

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.04.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

S.A.No.351 of 2008

and

M.P.No.1 of 2008

R.S.Nataraj Gounder

...Appellant/Plaintiff/Appellant

Versus

1.Nataraj
2.Nanjathal
3.Vijayalakshmi
4.Chinnathai

...Defendants/Respondents

Second Appeal filed under Section 100 of C.P.C against the judgment and decree of the Subordinate Judge's Court at Pollachi, dated 15.12.2004 in A.S.No.19 of 2004 confirming the judgment and decree of the District Munsif Court at Pollachi, dated 28.01.2004 in O.S.No.246 of 1997.

For Appellant : Mr.P.Valliappan

For Respondents 1 & 2 : No Appearance

Respondents 3 & 4 : Mr.T.J.Thevaraj

J U D G M E N T

This Second Appeal has been filed against the judgment and decree passed by the learned Subordinate Judge, Pollachi (First Appellate Court) in A.S.No.19 of 2004 dated 15.12.2004, in confirming the judgment and decree passed by the learned District Munsif, Pollachi (Trial Court) in O.S.No.246 of 1997 dated 28.01.2004.

2. The unsuccessful plaintiff is the appellant herein. The case of the plaintiff is that the first defendant leased out his property to him in the year 1995, for a period of one year on an annual rent of Rs.5,000/-. Subsequently, on 28.08.1995, the said lease was renewed for another one year on the same annual rent in advance. The suit property consists of coconut

trees, and as a cultivating tenant, the plaintiff is in possession and enjoyment of the same as per the lease. When the lease was subsisting, the first defendant wanted to sell the property to the second defendant. But the plaintiff refused to surrender the possession of the property. Therefore, the defendants attempted to dispossess the plaintiff from the suit property but the plaintiff again refused to surrender the possession. Hence, the plaintiff had filed the suit for the relief of permanent injunction, restraining the defendants/respondents and their men from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit property as a cultivating tenant.

3. The first defendant filed a written statement contending that the suit property does not belong to him as his absolute property, since, he sold the same in favour of the second defendant and the second defendant also taken possession of the same. It is further stated that in the year 1995, the first defendant leased the property in favour of the plaintiff under a oral lease, however, he denied the renewal for another one year. After the expiry of the lease, the plaintiff handed over possession to the first defendant. Therefore, he contended that the suit property is in possession of the second defendant and hence, the relief sought for by the plaintiff is not maintainable and he prayed for dismissal of the suit.

4. Second defendant remained ex-parte in the suit.

5. The defendants 3 & 4 contested the suit by filing a written statement, contending that the property, measuring an extent of 1.61 ½ acres in S.F.No.60 of Vakuthampalayam Village originally belonged to one Nanjappa Gounder, by virtue of a sale deed executed in his favour by one Sellammal. After the demise of said Nanjappa Gounder, the first defendant, one Subramaniam and other defendants are entitled to 1/4th share each over the property. Therefore, the defendants contended that the first defendant alone has no individual right to lease out the property in favour of the plaintiff. They further contended that since the first defendant is only entitled to 1/4th share in the suit property, the lease deed, alleged to have been executed by the first defendant in favour of the plaintiff will not bind the other defendants. The defendants 3 & 4 also contended that themselves and one Subramaniam (the brother of the defendants) have filed suit against the defendants 1 & 2 for partition and the same is pending. Therefore, the first defendant has no locus standi to lease out the property in favour of the plaintiff. Thus, they prayed for dismissal of the suit.

6. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 besides examining two other witnesses as P.W.2 & P.W.3 and twelve documents were marked as Exs.A1 to A10 and Exs.X1 & X2. On the side of the defendants, fourth defendant examined herself as D.W.1 and one other witness was examined as D.W.2. and Ex.B1 was marked.

7. The trial Court, on the basis of pleadings and evidence, dismissed the suit by holding that the plaintiff is not in possession of the suit property and the alleged Revenue Records produced by the plaintiff were only concocted documents, created by him to suit his requirement for obtaining the decree in his favour. The trial Court further held that the plaintiff's daughter married the second defendant's son and that there is a collusion between the plaintiff and the second defendant.

8. Challenging the judgment and decree passed by the trial Court, the plaintiff/appellant filed a First Appeal in A.S.No.19 of 2004 before the First Appellate Court and the First Appellate Court also confirmed the judgment and decree of the trial Court and dismissed the said First Appeal by holding that the plaintiff is not in possession of the suit property and further, observed that the suit has been filed only to defeat the rights of the other co-owners, who claim their share in the suit for partition.

9. Aggrieved against the concurrent judgments and decrees, the plaintiff has filed the present Second Appeal.

10. At the time of admitting the Second Appeal, the following substantial questions of law were framed by this Court:-

(i) When the authority under the Tamil Nadu Cultivating Tenants Protection Act, 1955 has declared that the appellant is a cultivating tenant entitled to the protection under the Act, whether the Courts below are correct in law in holding that the said order passed by the duly empowered authority is not tenable in law?

(ii) When a person in possession is a cultivating tenant, he is not entitled to get protection of his possession, except under due process of law, whether the respondents/defendants are entitled to evict the appellant/plaintiff, except under due process of law and whether the Courts below are correct in law in holding that the appellant has not proved his possession, by ignoring Exs.A1 to A12, Material Documents, which would show and establish the case of

the appellant?

11. The learned counsel appearing for appellant/plaintiff submitted that the first defendant is the absolute owner of the property and in the year 1995, he leased out the same in favour of the plaintiff, for a period of one year on an annual lease rent of Rs.5,000/-, which was subsequently extended for another one year on the same annual rent. Pursuant to such lease-hold right, the plaintiff was enjoying the property as a cultivating tenant and he has also taken steps to record his name as a cultivating tenant under the Tamil Nadu Cultivating Tenants Protection Act before the Record Tenancy Officer, Pollachi. The learned counsel therefore, contended that when the lease granted in favour of the appellant/plaintiff has not been denied in its entirety, the appellant/plaintiff cannot be evicted from the suit property, except, by due process of law, whereas, both the Courts below without considering all these aspects, wrongly held that the plaintiff was not in possession of the property as cultivating tenant and therefore, he prays this Court to allow the Second Appeal.

12. The learned counsel appearing for the respondents 3 & 4 submitted that the suit itself was filed in order to defeat the rights of the defendants/co-owners, who claim their share in the suit for partition. He also submitted that all the Revenue Records produced by the appellant/plaintiff were all bogus documents as they were created only after the filing of the present suit for the purpose of obtaining decree in his favour. Therefore, the learned counsel submitted that both the Courts below thoroughly analyzed the records and factual aspects and rightly came to the conclusion that the possession of the appellant/plaintiff in the suit property is not proved and therefore, held that he is not a cultivating tenant over the same. The learned counsel further contended that though the first respondent/first defendant contended that the suit property does not belong to him as he sold the same in favour of the second defendant, and the second defendant also taken possession of the same, the second defendant cannot claim joint possession over the same. Hence, the learned counsel prays that this Second Appeal is liable to be dismissed.

13. Heard the counsels on both sides and perused the materials available on record.

14.1. According to me, the Courts below have rightly held that the appellant/plaintiff is not entitled to the relief of permanent injunction. Though it is the case of the appellant/plaintiff that he is in possession of the suit property from the year 1995, by virtue of a lease given in his favour by the first defendant, and to substantiate the same, the

plaintiff marked Ex.A.5, viz., Order passed by the Tahsildar and Record Officer in T.R.No.9 of 1997, to prove his tenancy, it is to be noted that the same was created by him only after the filing of the suit to suit his own requirement, and this aspect has been rightly taken note of by the trial Court and dismissed the suit holding that the plaintiff is not in possession of the property.

14.2. The first Appellate Court also upheld the findings of the Trial Court and dismissed the First Appeal. Further, the Courts below found that, none of the documents marked by the plaintiff would show that the lease was effective and the plaintiff is in continuous possession of the property. Moreover, the plaintiff has stated that he is a cultivating tenant, however, in the Adangal Extract marked before the trial Court, he himself admitted that he has not cultivated any crop in the suit property. Further, the trial Court found that the plaintiff's daughter married the second defendant's son and there is a collusion between the plaintiff and the second defendant. That apart, there is also a suit pending between the co-owners in O.S.No.231 of 1997 as evident through Ex.A10. Further, Ex.B1, certified copy of suit register extract related to O.S.No.867 of 1996 of District Munsif Court, Pollachi clearly establishes such collusion. Further, the Revenue Records, Exs.A4, A6 and A7 marked by the appellant/plaintiff to prove his possession were of the year 2000 and in those documents, the property in Survey No.60/8 is classified as a waste land and therefore, no cultivation can be done. Therefore, plucking of the coconut from the coconut trees standing in the suit property by the appellant/plaintiff is obviously a false statement.

14.3. When the lease-hold right of the appellant/plaintiff itself is in dispute, he can no longer be called as lessee. The first Appellate Court has also considered all the above aspects and held that the first defendant renewal of the lease was not been true. The possession cannot be proved merely on the basis of the above documents. The suit itself is a result of collusion between the parties. The parties herein are co-owners and the suit is one of collusive nature, as the plaintiff is none other than that the close relative of the second defendant. Therefore, the legal principle that one entered into the possession lawfully cannot be evicted, except, under due process of law, cannot be applied in the facts and circumstances of this case. Hence, the concurrent judgments passed by the Courts below does not warrant interference in this Second Appeal. Hence, the substantial questions of law are answered against the appellant/plaintiff.

15. In the result, this Second Appeal is dismissed confirming the judgments and decrees of the Courts below. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

To

1. The Sub Court,
Pollachi.
2. The District Munsif Court,
Pollachi.
3. The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.G. Vivekanand, Advocate sr 37144.
+1 CC to Mr.P.Valliappan, Advocate sr 36774.

S.A.No.351 of 2008

JP (CO)
SP (10/09/2019)

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