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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2019

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1357 of 2003

1.Venugopal
2.Rajasekaran

..Appellants/Appellants/
Defendants

...Versus...

Palani Pillai

..Respondent/Respondent/
Plaintiff

PRAYER:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.180 of 2002 dated 20.03.2003 on the file of the Principal District Judge, Villupuram confirming the judgment and decree made in O.S.No.523 of 1998 dated 12.06.2002 on the file of the Principal District Munsif, Villupuram.

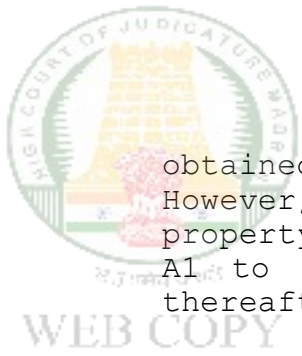
For Appellants :: Mr.K.P.Prabhuraj
for Mr.R.Srinivas

For Respondent :: Mr.S.T.Bharath Gowtham
for Mr.T.R.Rajaraman

J U D G M E N T

The defendants in the suit in O.S.No.523 of 1998 are the appellants herein.

2. The respondent/plaintiff filed the said suit for recovery of possession averring that the suit property originally belonged to his father and on his death, his wife Pappathy Ammal, namely the mother of the plaintiff got the same and thereafter, the plaintiff and his brother-Venkatachalam are entitled to the suit property pursuant to the partition deed in which the property was allotted to him and the first defendant is the father of the second defendant who were in possession of the property and subsequently, he has remitted Rs.5,000/- and



obtained discharge receipt Exhibit A3 from the second defendant. However, they have not handed over the possession of the suit property and hence, the plaintiff issued a legal notice-Exhibit A1 to hand over the possession and the reply was Ex.A2 and thereafter, the plaintiff has filed the suit.

3. The appellants/defendants have filed a written statement (The written statement filed by the first defendant was adopted by the second defendant) and they stated that they are not in possession of the property by way of the mortgage deed and they are in possession as cultivating tenants and there is a mortgage as pleaded by the plaintiff and also contended that Exhibit A3 discharge receipt is a forged one and hence, the defendants contested the suit.

4. The trial Court has framed necessary issues and subsequently having regard to the plea of forgery in Ex.A3, the acknowledgement card/Ex.X-1 for the legal notice Ex.A1 and the second defendant's signature in the vakalath which is marked as Ex.X2 which was sent to P.W.3 Finger Print Expert before the Court and his opinion and the report of the finger print expert as to the signature is marked as Ex.X3.

5. Based upon the answer elicited in the cross-examination of P.W.2 and the D.W.3, the Trial Court has categorically given a finding that the signature in Ex.A3 and Ex.X1 are tallying as per the report of the finger print expert marked as Ex.X3 and further held that in the absence of any positive evidence from the Revenue Tahsildar (as required under Tamil Nadu Cultivating Tenants Protection Act), the trial Court has negated the plea of the appellants/defendants and held that they are not the cultivating tenants and the trial Court also held that the amount of Rs.5,000/- has been duly stands discharged and therefore, ordered for handing over the delivery of possession, however the trial Court rejected the plea for mesne profit.

6. Taking into consideration the fact that the suit has been disposed after contest and decreed and the appeal has been dismissed by the first appellate Court, this second appeal has been filed by the defendants.

7. The above second appeal was admitted on 10.10.2003 on the following substantial questions of law:-

1. Whether an issue whether the defendants are cultivating tenants can be framed by a civil court and answered in the negative?
2. Whether a receipt simpliciter



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evidencing repayment of money can be taken as establishing a discharge of a mortgage?

3. Whether a usufructuary mortgage can be pleaded and proved by oral evidence of the mortgagor alone.

4. Whether the suit can be decreed on the sole ground that the defendants had failed to prove their defence, and

5. Whether the plaintiff need not prove his case by preponderance of probabilities?

8. The learned counsel for the appellants/defendants would submit that both the Courts below have failed to consider the evidence of P.W.2 and D.W.3 in proper perspective and advanced his arguments on the lines of the substantial questions of law as stated above.

9. On a perusal of P.W.2's evidence, it is clear that on the date 16.10.1991, the plaintiff has pledged the jewels with D.W.2 and raised an amount of Rs.5,000/- and paid to the second defendant and the same has been reduced in writing in Ex.A3 - discharge receipt.

10. Furthermore, it is to be stated that no positive evidence in respect of the cultivating tenancy as pleaded by the tenants had been projected or filed before the Courts below.

11. The learned counsel appearing for the appellants/defendants would contend that the respondent/plaintiff has to prove his case and he cannot take advantage of the weakness of the defendants. This Court has given its anxious consideration to the said contention raised by the learned counsel for the appellants and having regard to the evidence of the Forensic Expert, however to the dismay, though the defendants have taken a specific plea in the written statement that they are in possession of the suit property as cultivating tenants, the burden of proof that the said plea squarely falls upon the defendants and in the absence of any document or certified copy of the order from the concerned Tahsildar viz., Special Tahsildar (Tamil Nadu Cultivating Tenants Protection Act), the trial Court as well as the Lower Appellate Court have rightly held that the defendants have failed to prove the said plea and hence, the contention of the learned counsel as stated above is not applicable to the facts of this case in view of the specific plea.

12. In the absence of positive evidence, both the Courts below have rightly come to the conclusion that the defendants who raised their plea, have not proved their case and hence, they have failed on that ground and hence, the similar findings



recorded by both the Courts below do not warrant any interference by this Court in this appellate stage.

13. Yet another point is that whether the signature contained in Ex.A3 discharge receipt for payment of Rs.5,000/- from the plaintiff to the second defendant. In this regard, an expert opinion has also been sought for, as could be seen from, the evidence of P.W.3 and P.W.3, has categorically stated that the signature found in Exhibit A3 and the acknowledgement in Ex.A1 legal notice are one and the same and the finding of fact based upon the expert opinion cannot be interference with, in the absence of the evidence.

14. At this juncture, it is pertinent to note that the lower Appellate Court has categorically held that the second defendant has entertained at different means and methods in putting his signature in Ex.X1, Ex.X2 and in specimen signature. However, it came to light that Ex.A3 contains his signature as per the Expert opinion as per Ex.X3 (report of the finger print expert) also assumes significance.

15. After perusing the expert evidence of P.W.3 and his report Ex.X3, the said findings of the Courts below appear to be just and proper and does not call for any interference and as such, the plaintiff who has approached the Court for the relief of delivery of possession, has issued Ex.A1 being the legal notice based upon Ex.A3 repayment receipt which has been given and Ex.A2 is the reply notice of the second defendant/second appellant herein and the same is found to be proper notice for the prayer sought for.

16. In view of the specific evidence of the forensic finger print expert P.W.3 and Ex.X3 being the report of the finger print expert, coupled with the fact that in the absence of any positive evidence to substantiate the plea of the defendants for their alleged legal status of being in possession of the land as "cultivating tenants" and hence, both the Courts below on proper application of evidence on records negating the plea of defendant/appellant and the same is hereby confirmed.

17. The substantial questions of law in Questions Nos.3,4,5 do not arise for consideration, since the appellants/defendants have not produced any document and both the Courts below have rightly held that in the absence of positive evidence regarding the cultivating tenancy, the Civil Court cannot go into the issue, which is sustainable and furthermore in view of the expert opinion of P.W.3 and the discharge receipt in Ex.A-3 have been proved in the manner known to law. Both the substantial questions of law 1 & 2 are negated against the appellants and the substantial questions of law 3,4,5 do not arise for



consideration on the factual matrix as narrated above.

18. Resultantly, I do not find any merits in the Second Appeal. In the result, this Second Appeal is dismissed. No costs. The judgment and decree of the first appellate Court and the trial Court are confirmed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1. The Principal District Judge, Villupuram
2. The Principal District Munsif, Villupuram.
3. The V.R.Section, High Court, Madras.

+1 cc to Mr.R.Srinivas Advocate sr 57473

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