

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.07.2018	Delivered on: 05.07.2018
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CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.1814 of 2001
and
C.M.P.No.10786 of 2018

Mayilathal

... Appellant

Vs.

1. Vanjiappa Gounder
2. Kanakarajan
3. Kalimuthu
4. Lakshmi

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and decree of the learned Subordinate Judge, Udumalaipet dated 19.09.2000 made in A.S.No.96 of 1998 confirming the Judgment and decree of the learned District Munsif of Udumalaipet dated 30.10.1998 made in O.S.No.205 of 1994.

For Appellant :Mr.M.Muthappan

For Respondents:M/s.R.Babu
for S.B.Viswanathan for R1, R3 and R4

JUDGMENT

This Second appeal has been filed by the plaintiff against the Judgment and decree passed by the learned Sub Judge, Udumalaipet in A.S.No.96 of 1998 dated 19.09.2000 confirming the Judgment of the learned District Munisif, Udumalaipet in O.S.No.205 of 1994 dated 30.10.1998.

2. The appellant herein has filed a suit in O.S.No.205 of 1994 on the file of the District Munisif, Udumalaipet for granting permanent injunction restraining the respondents herein from interfering with her peaceful possession and enjoyment of the suit properties till she is evicted under due process of law. The learned District Munisif has dismissed the said suit by the Judgment dated 13.09.1998. Feeling aggrieved, the appellant herein has filed an appeal in A.S.No.96 of 1998 on the file of

the Sub Judge, Udumalaipet. The learned Sub Judge by the Judgment dated 19.09.2000 has dismissed the said appeal confirming the Judgment and decree passed by the learned District Munisif. As against the same, the appellant has filed the present second appeal.

3. For the sake of convenience, the parties are referred to as described before the Trial Court.

4. The averments made in the plaint are in brief as follows:

(a) These suit properties are belonged to the defendants 1 to 3. The first defendant is the father of the defendants 2 and 3. The fourth defendant is the wife of the first defendant. The plaintiff's only daughter Lakshmi was given marriage to the second defendant. The suit properties were leased out to the plaintiff by the first defendant on an oral lease agreement in the year 1987. Originally, the lease was fixed for one year and subsequently, the plaintiff continued to be in possession of the suit properties as a tenant holding over. The suit properties are included in a P.A.P Ayakut and when the Water was let in the PAP channel, the yearly lease amount to be paid was Rs.5,000/- and for the rest of the years, the amount was fixed as Rs.2,000/-. The lease amounts have been paid in advance for every year. Due to the close relationship between the plaintiff and the defendants, the plaintiff did not insist for the issue of receipts for the payments of lease amount. As per the oral agreement, the plaintiff used to pay the land revenue and water tax to the Revenue Department on behalf of the defendants. The plaintiff is not in arrears of rent till the date of filing of the suit.

(b) Due to some misunderstanding between the plaintiff's daughter and her husband, the second defendant abruptly left the house and is now staying with his father the first defendant. All the defendants are trying to evict the plaintiff forcibly from the suit properties. The defendants are not entitled to do so. The plaintiff being the tenant holding over, she cannot be evicted from the suit properties illegally except by due process of law. Hence the suit.

5. The averments made in the written statement filed by the first defendant and adopted by the defendants 3 and 4 are in brief is as follows:

The suit properties are the joint family properties of the defendants 1 to 3. The suit properties never leased out to the plaintiff at any point of time. The alleged oral lease in favour of the plaintiff is an imaginary one. The defendants' family is basically an agricultural family and there is no necessity to lease out the property to any one. The first defendant, on earlier occasion entrusted the money with his son

(second defendant) for paying land revenue. The second defendant who is also Son-in-law of the plaintiff had entrusted the money with the plaintiff and she had paid the land revenue for the suit properties. The Adangal Register maintained by the concerned Village Administrative Officer would disprove the case of the plaintiff. The Suit properties are under the possession and enjoyment of the defendants 1 to 3. The present suit has been filed with an ulterior motive to grab the properties and entrust the same to her daughter. Therefore, the defendants prayed to dismiss the above suit.

6. Based on the aforesaid pleadings, the learned District Munisif has framed necessary issues and tried the suit. During Trial, on the side of the plaintiff, the plaintiff examined herself as P.W.1 and also examined two more witnesses as P.Ws 2 and 3. She has also marked Exs.A-1 to A-4. On the side of the defendants, the first defendant was examined as D.W.1 and one Mr.Sivalingam was examined as D.W.2. They have marked Exs.B1 to B9 as exhibits.

7. The learned District Munisif, after considering the materials placed before him, found that the plaintiff has not proved the alleged lease and she also failed to prove that she is in possession of the suit properties. Accordingly, he dismissed the suit. As against the same, the plaintiff has filed an appeal in A.S.No.96 of 1998 on the file of the Sub-Judge, Udumalaipet. The learned Sub-Judge, Udumalaipet, has dismissed the said appeal, confirming the Judgement and decree of the Trial Court. Aggrieved by the same, the plaintiff has filed the present second appeal.

8. At the time of admitting this second appeal, this Court has formulated the following substantial questions of law:-

(i) In the light of the evidence adduced by P.W.3 Village Administrative Officer, who is the competent to speak about the possession of land, Are the Lower Courts right in dismissing the suit that the plaintiff is not in possession of the suit land?

(ii) Are the Lower Courts right in that the plaintiff's name is not found in Adangal extract to prove her possession?

(iii) Are the Lower Courts right in dismissing the suit when the application under Tamil Nadu Agriculture Land Records of Tenancy Right Act filed by the plaintiff is pending before the Competent Authority?

9. During pendency of this second appeal, the appellant/plaintiff has filed an application in C.M.P.No.10786 of 2018 under Order 41 Rule 27 r/w section 151 of C.P.C to receive the proceedings of the Tahsildar dated 10.07.2002, certificate of the Village Administrative Officer dated 22.03.2017 are Adangal extract as additional evidence.

10. Heard Mr.M.Muthappan, the learned counsel for the appellant/plaintiff and M/s.R.Babu and S.B.Viswanath, the learned counsel for the respondent Nos.1,3 and 4.

11.Question Nos.1 to 3:

The learned counsel for the appellant/plaintiff has submitted that the Courts below failed to appreciate the evidence of P.W.3 Village Administrative Officer of the concerned village who is the competent person to speak about the possession of the suit properties. He further submitted that the Courts below failed to appreciate that the plaintiff has paid kists for the suit property. He further submitted that the Courts below failed to consider that the plaintiff has already submitted an application before the Competent Authority to record her as a cultivating tenant under the Tamil Nadu Agriculture Land Records of Tenancy Right Act and the same was pending. He further submitted that even though, the plaintiff has filed an application before the Competent Authority to record her as a cultivating tenant during pendency of the suit, only on 16.07.2002, the Competent Authority has allowed the said application and passed an Order to record her as cultivating tenant. He further submitted that in pursuant to the said Order, the Village Administrative Officer of the concerned village has issued a certificate dated 22.03.2017 stating that the plaintiff has been recorded as cultivating tenant in-respect-of the suit properties and she is cultivating the suit properties and she also filed adangal extract and hence she has filed an application in C.M.P.No.10786 of 2018 under Order 41 Rule 27 r/w Section 151 of C.P.C to receive those documents as additional evidence. He further submitted that since those documents were received by the appellant only recently, she could not produce those documents before the Courts below. He further submitted that for deciding the present second appeal, those documents are absolutely necessary and hence he request to receive those documents as additional documentary evidence on the side of the appellant and allow the second appeal and decree the suit as prayed for.

12. The learned counsel for the respondents has submitted that the appellant/plaintiff has not produced any documentary evidence to show that the suit properties were leased out to her. He further submitted that since the plaintiff

is the close relative of the defendants, they have entrusted the money to pay the land revenue and accordingly she paid the land revenue and that will not give any right to the plaintiff over the suit properties. He further submitted that P.W.2 who is being the Village Administrative Officer, if he found that the plaintiff was cultivating the suit properties, he should have recorded the same in the Adangal Register, but without making such entry in the Adangal Register, he cannot give oral evidence stating that the plaintiff is cultivating the land. He further submitted that the documents, now sought to be filed by the appellant, have been obtained during pendency of the second appeal and hence no reliance can be placed upon those documents. He further submitted that since there was some dispute between the plaintiff's daughter and her Son-in-law (second defendant), the plaintiff has filed the above vexatious suit. He further submitted that after considering the evidence adduced by both sides, the Trial Court has rightly rejected the plaintiff's claim and the same has been confirmed by the First Appellate Court and in the said concurrent findings, this Court cannot interfere and therefore he prayed to dismiss the second appeal.

13. The undisputed facts are as follows:

The first defendant is the father of the defendants 2 and 3 and the fourth defendant is the wife of the first defendant. The plaintiff's daughter Lakshmi was married to second defendant. The suit properties belong to the defendants 1 to 3.

14. According to the plaintiff, the first defendant has leased out the suit properties orally to her in the year 1987 and since then she is in possession of the suit properties as cultivating tenant. Her further case is that due to the misunderstanding between her daughter and Son-in-law (second defendant), the defendants tried to dispossess her from the suit properties and hence she filed the above suit on 25.04.1994. Her further case is that till the date of filing of the suit, she has paid lease amount, but considering the close relationship, she did not insist the defendants to issue receipts.

15. The case of the defendants is that the alleged lease is false and the plaintiff is not cultivating the suit properties as alleged by her. Their further case is that they have been personally cultivating the suit properties. Their further case is that since there was a misunderstanding between the plaintiff's daughter and her Son-in-law (second defendant), the plaintiff has filed the above vexatious suit.

16. In order to substantiate her case, the plaintiff has relied upon Exhibits A1 to A4 and also the oral evidence of P.Ws 2 and 3. Exs.A1 to A4 are kist receipts stand in the name of the first defendant. According to the plaintiff, she has paid kist

and obtained Exs.A1 to A4. Merely, because the plaintiff has paid the kist for the suit properties, it cannot be presumed that she is cultivating the suit properties. She has not produced any other documentary evidence to show that she was in possession of the suit properties on the date of filing of the suit. P.W.2, though in his chief examination has stated that he has seen personally that the plaintiff has been cultivating the suit properties, in his cross examination, he has admitted that at the time of entering into the oral lease, he was not there. P.W.3 is the Village Administrative Officer. He has stated in his chief examination that only on enquiry, he came to know that the plaintiff has been cultivating the suit properties. According to the plaintiff, she has been placed in possession of the suit properties as tenant in the year 1987 and she has filed the suit in the year 1994. If really, the plaintiff was in possession of the suit properties for about seven years, P.W.3 being the Village Administrative Officer should have made entries in the Adangal Register as the cultivating tenant. Without making any such entries in the Adangal Register, he gave oral evidence as plaintiff is cultivating the suit properties. Therefore, the Courts below have rightly rejected his evidence.

17. Admittedly, the documents sought to be marked by the appellant/plaintiff have been obtained during pendency of the second appeal and they will not have any relevance for deciding this second appeal. The plaintiff should have establish her case that on the date of filing of the suit, she was in possession of the suit properties. Even if those documents are received that it will not help the Court to decide the point that on the date of the suit, she was in possession of the suit properties. Therefore, the C.M.P.No.10786 of 2018 is liable to be dismissed.

18. Since, the Courts below based on the facts have come to the conclusion that the plaintiff has miserably failed to prove that she was in possession of the suit properties on the date of filing of the suit, in the said concurrent factual findings, this Court cannot interfere. Accordingly, the substantial questions of law are answered against the appellant.

19. In the result, the Second appeal is dismissed. Considering the relationship between the parties, the parties are directed to bear their own costs. The connected Miscellaneous petition No.10786 of 2018 is also dismissed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

vv

To

1. The Subordinate Judge,
Udumalaipet.
2. The District Munsif,
Udumalaipet
3. The Section Officer, VR Section,
High Court, Madras.

+1 CC to Mr.M. Muthappan, Advocate sr 43799.

S.A.No.1814 of 2001
and
C.M.P.No.10786 of 2018

SVI (CO)
SP (09/08/2018)



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