

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

S.A. 321 of 2019
and
C.M.P. 4792 of 2019

Alamelu Ammal ... Appellant/Plaintiff

Vs.

1. Deivasigamani
2. Perumal
3. R.Selvaraj
4. S.Selvaraj
5. Rajendran ... Respondents/Defendants 1 to 5

Prayer:- This second appeal has been filed under Section 100 of C.P.C., against the judgment and decree of the Subordinate Judge, Panruti in A.S. No.14 of 2001 dated 29.11.2001 in pursuant to the decree and judgment of the District Munsif, Panruti in O.S.No.591 of 1991, dated 15.12.2000.

For Appellant : Mr. R.Thanjan

JUDGEMENT

The plaintiff, whose suit has been dismissed by the Lower Appellate Court has preferred the present Second Appeal.

2. The case of the appellant/plaintiff is that, the suit property belongs to 8th defendant temple, and she has been inducted as a tenant by the temple, and she has been in continuous possession and enjoyment of the suit property. Earlier, the H.R. & C.E. Department has taken steps to evict the appellant/plaintiff. Hence, she has filed the suit in O.S.No. 220 of 1989 on the file of Sub-Court, Cuddalore seeking a permanent injunction against the H.R. & C.E. Department, even though the said suit was dismissed, the Trial Court has confirmed the possession of the appellant/plaintiff. Now, the defendants in the suit are taking steps once again to evict the appellant/plaintiff. Hence, she has filed the suit.

3. The Trial Court has decreed the suit holding that even though the earlier Suit filed by the plaintiff has been dismissed, it has been held that appellant/plaintiff is in

possession of the property. Hence, the defendants cannot evict the appellant/plaintiff from the suit property.

4. Aggrieved over the same, the respondents/defendants 1 to 5 have filed an appeal in A.S.No. 14 of 2001, on the file of Sub-Judge, Panruti, and the lower Appellate Court after considering the entire materials available on record and after considering the evidences come to a conclusion that the appellant/plaintiff, on his own admission stated that she is not in possession of the property for more than 15 years. Hence, the lower Appellate Court has allowed the appeal and thereby dismissed the Suit. Challenging the judgment and decree passed by the lower Appellate Court, the present Second Appeal has been filed.

5. I have heard the submissions made by the learned counsel appearing for the appellant and perused the materials available on record carefully.

6. It is an admitted fact that the 8th defendant temple in the suit is the owner of the property. According to the plaintiff, she was inducted as a tenant in the suit property. In the earlier suit filed by her seeking for injunction has been dismissed. However, it seems that there is a finding that the appellant/plaintiff has been in possession of the property. Only based upon the above judgment and decree, the present Suit has been filed. The Trial Court mainly relying upon the findings of the earlier judgment decreed the suit, but, the lower Appellate Court after considering the entire materials and evidences as well as the pleadings of the appellant/plaintiff, wherein it has been clearly stated that the appellant/plaintiff has clearly admitted that she was not in possession and enjoyment of the property for more than 15 years from the date of filing of the suit and she has been residing at her daughter's house at Sankarapuram. Apart from that, there is no other evidence available on record to show that the appellant/plaintiff is in possession of the suit property, thereby allowed the appeal.

7. On perusal of materials, it could be seen that the earlier suit filed by the appellant/plaintiff, has been dismissed, but there is a finding that she is in possession of the property, the suit was dismissed in the year 1991. In the present suit, the plaintiff has clearly deposed that she was not in possession and enjoyment of the suit property for nearly 15 years and at present, she has been residing at her daughter's house at Sankarapuram. When the appellant/plaintiff has clearly admitted that she was not in possession and enjoyment of the property, she cannot maintain the suit for permanent injunction based on her possession, the lower Appellate Court has correctly held that the appellant/plaintiff is not in possession of the property, and thereby allowed the appeal, and dismissed the suit. I find no perversity and illegality in the judgment and

decree passed by the lower Appellate Court and no substantial question of law arises for consideration in the present Second Appeal. In the result, the present Second Appeal stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The Sub-Judge, Panruti.
2. The District Munsif, Panruti

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MR (CO)
GMY (21/08/2019)