

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.887 of 2001

and

CMP.Nos.24207, 7729, 16927 and 23414 of 2019

- 1.Jeevarathinam
2. Selvaganapathy

... Appellants/Appellants/Plaintiffs

Vs.

1. Kamala (deceased) ...1st Respondent/Respondent/Defendant
2. A.Jothi
3. A.Shankar

... Respondents 2 & 3/LRs of 1st Respondent

(RR2 and 3 brought on record as LRs of the deceased sole respondent vide order of court dated 03.08.2018 made in CMP.No.12437 to 12439/2018 in SA.No.887 of 2001)

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 10.02.2000 in A.S.No.84 of 1998 on the file of the Principal District Judge, Cuddalore dismissing the appeal against the judgment and decree dated 14.02.1998 in O.S.No.824 of 1995 on the file of the Principal District Munsif's Court, Cuddalore.

For Appellants : Mr.R.Sunil Kumar

For Respondents : Mr.V.Rajendran for R2 and R3

JUDGMENT

This second appeal has been filed by the plaintiffs against the judgment and decree passed by the Principal District Judge, Cuddalore in A.S.No.84 of 1998 dated 10.02.2000 confirming the judgment and decree passed by the Principal District Munsif, Cuddalore in O.S.No.824 of 1995 dated 14.02.1998.

2. The appellants herein had filed a suit in O.S.No.824 of 1995 on the file of Principal District Munsif, Cuddalore for

the relief of declaration of their title and recovery of vacant possession after removing super structure. The learned Principal District Munsif, Cuddalore by the judgment dated 14.02.1998 had dismissed the said suit with costs. Aggrieved by the same, the plaintiffs had filed an appeal in A.S.No.84 of 1998 on the file of the Principal District Judge, Cuddalore. During pendency of the said appeal, the plaintiffs had filed an application in I.A.No.146 of 1999 under Order 41 and Rule 27 of CPC seeking leave of the court for adducing additional documentary evidence. The learned Principal District Judge by the judgment dated 10.02.2000 had dismissed the said I.A.No.146 of 1999 and also the said appeal with costs and thereby confirmed the judgment and decree passed by the trial court. Feeling further aggrieved, the plaintiffs have 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:

The first plaintiff is the mother of the second plaintiff. The suit property belonged to the first plaintiff. The defendant was inducted as a tenant ten years ago by oral lease. Already, one Sattanathan claimed right over the suit property. Hence, the first plaintiff had filed a suit for declaration and permanent injunction in O.S.No.818 of 1998 on the file of the District Munsif, Cuddalore and the said suit was dismissed. As against the same, the first plaintiff had filed an appeal in A.S.No.55 of 1992 on the file of Sub Judge, Cuddalore. In that appeal, a compromise was entered. As per the terms of compromise, the said Sattanathan conceded the title of the second plaintiff herein with regard to the suit property and other properties held by other tenants. The second plaintiff's title to the property as successor in interest to the original lessor, Jeevarathnammal (first plaintiff) cannot be questioned by the defendant. The defendant is estopped from denying the title of the plaintiffs. The disputes between the first plaintiff and the said Sattanathan emboldened the defendant to deny the plaintiffs' title and she began defaulting in payment of monthly rent. Hence, the first plaintiff had issued a notice to the defendant through her counsel dated 30.04.1994 calling upon her to deliver vacant possession of the suit property. The defendant after receipt of the said notice had sent a reply notice through counsel with false averments. She disputed the title of the first plaintiff and hence the plaintiffs had constrained to file the suit to declare the second plaintiff's title to the suit property and for consequential relief of recovery of possession after removal of super structure and also for past damages of Rs.210/- and future damages.

5. The averments made in the written statement filed by the defendant are in brief as follows:

The suit is not maintainable since the suit property had been possessed by the defendant and her predecessors in title for the past three generations without any interruption. The thatched house in the suit property is very old and the same was constructed by Rathnavel Mudaliar who is father-in-law of the defendant, which has been repaired and re-roofed from time to time by spending huge amount of Rs.50,000/- but, the plaintiffs never raised any objection. Hence the property is subject to the adverse possession also. The compromise entered between Sattanathan and the plaintiffs could not bind upon the defendant. The defendant denied the alleged lease. The plaintiffs are not having any title over the suit property and hence there is no question to pay any rent or default in paying the rent. After receipt of the notice, the respondent had sent a reply notice with correct particulars. There is no cause of action and therefore she prayed to dismiss the suit.

6. Based on the aforesaid pleadings, the learned District Munsif, Cuddalore had framed necessary issues and tried the suit. On the side of the plaintiffs, the first plaintiff was examined as PW1 and Exs.A1 to A33 were marked on their side. On the side of the defendant, the defendant examined herself as DW1 and also examined one more witness as D.W.2. She had marked Exs.B1 to B5 as exhibits.

7. The learned Principal District Munsif, Cuddalore after considering the materials placed before her found that the plaintiffs failed to establish their title over the suit property and also the alleged lease. She further found that since the defendant was not a party to the suit in O.S.No.818 of 1998, the alleged compromise entered between the first plaintiff and the said Sattanathan could not bind upon the defendant. Accordingly, she dismissed the suit. However, she directed the parties to bear their respective costs. Aggrieved by the same, the plaintiffs had filed an appeal in A.S.No.84 of 1998 on the file of the Principal District Judge, Cuddalore. During pendency of the said appeal, the plaintiffs had filed an application in I.A.No.146 of 1999 under Order 4 Rule 27 of CPC for seeking leave of this Court to adduce additional documentary evidence. The learned Principal District Judge, Cuddalore by the judgment dated 10.02.2000 had dismissed the said IA.No.146 of 1999 and also dismissed the appeal with costs confirming the judgment and decree passed by the trial court. Feeling further aggrieved, the plaintiffs have filed the present second appeal.

8. This Court at the time of admitting the second appeal has formulated the following substantial questions of law:-

"i) Whether the courts below did not err in dismissing the plaintiffs suit, especially when the plaintiff had adduced all the necessary indicia of proof regarding title namely civil court decree and Ex.A.2 the house tax receipts?

ii) Whether the question regarding title ought not have been answered affirmatively in favour of the plaintiff when the defendant failed to establish the plea of adverse possession, which was consistent only with the case of conceding title of the plaintiffs but pleading a lost grant?"

9. Heard Mr.R.Sunil Kumar, the learned counsel for the appellants and Mr.V.Rajendran, the learned counsel for the second and third respondents.

10. During pendency of this second appeal, the sole respondent/defendant died and hence her legal representatives were impleaded as the respondents 2 and 3. Further, during pendency of the second appeal, the appellants have filed an application in CMP.No.7729 of 2019 under Order 41 Rule 27 of CPC seeking permission of this court to receive certified copies of the judgments and decrees passed in O.S.Nos.5 of 1996, 780 of 1994, 377 of 1998; in AS.Nos.19 of 99, 5 of 2002, 46 of 2003 and delivery receipt in EP.No.37 of 2003 and certified copy of the order in EP.No.341 of 2004 in O.S.No.377 of 1998 as additional documentary evidence. They also filed another application in CMP.No.16927 of 2019 under Order 41 Rule 27 of CPC to receive a copy of the judgment passed by the Hon'ble Supreme Court in Civil Appeal No.5276 of 2008 dated 23.10.2018 as additional documentary evidence.

11. The respondents also filed an application in CMP.No.23414 of 2019 under Order 41 Rule 27 seeking permission of this Court to file Ration Card, Aadhar Card stands in the name of first defendant, Aadhar Card stands in the name of second respondent, nativity certificate issued to the second respondent, death certificate and Election Identity card of the first respondent as additional documentary evidence.

12. Since the dispute is with regard to the title, this court is of the view that the documents filed by both the parties are vital documents for deciding the issue between the parties. Further, the plaintiffs, before the First Appellate Court, had filed an application in I.A.No.146 of 1999 seeking permission of the First Appellate Court to file house tax extract, but the First Appellate Court has dismissed the said

application. As already pointed out that the dispute is with regard to the title, the said document is also an important document to decide the issue between the parties and hence this court is of the view, the order passed by the First Appellate Court in I.A.No.146 of 1999 dismissing the said application is liable to be set aside. Accordingly, the order passed by the First Appellate Court in I.A.No.146 of 1999 is set aside.

13. Therefore, this court is of the view that the matter has to be remitted back to the First Appellate Court with a direction that the First Appellate Court has to receive the documents filed by the appellants in IA.No.146 of 1999 and also the documents now filed by both the parties in CMP.Nos.7729 of 2019, 16927 of 2019 and 23414 of 2019 and gave an opportunity to both the parties to adduce oral evidence to mark the aforesaid documents by following the procedure prescribed under Order 41 Rule 28 of CPC and thereafter dispose of appeal in accordance with law. Accordingly the Substantial questions of law are answered.

14. In the result, CMP.Nos.7729,16927 and 23414 of 2019 are allowed and the second appeal also allowed. The Judgment and decree passed by the Courts below are set aside. The matter is remitted back to the First Appellate Court. The First Appellate Court is directed to receive the documents filed by the appellants/plaintiffs in I.A.No.146 of 1999 in A.S.No.84 of 1998 and also the documents filed before this Court in CMP.Nos.7729,16927 and 23414 of 2019 and mark those documents by following the procedure prescribed under Order 41 Rule 28 of CPC and thereafter dispose of the appeal in A.S.No.84 of 1998 in accordance with law. Consequently, connected miscellaneous petition in CMP.No.24207 of 2019 is closed. No costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

Vv
To

1. The Principal District Judge,
Cuddalore.
2. The Principal District Munsif's Court,
Cuddalore.

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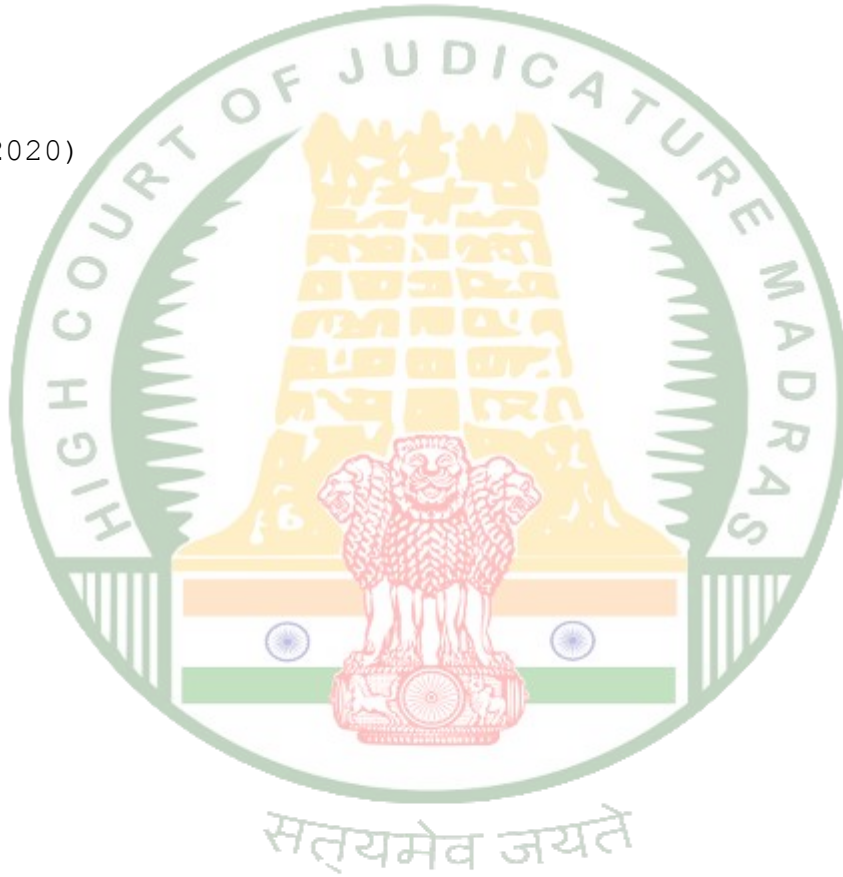
Copy to
The Section Officer, VR Section,
High Court, Madras.

+1 CC to Mr.R.Sunil Kumar, Advocate sr 98216.

+1 CC to Mr.V.Rajendran, Advocate sr 98637.

S.A.No887 of 2001
and
CMP.Nos.24207, 7729,
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SR(CO)
SP(16/12/2020)



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