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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.04.2019

PRONOUNCED ON : 16.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.2016 of 2003

1.Nallammal  
2.Nanjappan  
3.Palanisamy  
4.P.Kamalam  
5.Avanaya @ Ammaniammal  
6.P.Natarajan

...Appellants/Appellants/Defendants  
1, 2, 4, 6, 10, 11

Vs.

1.K.S.Palanisamy  
2.P.Srinivasan  
3.P.Rammohan  
4.V.Sarumathi  
5.K.Vatsala  
6.Ramaswamy Gounder  
7.Devi  
8.Natanarajamoorthi  
9.Senniammal  
10.P.Revathi

...Respondents/Respondents/Plaintiffs

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 12.11.1998 passed in A.S.No.27 of 1998 on the file of the Second Additional District Court, Erode, modifying the judgement and decree dated 21.04.1997 passed in O.S.No.149 of 1991 on the file of the Subordinate Court, Gobichettipalayam.

For Appellants : Mr.S.Hajamohideen Gisti

Respondent : Set exparte  
Nos.1 to 5 & 10

Respondents : Given up  
Nos.6 to 9

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 12.11.1998 passed in A.S.No.27 of 1998 on the



file of the Second Additional District Court, Erode, modifying the judgement and decree dated 21.04.1997 passed in O.S.No.149 of 1991 on the file of the Subordinate Court, Gobichettipalayam.

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

"i).Whether the lower appellate Court is justified in allowing the cross objections without considering the evidence on record and without assigning any reasons for the same?

ii).Whether the Courts below are justified in holding that as the defendants have failed to prove their case of tenancy, the case of the plaintiff has to be accepted, overlooking that it is for the plaintiffs to prove their case and they cannot take advantage of the weakness of the defendants case?"

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 plaintiffs have laid the suit against the defendants claiming damages for a sum of Rs.50,000/-.

6.Shorn of unnecessary details, the plaintiffs would claim that the suit properties had been entrusted to Goundey Gounder for managing the same on agency basis and accordingly, after his demise, his legal representatives are bound to render account to the plaintiffs/owners of the suit properties and inasmuch as Goundey Gounder and his legal representatives viz., the defendants had failed the account to the plaintiffs regarding the profits derived from the suit properties, accordingly, seeking damages in a sum of Rs.50,000/- from them for the period from 01.07.1985 to 30.06.1988 claiming that the defendants, who are in the occupation of the suit properties, would have derived not less than Rs.25,000/- per year, accordingly, laid a suit claiming a sum of Rs.50,000/- from them towards damages.



7.The contesting defendants resisted the plaintiffs' suit putting forth the plea that the suit properties had been in the occupation of Goundey Gounder and subsequently, the defendants on lease arrangement and accordingly, the defendants are in the occupation of the suit properties and as the defendants are the cultivating tenants thereof, the plaintiffs are not entitled to recover any damages from them and at the most, the plaintiffs would be entitled only to recover the lease agreed to between the parties and not more than that and accordingly, prayed for dismissal of the plaintiffs' suit.

8.That the plaintiffs are the owners of the suit properties is not in dispute. According to the plaintiffs, as detailed in the plaint, the suit properties had been entrusted to Goundey Gounder on agency basis on certain terms. After his demise, the defendants had taken over the possession and enjoyment of the suit properties. The defendants disputed the abovesaid arrangement put forth by the plaintiffs with reference to their possession and enjoyment of the suit properties and according to them, only on the basis of the lease deed, Goundey Gounder and they are in the possession and enjoyment of the suit properties. In such view of the matter, when the defendants, in particular, have taken the plea that pursuant to the lease deed or lease agreement dated 13.04.1952, Goundey Gounder and they are in the occupation and enjoyment of the suit properties as the lessees and when the same is repudiated by the plaintiffs, as determined by the Courts below, the defendants should, at the foremost, establish that they are the lessees of the suit properties as put forth by them and that, they are not in the occupation and enjoyment of the suit properties on the basis of the agency arrangement projected by the plaintiffs. The lease deed projected by the defendants had not been produced. Further, when it is found that the defendants have not come forward with any specific case as to terms of the lease projected by them and when there is no material placed on their part, they had paid any lease to the plaintiffs in respect of the suit properties at any point of time, in all, it is found that the Courts below are found to be wholly justified in rejecting the abovesaid plea of lease arrangement projected by the defendants and accordingly, determined that Goundey Gounder and after his demise, the defendants are in the possession and enjoyment of the suit properties only as per the agency arrangement as put forth by the plaintiffs and accordingly, further held that the defendants are liable to pay appropriate damages to the plaintiffs, qua, the profits derived by the defendants from the suit properties.

9.According to the plaintiffs, for the period in question, the defendants would have received not less than a sum of Rs.50,000/- and accordingly, prayed for the recovery of the said sum from the defendants towards damages. Considering the vast



extent of the suit properties and also the availability of several Wells in the suit properties and the service connection fitted in the Wells, etc., and also considering that the suit properties are cultivable lands, particularly, capable of yielding income and in this connection, the Courts below had also placed reliance upon the Adangal extracts projected by the plaintiffs marked as Exs.A2 to 4 and considering the nature of the crops that could be raised in the suit properties, in all, it is found that the suit properties are fertile lands fitted with irrigational facilities through the Wells source etc., and accordingly, the trial Court had, on the available materials placed, both oral and documentary, determined that the defendants would have derived an income of Rs.15,000/- per year from the suit properties and resultantly, determined that they are liable to pay Rs.30,000/- to the plaintiffs for the period of two years in question for their occupation and enjoyment of the suit properties.

10.Impugning the judgment and decree of the trial Court, the contesting defendants preferred the first appeal and it is further seen that the plaintiffs have preferred cross appeal aggrieved over the quantum of damages fixed by the trial Court.

11.It is noted that though the contesting defendants had preferred the first appeal, they had not chosen to contest the appeal as such. The same could be gathered from the judgment of the first appellate Court, resultantly, it is found that the first appellate Court had only been necessitated to determine the cross appeal preferred by the plaintiffs and accordingly, considering the nature of the five items of the suit properties, noting that they are of an extent not less than 11 acres of land provided with Well facilities, electricity service connection, etc., and also nature of the crops that could be raised from the said lands, they being fertile and capable of yielding income more than the quantum of the damages fixed by the trial Court, holding that the damages fixed by the trial Court is on the lesser side and resultantly, determined that the plaintiffs are entitled to secure damages in a sum of Rs.50,000/- for the period of two years in question from the defendants and accordingly, dismissed the appeal preferred by the contesting defendants and allowed the cross appeal preferred by the plaintiffs. Impugning the same, the present second appeal has been preferred.

12.Considering the vast extent of the suit properties and noting that they are the fertile lands and fitted with several Wells and service connection etc., and also noting that they are capable of proving adequate yields and further, when it is noted that cash crops could be raised thereon, as could be evidenced from Exs.A2 to 4 adangal extracts and when from Exs.A2 to 4, it



is found that cash crops like sugar cane, rice and the plantains had been raised in the suit properties and in such view of the matter, it is found that the determination of the first appellate Court that the suit properties would have yielded income per annum not lesser than Rs.25,000/- cannot be said to be as excess as now contended by the defendants and the defendants cannot be allowed to put forth the contentions that the earlier proceedings between the parties, the yield from the suit properties had been fixed at Rs.10,000/-, particularly, when the value of the determination of the income in the abovesaid proceedings had been determined at the relevant point to the institution of the said proceedings and whereas, the present suit has been levied in the year 1991 and considering the nature of the cash crops, which could be raised in the suit properties and other facilities appended to the suit properties, in all, it is seen that the first appellate Court is justified in fixing the damages or income which could be received by the defendants at Rs.25,000/- per year and therefore, the same does not warrant any interference.

13. When the defendants had failed to establish the lease arrangement between them and the plaintiffs and in that connection, they had not placed any proof whatsoever and the defendants have not disputed the ownership of the plaintiffs, qua the suit properties and when they are found to be not the lessees of the suit properties as pleaded by them and resultantly, their possession is only to be viewed as per the arrangement of agency put forth by the plaintiffs, in such view of the matter, it is found that the defendants are liable to account to the plaintiffs for the income which could have been derived from the suit properties and in such view of the matter, the first appellate Court is justified in directing the defendants to pay the damages to the plaintiffs as prayed for.

14. In the light of the abovesaid discussions, the substantial questions of law formulated in the second appeal are accordingly answered against the defendants.

In conclusion, the second appeal fails and is, accordingly, dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-  
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

sms



To

- 1.The Second Additional District Court, Erode.
- 2.The Subordinate Court, Gobichettipalayam.
- 3.The Section Officer,  
V.R. Section, High Court, Madras.

S.A.No.2016 of 2003

NRL (CO)  
GMY (17/09/2019)