

0IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.02.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.No.195 of 2012

K.K.Viswanathan

.. Appellant/Plaintiff

versus

Meenakshiamma

.. Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 19.08.2010 made in A.S.No.6 of 2006 on the file of the learned Additional District and Sessions Judge [FTC No.II], Ranipet, Vellore District, reversing the judgment and decree dated 29.01.2004 made in O.S.No.167 of 1987 passed by the learned District Munsiff, Arakkonam.

For Appellant : Mr.B.Gopalakrishnan
for M/s.P.A.Chithramani

For Respondent : Mr.M.S.Subramanian
for M/s.S.Hemalatha

J U D G M E N T

Aggrieved over the judgment of the First Appellate Court reversing the judgment of the trial Court granting a decree for permanent injunction, the present Second Appeal came to be filed.

2. At the time of admission, the following substantial questions of law were framed:

"1. Whether the first appellate court has committed an error in arriving at a conclusion that the plaintiff is not a cultivating tenant based on the order passed by the authority under the Record of Tenancy Act ?

2. Whether the first appellate court has committed an error in non-suiting the appellant/plaintiff without deciding the question of possession pleaded by the plaintiff ?"

3. For the sake of convenience, the parties are to be referred to in their original rank in the suit.

4. The brief facts leading to the present Appeal are as follows:

4.1. The suit property was under the possession of the plaintiff's father and plaintiff's father was cultivating the same and thereafter, the plaintiff is cultivating the said land continuously and he is in possession of the suit property. Therefore, the plaintiff, who is the cultivating tenant is entitled to the benefit under the Tamil Nadu Cultivating Tenants Protection Act, whileso, the defendant without any manner of right or interest over the property is now making an attempt to dispossess the plaintiff from the suit property on 10.04.1987. Hence, the suit has been filed for permanent injunction by restraining the defendant.

4.2. It is the contention of the defendant that neither the plaintiff nor his father was in possession of the suit property at any point of time as a cultivating tenant. The suit property originally belongs to the defendant's mother, namely, Ranganayagi Ammal and she died intestate leaving the defendant, her brother and sister as legal heirs. The defendant has filed a suit in O.S.No.348 of 1980 for partition of her 1/5th share and the same was decreed on 17.10.1984. The plaintiff is the money lender was set up by his brother, who is the brother in the partition suit, he has no cause of action and hence, he prayed for dismissal of the suit.

4.3. The trial Court has framed the following issues:

- "1. Whether the plaintiff is a cultivating tenant in respect of the suit property ?
2. Whether the plaintiff is entitled to the relief of permanent injunction prayed for ?
3. To what relief ?"

4.4. Before the trial Court, on the side of the plaintiff, he was examined as P.W.1 and 12 Exhibits were marked as Ex.A.1 to Ex.A.12 and on the side of the defendant, he was examined as D.W.1 and 11 Exhibits were marked as Ex.D.1 to Ex.D.11.

4.5. The trial Court has granted permanent injunction, however the First Appellate Court reversing the finding of the trial Court, as against which, the present Second Appeal is filed.

5. Heard the learned counsel appearing for the appellant and the learned counsel for the respondent.

6. It is the contention of the learned counsel appearing for the appellant that the plaintiff is in possession of the property and the trial Court has clearly found the same on the basis of the document whereas the First Appellate Court has ignored the finding and simply dismissed the suit. Therefore, submitted that even the plaintiff is not a cultivating tenant but he is entitle to protect his possession. Hence, he prayed for allowing the appeal.

7. The learned counsel appearing for the respondent would contend that absolutely there is no evidence that the plaintiff is in possession of the property. The possession has already been taken in execution of the decree passed in O.S.No.348 of 1980 and this plaintiff is none other than the cousin of one of the defendant in O.S.No.348 of 1980. The plaintiff attempted to get his name registered before the concerned authorities has also failed, which reached finality. Hence, he submitted that this suit is nothing but abuse of process of law and prayed for dismissal of the suit.

8. I have perused the materials available on record. The suit has been laid inter alia contending that the plaintiff is a cultivating tenant. It is the main contention of the plaintiff that his father was the original tenant and thereafter, he is continuing the cultivation. The suit has been filed in the year 1987. After the suit it appears that he has filed an application before the Tahsildar for recording his name, as cultivating tenant. His contention has been rejected on 16.11.1994. Thereafter, again he made an attempt to get his name registered, however in the second attempt, the Tahsildar has allowed his request on 27.01.1995, this fact is not disputed, as against which, the Writ Petition has filed and the Writ Appeal has also filed as could be seen from the records and the order has been confirmed and reached finality. This shows that the request of the plaintiff to register him as a cultivating tenant has negatived. Ex.B.1 is the order passed by the DRO makes it very clear that the father of the plaintiff himself admitted that he never ever been as tenant in the suit property and also he has filed an affidavit to that effect before the DRO. Therefore, DRO has rightly rejected his contention and the above proceedings reached finality. The Writ Appeal has also finally disposed of and this fact was also not disputed and established on record. Further in executing the decree passed in O.S.No.348 of 1980, the suit property in Survey No.457/02, the possession was handed over to the defendant.

9. In this regard, the evidence of P.W.1 himself makes it very clear that the possession has been delivered, however, he shown ignorance whether the possession has been delivered to

the defendant. The above evidence makes it very clear that the possession has also been delivered to the defendant. Therefore, the contention of the plaintiff is that he is in possession of the property and he is entitled to the benefit under the Tamil Nadu Cultivating Tenants Protection Act, cannot be countenanced. His very contention is that he was inducted as a tenant was negated by the authorities, further his own father admitted that he never ever been as tenant in the suit property. Further to countenance the plaintiff contention, absolutely there is no materials available on record. In the absence of any evidence to substantiate his possession in the property, the plaintiff has no semblance of right in the suit property and cannot claim an injunction claiming that he is the cultivating tenant, particularly, such allegation is also found to be false and negated by all the authorities, which reached finality before this Court. Hence, considering the entire materials, I do not find any interference or illegality in the order passed by the First Appellate Court.

10. For the aforesaid reasons, the substantial questions of law are answered in favour of the respondent and against the appellant. The Second Appeal is dismissed and the judgment and decree of the First Appellate Court is hereby confirmed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sri

To

1.The Additional District and Sessions Judge [FTC No.II],
Ranipet, Vellore District.

2.The District Munsif,
Arakkonam.

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

+1 cc to Mr.B.Gopalakrishnan, Advocate SR.No.13819

+1 cc to M/s.S.Hemalatha, Advocate Sr.No.14545

S.A.No.195 of 2012

MP(CO)
CSL/12.04.2019