



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

S.A.(MD)No.116 of 2018

WEB COPY

1.D.Ammulu
2.D.Anbalagan
3.D.Aasai @ Aasaithambi
4.D.Selvamani
5.D.Senthil

... Appellants/Appellants/
Defendants 1 to 5

Vs.

Thulasiammal Trust,
(Private Trust) through its Trustees

P.R.Krishnamoorthy (died after suit)

1.P.R.Seenivasan - Trustee

... Respondent/Respondent/
Plaintiff

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree in A.S.No.23 of 2013 on the file of the Principal Subordinate Court, Kumbakonam, dated 09.01.2017 confirming the judgment and decree in O.S.No.224 of 2006 on the file of II Additional District Munsif - cum - Judicial Magistrate, Kumbakonam, dated 19.07.2012.

For Appellants : Mr.V.Maragathavel
For Respondent : Mr.T.R.Subramanian

JUDGMENT

Challenging the judgment and decree passed in A.S.No.23 of 2013 on the file of the Principal Subordinate Court, Kumbakonam confirming the judgment and decree passed in O.S.No.224 of 2006, on the file of II Additional District Munsif - cum - Judicial Magistrate Court, Kumbakonam, the defendants have filed the above Second Appeal.

2. The plaintiffs filed the suit in O.S.No.224 of 2006 for recovery of possession and permanent injunction. According to the plaintiffs, the defendants are lessees under them in respect of the suit property. The defendants contended that they are cultivating tenants and therefore, the civil Court has no jurisdiction to entertain the suit and only the Tenancy Tahsildar has got jurisdiction to decide the issue involved in the suit.

3. Before the trial Court, on the side of the plaintiffs, P.W.1 was examined and 13 documents viz., Exs.A.1 to A.13 were marked. On



the side of the defendants, two witnesses were examined and Ex.B.1 was marked. The Advocate Commissioner's reports and plans were marked as Exs.C.1 to C.4.

4. The trial Court, taking into consideration the case of both sides, decreed the suit for recovery of possession and dismissed the suit in respect of permanent injunction. Aggrieved over the same, the defendants preferred an appeal in A.S.No.23 of 2013 and the plaintiffs preferred a cross-appeal in Cross-Appeal No.23 of 2013 in respect of the rejection of the prayer for permanent injunction.

5. The lower Appellate Court, after hearing both sides, decreed the suit in toto. Aggrieved over the same, the defendants have filed the above Second Appeal.

6. Heard Mr.V.Maragathavel, learned Counsel appearing for the appellants and Mr.T.R.Subramanian, learned Counsel appearing for the respondent.

7. The appellants have raised the following Substantial Questions of Law in the Second Appeal:

" (i) Whether the Courts below are right in granting injunction against the lawful lessees?

(ii) Whether the Courts below are right in granting recovery of possession to the plaintiffs when the defendants are lawful lessees of the land?

(iii) Whether the civil suit for recovery of possession against lessee of the lands is proper and maintainable?

(iv) Whether the plaintiffs have locus standi to file the suit?

(v) Whether the first Appellate Court having received and marked the documents produced as additional evidence is right in dismissing the appeal without considering the same?

(vi) Whether the first Appellate Court having received and marked the documents produced as additional evidence is right in dismissing the appeal without considering the same?"

8. On a careful consideration of the materials available on record and the submissions made by the learned Counsel appearing on either side, it could be seen that the main contention of the defendants is that the civil Court has no jurisdiction to entertain the suit for the reason that they are cultivating tenants in respect of the suit property. However, in support of their contention, they have not produced any documentary evidence before the trial Court. That apart, admittedly the defendants were not recorded as cultivating tenants in respect of the suit property. That being the case, the defendants cannot be construed as cultivating tenants under the plaintiffs in respect of the suit property.

9. The learned Counsel appearing for the respondents/plaintiffs



submitted that the defendants have not paid the rent to the plaintiffs since the year 1992. According to the plaintiffs, the defendants have not proved that they have regularly paid the rents to the plaintiffs without any default.

10. From the available oral and documentary evidences, it is clear that the defendants have defaulted in paying the rents to the plaintiffs from the year 1992 onwards. When the defendants have not established that they are cultivating tenants, the civil Court has jurisdiction to entertain the suit for recovery of possession and permanent injunction. Considering the oral and documentary evidences, the lower Appellate Court has rightly decreed the suit for recovery of possession and permanent injunction.

11. In these circumstances, I do not find any ground much less any Substantial Questions of Law to interfere with the judgment and decree of the lower Appellate Court. The Second Appeal is liable to be dismissed. Accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Kumbakonam
2. The II Additional District Munsif-cum-Judicial Magistrate,
Kumbakonam.

+1cc to Mr.T.R.Subramanian, Advocate in SR. No.67964
ssl
MK/SV VR/SAR 4/05.07.2018/3P/4C

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