother and his mother and succeeded the case before the Rent Control Tribunal as well as this High Court. In order to decide the rights, the plaintiff filed the vexatious suit. The plaintiff did not mark any document to show that he got the lease hold right from the temple authorities of Kailasanathar Swamy Temple either by him or by his brother. In the absence of any document with regard to the lease hold rights from the temple, the plaintiff has no right to claim partition in



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the suit schedule property. However, the lower appellate court without any material, granted 50% share in favour of the plaintiff, his brother and his mother which is unsustainable and the plaintiff also has not established the contribution of Rs.15,000/- for the construction of the said house. Hence, the order passed by the lower appellate court is perverse.

9.Inspite of notice none appears for the respondent and the second appeal being of the year 2002, this Court is inclined to decide the appeal on the basis of the materials available.

10.On perusal of the material records particularly the plaint averment, the suit schedule property is a temple property. Initially the second defendant's father Ponnukannu Mudaliyar obtained the lease hold right over the suit schedule property. After the demise of the said Ponnukannu Mudaliyar, it was alleged that the plaintiff's brother i.e, the first defendant obtained the lease hold right from the temple authorities. Thereafter it is alleged that the plaintiff paid



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Rs.15,000/- for construction of house on the leased land. However, no documents were marked in order to establish the lease hold rights and construction of house in the suit schedule property. The appellant though claimed lease hold rights, the second defendant claimed her father's lease hold rights and the construction of house therein before the Rent Control Tribunal. After perusal of the entire records the Rent Control Tribunal passed the eviction order in favour of the appellant herein. As against the eviction order the plaintiff, his brother and his mother agitated the case upto the level of High Court and lost the case before the appellate forum. At the time of eviction proceedings, the plaintiff filed the suit for partition and claimed that the RCOP order is not binding on the suit.

11.It is pertinent to note that the plaintiff is not residing in the said property. He is an employee of Telephone Exchange at Kutralam. If really the plaintiff has not occupied the said suit schedule property along with his brother, there was no necessity for the appellant herein to contest the case before the Rent Control Tribunal. Admittedly, the plaintiff's brother and mother are residing in the suit schedule property



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based on the alleged lease hold rights obtained by the second defendant's father from the temple authorities of Kailasanathar Swamy Temple. Thereafter, the second defendant filed a Rent Control Proceedings against the defaulters and the Rent Control Tribunal passed the order in favour of the second defendant, which has since been confirmed by the appellate Court.

12.The trial Court as also the Rent Control Tribunal has clearly held the property in favour of the appellant herein. Further, the leasehold rights of the respondents have not been established and so also the share of amount given for the construction of the house by the respondents has not been established by the respondents. When there is no material evidencing the advancing of the amount by the respondents to the appellant herein to construct the house, it was not right on the part of the appellate Court to order payment of 50% to the respondent herein. Therefore, the said order of the appellate court is erroneous and the same requires to be set aside.

13.Accordingly, the substantial questions are answered in the



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aforesaid terms.

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14.In the result, the Second Appeal is allowed and the order dated 19.02.2002 passed by the learned Principal Subordinate Judge, Nagapattinam is setaside and the order dated 25.06.1999 passed by the learned District Munsif, Nannilam is confirmed. However, there shall be no order as to costs.

14.02.2018

Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes/No

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To

- 1.The Principal Subordinate Judge,
Nagapattinam.
- 2.The District Munsif,
Nannilam.
- 3.The Section Officer,
V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

This second appeal is listed today at the instance of the Court.

2.The matter is listed today on the mentioning made by the learned counsel that the drafted copy of the order dated 14.02.2018 has not yet been made available and the web copy has also not been uploaded.

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3. To ascertain the status, the Court called for the bundle, which, on production, revealed that though the Personal Assistant had typed the order, but the same had been sent to the concerned Section without the order being signed. Therefore, to appraise the status and to seek the views of the counsel with regard to the same, the case has been listed today.

4. Upon the matter being listed, learned counsel appearing for the appellant fairly submitted that the second appeal was allowed by this Court vide order dated 14.02.2018. The copy of the unsigned order also reveals that the order has been passed by this Court, allowing the second appeal on 14.02.2018. Learned counsel further agreed that this Court may pass the very same order and that the Registry may be directed to issue the order copy as expeditiously as possible.

5. In view of the stand taken by the learned counsel, there is no necessity to pass any further orders other than signing the order dated 14.02.2018, which was typed and placed in the bundle, which has erroneously been sent without signature.

6. The matter is clarified accordingly.

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M.DHANDAPANI, J.
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