

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.04.2019

PRONOUNCED ON : 22.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1488 of 2005

G.R.Thiagasundaram ... Appellant/Respondent/Defendant

Vs.

R.Ragunatha Pathar ... Respondent/Appellant/Plaintiff

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 14.06.2005 passed in A.S.No.3 of 2003 on the file of the Subordinate Court, Thiruvarur, reversing the judgement and decree dated 23.10.2002 passed in O.S.No.131 of 2001 on the file of the District Munsif Court, Thiruvarur.

For Appellant : Mr.C.Uma Shankar

For Respondent : Mr.J.Nandagopal

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 14.06.2005 passed in A.S.No.3 of 2003 on the file of the Subordinate Court, Thiruvarur, reversing the judgement and decree dated 23.10.2002 passed in O.S.No.131 of 2001 on the file of the District Munsif Court, Thiruvarur.

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

"1.Whether the Lower Court has appreciated the scope of the provisions of Indian Evidence Act especially section 34 of Indian Evidence Act?

2.Whether the Lower Court is correct in casting the burden of proof on the defendant?

3. Whether the suit is bad for non-joinder of parties?

4. Whether the lower Court is erred in not following the well-laid principles of law regarding that without proper evidence the pleading will not be sustainable?".

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 possession, past profits and future mesne profits.

6. It is not in dispute that the suit property belongs to the plaintiff and the same is not challenged by the defendant.

7. Now, according to the plaintiff, due to his ill-health at one point of time, he had entrusted the management of the suit property to his son and thereafter, inasmuch as his son had failed to account the income of the suit property in a proper manner, on being questioned, it is the case of the plaintiff that he was informed by his son that the suit property had been entrusted to the defendant on some arrangement and according to the plaintiff, inasmuch as his son no right or title to the suit property in any manner and the suit property had been entrusted to him only for managing the same on behalf of the plaintiff, his son is not entitled to deal with the property in other ways and accordingly, contended that the defendant cannot be allowed to remain in the possession of the suit property in connection with some arrangement made with the son of the plaintiff and accordingly, it is put forth by the plaintiff that inasmuch as the defendant is in the possession of the suit property belonging to the plaintiff without any right whatsoever, according to him, he has been necessitated to lay the suit for appropriate reliefs.

8. Inter alia, the defendant, as abovenoted, after admitting the title of the plaintiff to the suit property, however, would state that the plaintiff's son was employed in the Petrol Bunk of the defendant and during his employment, he had misappropriated money to the extent of Rs.1,54,865.20 qua the sale of diesel in connivance with the other person and accordingly, it is put forth by the defendant that when the

defendant proposed or contemplated initiation of the criminal action against the plaintiff's son, it is stated that the plaintiff's son had agreed to handover the suit property to the defendant for not taking any action against him with reference to the abovesaid illegal acts committed by him and accordingly, it is put forth that the defendant had been permitted to take the proceeds of the suit property and adjust the same with reference to the money misappropriated by the plaintiff's son qua the sale of the diesel and also put forth that the said issue is known to the plaintiff and in such view of the matter, according to the defendant, he is in lawful possession of the suit property and the plaintiff is not entitled to recover the same from him without settling the amount due to the defendant as abovestated and accordingly, not entitled to any past and future profits in respect of the suit property as claimed in the plaint and accordingly, prayed for dismissal of the suit.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the suit. On appeal by the plaintiff, the first appellate Court, on an appreciation of the materials placed, was pleased to allow the appeal and thereby, set-aside the judgment and decree of the trial Court. Impugning the same, the present second appeal has been laid.

10. As abovenoted, it is not in dispute that the plaintiff is the owner of the suit property, accordingly, it is found that the plaintiff is entitled to recover the possession of the suit property from the defendant, who has no right whatsoever to the suit property as such. However, it is found that the suit property is in the possession and enjoyment of the defendant. With reference to the said claim of the defendant, it is put forth on his behalf that the plaintiff's son had misappropriated a huge sum of money in the petrol Bunk of the defendant, where he was employed, qua the sale of Diesel in connivance with the other person and accordingly, with a view to forbid the defendant from taking the criminal action against the plaintiff's son, according to the defendant, he had been entrusted the possession of the suit property by the plaintiff's son and it has been agreed that the defendant should take proceeds of the suit property and adjust the same towards the sum due to him from the plaintiff's son and in such view of the matter, according to the defendant, the plaintiff also being aware of the said position, is not entitled to seek and obtain the reliefs as prayed for.

11. In so far as this case is concerned, we are not concerned with the alleged misappropriation of money said to have been committed by the plaintiff's sons in the Petrol Bunk of the defendant. No doubt, the plaintiff's son was employed in

the Petrol Bunk of the defendant. Even assuming for the sake of arguments that money had been misappropriated by the plaintiff's son but that would not in any manner entitle the plaintiff's son to entrust the suit property belonging to the plaintiff to the defendant with a view to adjust the proceeds of the same qua the money alleged to have misappropriated by him in the Petrol Bunk. When the plaintiff's son is not entitled to the suit property and when it is not in dispute that the plaintiff is the absolute owner of the suit property, the claim of the defendant that on the arrangement made with the plaintiff's son, he had been permitted to enjoy the suit property and enjoy the proceeds of the same to enable him to adjust the alleged sum misappropriated by the plaintiff's son, as such, cannot be accepted. Though the abovesaid arrangement is made with the son of the plaintiff, however, as rightly found by the first appellate Court, no document worth acceptance has been placed by the defendant to evidence that the plaintiff was a party to the alleged arrangement between the plaintiff's son and the defendant in connection with the entrustment of the suit property to the defendant and therefore, the alleged arrangement would not in any manner bind the plaintiff. If as alleged by the defendant, the plaintiff's son had committed any misappropriation of amount qua the sale of diesel in his petrol bunk, the defendant is only entitled to take appropriate action as available to him under law against the plaintiff's son and on that score, he would not be entitled to take the suit property as a security for adjusting the proceeds derived from the same towards the sum said to have been misappropriated by the plaintiff's son.

12. In the light of the abovesaid factors, the first appellate Court had rightly appreciated the materials placed on record in the proper perspective and held that the defence version projected in the matter on the part of the defendant is unfounded and unsustainable in any angle and the plaintiff's son not being the necessary party to the proceedings for the reliefs sought for by the plaintiff in the matter and the plaintiff not in any manner connected with the arrangement said to have been entered into between the plaintiff's son and the defendant, in such view of the matter, I do not find any reason to interfere with the well considered judgment and decree of the first appellate Court in upholding the plaintiff's case.

13. For the reasons aforesaid, 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 defendant and in favour of the plaintiff.

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

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

sms

To

1.The Subordinate Judge, Thiruvarur.

2.The District Munsif, Thiruvarur.

Copy To : The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr..Nandagopal, Advocate SR.No.38083

+1cc to Mr.M.Sivavarthan, Advocate SR.No.38680

S.A.No.1488 of 2005

LN (CO)
GMY (30/10/2019)

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