

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.04.2019

PRONOUNCED ON : 03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.588 of 2007

Subbaraya Chettiyar (died)

1.Rajalingam

2.Ramamurthy

... Appellants and LRS of the  
deceased Plaintiff

Vs.

Sri Kanniga Parameswari Amman  
Mutt @ Chattiram by its Managing  
Trustee, Periyakadai Veedhi,  
Namakkal.

... Respondent/Defendant

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 27.11.2006 passed in A.S.No.50 of 2000 on the file of the Subordinate Court, Namakkal, reversing the judgement and decree dated 09.12.1999 passed in O.S.No.310 of 1998 on the file of the Additional District Munsif Court, Namakkal.

For Appellants : Mr.S.Mukunth

For Respondent : Mr.C.Jagadish

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 27.11.2006 passed in A.S.No.50 of 2000 on the file of the Subordinate Court, Namakkal, reversing the judgement and decree dated 09.12.1999 passed in O.S.No.310 of 1998 on the file of the Additional District Munsif Court, Namakkal.

2.The second appeal has been admitted on the following substantial questions of law:

"1.Whether the lower appellate court is correct in law in reversing the judgment and decree of the trial Court on

the ground that the appellants do not have a right to the passage under Ex.B1, lease deed totally overlooking the fact that Ex.B1 Lease Deed has come to an end and the same has been novated by an oral lease which has been in vogue and given effect to since 1969?

2.Whether the lower appellate court is correct in law in non-suited the appellants totally overlooking the fact that the respondent who has remained silent from 1969 and who had not protested the use of the passage by the appellants have acquiesced to the enjoyment of the passage by the appellants and is therefore estopped from obstructing the same?"

3.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

5.Suffice to state that the suit has been laid by the plaintiff against the defendant for permanent injunction.

6.It is not in dispute that the suit shop belongs to the Mutt and the same had been let on lease in favour of the plaintiff. Now, according to the plaintiff, the lease is oral. Further, according to the plaintiff, as per the plan attached to the plaint, the suit shop leased out to him is facing the main road on the western side and further, according to him, on the southern side of the suit shop, there is a lane portion and it is also stated by the plaintiff that there is a doorway, shown as "S" in the plaint plan, on the southern side of the suit shop and according to the plaintiff, as per the lease arrangement entered into with the defendant, he had been granted the right / permission to use the lane portion lying on the southern side of the suit shop in taking the lorries and down loading the goods and further, taking the goods through "S" doorway shown in the plaint plan and he had been exercising the said right from the date of the lease and according to the plaintiff, the defendant, of late, endeavoured to close the doorway shown as "S" in the plaint plan and also put up a construction in the lane portion on the southern side of the suit shop, thereby, attempted to hinder the plaintiff in using the lane portion and thereby, take the goods into the suit shop and godown through the "S" doorway and hence, praying for appropriate relief against the defendant,

with reference to the same, he has laid the suit against the defendant.

7.The defendant resisted the plaintiff's suit contending that no doubt, the suit shop had been leased out in favour of the plaintiff, however, it is put forth that the lease is not oral but by way of a registered lease deed executed in the year 1963 and further, contended that the lease deed does not cover any right conferred on the plaintiff in using the "S" doorway in the southern side of the suit shop and it is stated that the plaintiff has not been granted the lease in respect of the usage of "S" doorway and further, according to the defendant, there is no lane on the southern side of the suit shop and on the other hand, the land situated on the southern side of the suit shop belong to the defendant and in such view of the matter, according to the defendant, they are entitled to put up the construction in the land belonging to them by closing the "S" doorway and the plaintiff is having access to the shop through the main door viz., the main road on the western side and the plaintiff has not been granted any right of pathway through the land belonging to the defendant on the southern side of the suit shop and in such view of the matter, according to the defendant, without any cause of action and suppressing the true facts, the plaintiff has laid the suit and therefore, the suit is liable to be dismissed.

8.Based on the materials placed on record, the trial Court was pleased to decree the suit in favour of the plaintiff, however, the first appellate Court, set aside the decree and judgment of the trial Court and dismissed the suit laid by the plaintiff. Impugning the same, the present second appeal has been preferred.

9.It is not in dispute that the suit shop had been leased out to the plaintiff. The plaintiff would claim that the lease arrangement is oral, however, as could be seen from the materials placed on record by the defendant, it is found that the plaintiff and the defendant entered into a written lease agreement in respect of the suit shop on 20.12.1963 and the same has been marked as Ex.B1. On a perusal of Ex.B1, as rightly found and determined by the first appellate Court, it is evident that the plaintiff has not been conveyed any lease hold right in respect of the usage of "S" doorway in the southern side of the suit shop. Furthermore, by way of Ex.B1 lease deed, the plaintiff has not been granted any lease hold right in respect of using the portion lying on the southern side of the suit shop. According to the plaintiff, to the south of the suit shop, the lane portion is available and through the lane portion, he used to take the vehicles carrying the goods and download the goods and take the goods through the "S" doorway

into his shop. However, when as per Ex.B1 lease deed, no such right had been conferred on the plaintiff and on the other hand, the plaintiff had been conferred only the right to take the goods through the main door on the western side of the suit shop, which is facing the main road, the case projected by the plaintiff that the defendant had orally agreed and conferred the right on the plaintiff to use the lane portion on the southern side and also the "S" doorway in the southern end of the suit shop, as such, cannot be countenanced.

10. On being confronted with Ex.B1 lease deed, the plaintiff would take a stand that the abovesaid lease deed is only for a specific period and after the expiry of the said period, it is put forth on his part that there had been an oral arrangement between the parties, whereunder, he had been conferred the right to use the lane portion on the southern side as well as to use the "S" doorway in the southern side of the suit shop. If that be so, as rightly found by the first appellate Court, the plaintiff should have come forward with the clear pleas in the plaint that the lease arrangement was by way of written deed and after expiry of the same, the parties entered into an oral arrangement /lease arrangement with reference to the suit shop. But that is not the case projected by the plaintiff in the plaint and on the other hand, the plaint reads as if only an oral lease arrangement had been entered into between the parties concerned, and hence as rightly found by the first appellate Court, it is evident that the plaintiff has suppressed the material information and come forward with the suit seeking the equitable relief of permanent injunction, and on that score alone, it is found that the plaintiff is not entitled to obtain the relief prayed for.

11. As regards the oral lease arrangement claimed by the plaintiff after the expiry of the written lease arrangement marked as Ex.B1, with reference to the said case of the plaintiff, he has examined PWs 2 & 3. On a perusal of the evidence adduced by PWs 2 & 3, it is found that they are not having good terms with the defendant and in fact, it is found that the litigations had been pending between them and the defendant and the defendant, one way or the other, had been taking steps to evict them from the property belonging to it and accordingly, strained relationship exist between PWs 2 & 3 and the defendant. Be that as it may, the evidence of PWs 2 & 3 also is found to be not convincing and acceptable for upholding the oral lease arrangement put forth by the plaintiff as regards the alleged use of the portion on the southern side and "S" doorway. PW2, during the course of cross examination, has admitted that he does not know on what date, the oral lease arrangement was effected, between whom the same had been effected and on what terms, the same had been effected. In such view of the matter,

it is evident that on account of his enmity with the defendant, as the defendant had initiated action against him to evict him from the shop belonging to the defendant, it is found that without any basis, PW2 has tendered evidence in the chief examination as if the oral arrangement had existed between the plaintiff and the defendant qua the portion lying on the southern side and the "S" doorway. Similar is the evidence of PW3. PW3 is found to be a retired watchman of the defendant mutt and as abovenoted, he has already been pitted against the defendant one way or the other and litigation had been pending between them. Though he would claim that there has been a oral lease arrangement between the plaintiff and the defendant in terms of the arrangement made under the written lease deed, according to him, they had not gone into beyond the recitals already contained in the written arrangement and accordingly, by way of oral lease arrangement, there has been no mention or reference about the usage of the alleged lane portion on the southern side and the "S" doorway. As abovenoted under Ex.B1 lease deed, the plaintiff has not been granted any leasehold right in respect of the usage of land portion on the southern side and the "S" doorway fitted in the southern side of the said shop. Accordingly, it is found that PW3 has also tendered evidence that the oral lease arrangement had been continued only in accordance with the terms found in the written lease deed under Ex.B1 and such being the evidence of PW3, his evidence would be of no use to sustain the oral arrangement of lease projected by the plaintiff for claiming the right of usage of the portion on the southern side and the "S" doorway.

12.No doubt, the plaintiff had been in the occupation of the suit shop for a considerable period of time, however, when the plaintiff is entitled to use the suit shop as per the right conferred on him under the lease arrangement entered into with the defendant and when the materials placed on record go to show that the plaintiff has not been granted any right of usage of the portion on the southern side of the suit shop for taking the vehicles and downloading the goods and also not been granted any right to lift the goods into the suit shop through the "S" doorway and on the other hand, the written lease deed Ex.B1 clearly carves out the way of entering into the suit shop only through the main road on the western side, it is found that the plaintiff's claim of right to use the portion on the southern side of the said shop and the "S" doorway does not merit acceptance.

13.According to the plaintiff, the other lessees of the defendant are using the portion on the southern side for taking their goods to the shops leased out to them lying beyond the southern portion. As rightly contended by the defendant's counsel, the plaintiff is not entitled to claim the benefits of

the arrangement of lease entered into by the defendant with the other tenants and merely because, the other tenants had been granted the right to use the portion on the southern side, automatically, the plaintiff cannot expect the same right of the usage of the said portion, when it is found that he had not been granted any such right under the lease arrangement made by him with the defendant.

14.The plaintiff's counsel contended that if he directed to park the vehicle in the main road for downloading the goods through the main entrance, he would be put to loss and hardship and on the other hand, if the plaintiff is directed to use the portion on the southern side for parking the vehicle and download the goods and take them through the "S" doorway into the shop, no serious prejudice would be caused to the defendant and accordingly, prayed for the acceptance of the plaintiff's case.

15.Considering the materials placed on record, it is found that there are various shops in the area adjoining to the suit shop facing the main road, accordingly, it is found that the evidence has been placed in the matter, that the other shops facing the main road are parking only in the main road and downloading the goods from the vehicle to their respective shops through the main road on the western side and in such view of the matter, the claim of the plaintiff that he would be put to loss and hardship, if he is directed to use the main road only for parking the vehicles and down loading the goods etc., particularly, when the shop owners as similar to the plaintiff are downloading their goods only from the vehicle parked in the main road and therefore, the abovesaid argument of the plaintiff for claiming the right to use the portion on the southern side, without any basis, as such, cannot be countenanced.

16.In the light of the abovesaid factors, when the plaintiff has not been granted any lease hold right in respect of the portion on the southern side of the said shop as well as the "S" doorway and the plaintiff has failed to establish that he had exercised any such right and thereby, acquired the same by prescription and when the said right could also not be claimed by the plaintiff by way of easement of necessity, when it is found that the plaintiff has other access to the suit shop and when the plaintiff had been granted the access to the suit shop only through the main door on the western side as per the lease arrangement, contrary to the said arrangement, the plaintiff is not entitled to claim more right than that he has been leased out and the abovesaid factors had been rightly taken into consideration by the first appellate Court by appreciating the materials placed on record and in such view of the matter, I do not find any valid reason to interfere with the judgment and

decree of the first appellate Court dismissing the plaintiff's suit. In my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are, accordingly, answered against the plaintiff and in favour of the defendant.

In conclusion, the second appeal fails and is, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sms  
To

- 1.The Subordinate Judge,  
Subordinate Court, Namakkal.
- 2.The Additional District Munsif Court,  
Namakkal.

Copy to

The Section Officer,  
V.R. Section,  
High Court, Madras.

+lcc to Mr.Sarvabhauman Associates, Advocate Sr.44619

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