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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.09.2011

CORAM

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

S.A.No.365 of 2009

Mrs. Tamilarasi

.. Appellant/ Defendant

Vs.

Arulmighu Nellukadai  
Mariamman Tirukkoil,  
Nagapattinam Town,  
Rep. by its Hereditary Trustee  
V.K.N.M.Thiagarajan  
S/o Muthukumarasamy Pillai

. Respondent/ Plaintiff

Prayer:- Second Appeal filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 8.12.2008 made in A.S.No.30 of 2008 on the file of the Subordinate Judge, Nagapattinam, confirming the judgement and decree in O.S.No.283 of 2003, dated 11.10.2007 on the file of the District Munsif Court, Nagapattinam.

For Appellant

.. Mr. C. Manohar

For Respondent

.. Mr. S. Sathiamurthy

J U D G E M E N T

The unsuccessful defendant in O.S.No.283 of 2003 on the file of the District Munsif Court, Nagapattinam, is the appellant.

2. The respondent/ plaintiff filed the suit for eviction of the appellant from the suit property stating that the suit property belonged to the respondent Temple which is a Public Religious Temple and the appellant's husband was let into possession of the property as a tenant and he has also executed a document dated 1.2.1986 in favour of the Temple and put up hut and was paying rent of Rs.10/- per month and after the death of her husband, the appellant is enjoying the property and thereafter on 7.6.2003 the tenancy was terminated by issuing a notice directing the appellant to vacate and hand over possession on 30.6.2003 and the appellant sent reply questioning the title of the respondent Temple and therefore the suit was filed for eviction.

3. The appellant contested the suit stating that her husband was not a tenant under the respondent Temple and the suit property does not belong to the respondent Temple and the alleged lease deed

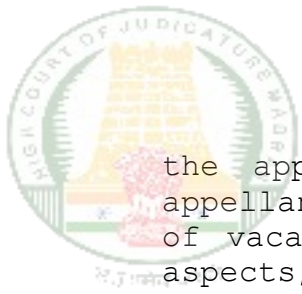


executed by the husband of the appellant is a forged one and the appellant's father-in-law was in possession of the property for more than 50 years and thereafter as his legal heirs the appellant's husband and his brothers were in possession and enjoyment of the same and therefore the appellant cannot be evicted.

4. The trial Court decreed the suit holding that the appellant's husband executed Ex.A1 lease deed in favour of the Temple and the Temple is the owner of the property as proved by Exs.A5 and A8 and therefore the respondent Temple is entitled to evict the appellant by giving notice and proper notice was given and therefore the respondent Temple is entitled to the decree. The lower appellate Court also concurred with the findings of the trial Court and dismissed the appeal. Hence, the Second Appeal.

5. The learned counsel for the appellant submitted that both the Courts erred in holding that the respondent Temple is the owner of the suit property without properly appreciating the survey number stated in the schedule. According to him, originally the suit was filed in respect of T.S.No.888 and thereafter the schedule was amended instead of T.S.No.888 new T.S.No.889 was substituted on the basis of the Commissioner's report and according to the Property Register maintained by the respondent Temple, the respondent Temple is not the owner of the property in respect of T.S.No.889 and therefore the respondent Temple cannot maintain the suit for eviction without proving their title. He further submitted that Ex.A1 alleged to have been executed by the husband of the appellant was in respect of T.S.No.888 and therefore that cannot be relied upon to presume a tenancy in respect of the suit property. He therefore submitted that having regard to the fact that the respondent Temple is not the owner of T.S.No.889, the suit for eviction is not maintainable. He further submitted that the property in the possession of the appellant is a Government poramboke and the respondent Temple has no title.

6. On the other hand, Mr. S.Sathiamurthy the learned counsel for the respondent Temple submitted that though under Ex.A1 T.S.No.888 was mentioned as the property leased out to the appellant's husband, the survey number was wrongly mentioned in Ex.A1 and as per Ex.A5, the Town Survey Register issued by the Commissioner, Nagapattinam Municipality to prove that T.S.No.889 belongs to Nallukadai Pillayar Koil and the said Pillayar Koil comes within the jurisdiction of Mariamman Tirukkoil and therefore it cannot be contended that the respondent Temple is not the owner of the suit property. He further submitted that Ex.A6 would prove that the Vinayagar Temple was annexed with Nellukadai Mariamman Temple by the proceedings of the Commissioner, Hindu Religious and Charitable Endowment Department dated 4.1.1977 and therefore it cannot be contended that the respondent Temple is not the owner. He further submitted that even though there is some dispute in respect of the suit property, the respondent Temple prove the tenancy of



the appellant's husband through Ex.A9 wherein the name of the appellant's husband Kannaiyan was mentioned as a tenant in respect of vacant site belonging to the Temple and considering all these aspects, both the Courts below rightly held that the respondent Temple is the owner of the suit property and the appellant's husband was the tenant and the respondent Temple has issued proper notice and therefore the decree passed by the Courts below are correct and need not be interfered with.

7. On the basis of the submissions made by both the counsel, the following substantial questions of law are framed:

(1) Whether the respondent Temple proved ownership in respect of the suit property ?

(2) Whether the respondent Temple proved that the appellant and her husband are tenants in respect of the suit property ?

8. It is not in dispute that when the suit was filed in the schedule, T.S.No.888 was mentioned, thereafter the Advocate Commissioner was appointed and he has also filed report and thereafter the schedule was amended and instead of T.S.No.888, T.S.No.889 was substituted. It is the contention of the appellant that in respect of T.S.No.889, the respondent Temple is not the owner and it is a Government poramboke and therefore the respondent Temple has no right to evict the appellant. Therefore we will have to see the respondent Temple is the owner of T.S.No.889 as per the amended plaint. Ex.A8 is the Property Register maintained by the respondent Temple and as per the said Register the respondent Temple is the owner of various items of property and in respect of T.S.No.888 the appellant's husband Kannaiyan was shown as tenant in respect of vacant site in T.S.No.888 having an extent of 20' x 10'. Ex.A1 is the lease deed alleged to have been executed by Kannaiyan in favour of the respondent Temple. In respect of the suit property under Ex.A1 also it is specifically stated that the survey number of the property taken on lease is T.S.NO.888. In Ex.A2 notice sent by the respondent Temple also they mentioned that the survey number of the suit property in the occupation of the appellant is T.S.NO.888. Only in Ex.A5 it is stated that T.S.No.889 is a Natham House by Nallukadai Pillayar Koil. Therefore having regard to Ex.A8, the Property Register maintained by the respondent Temple, the lease deed Ex.A1, Notice Ex.A2, it is proved by the appellant that the respondent is the owner of T.S.No.888 and not T.S.No.889 as now contended by the respondent Temple. The entry in Ex.A5 cannot be taken into consideration in support of the claim of the respondent Temple having regard to the other Exs. A8, A1 and A2. Therefore, as rightly contended by the learned counsel for the appellant that the respondent Temple failed to prove that they are the owners of T.S.No.889 and even as per the own document the respondent Temple is the owner of T.S.No.888 and the suit is filed in respect of T.S.No.889 and hence the respondent Temple is not entitled to file for eviction.



9. It was contended by the learned counsel for the respondent Temple Mr. S.Sathiamurthy that even though there is a mistake in survey number having regard to the boundary which is admitted by the appellant, the respondent Temple has proved that the appellant is the tenant and the boundary recitals in Ex.A1 corresponds with the boundary recitals in the suit schedule and therefore the respondent Temple has proved their title to the suit property.

10. I am unable to accept the contention of the learned counsel for the respondent. There may not be any dispute with regard to the boundary recitals and having specifically pleaded that the suit property is in respect of T.S.No.889, without proving that the suit property is in T.S.No.889, in my opinion the respondent Temple is not entitled to claim eviction on the basis of the boundary recitals. Further, originally the respondent Temple filed the suit in T.S.No.888 and only after seeing the Commissioner's report and having found that the possession of the appellant is in T.S.No.889, the plaint was amended and claimed eviction in respect of T.S.No.889. As the respondent Temple failed to prove that they are the owners of T.S.No.889 and the appellant has also contended that T.S.No.889 is a Government poramboke and the appellant and her husband are residing on their own right and not as a tenant, in my opinion, the respondent is not entitled to order of eviction and both the Courts below failed to note whether the respondent is the owner of the suit property in T.S.No.889 with reference to Exs.A1, A2 and A8. Hence, the substantial questions of law are answered in favour of the appellant and I hold that the respondent Temple is not the owner of T.S.No.889 and Exs.A1, A2 and A8 would prove that the respondent is the owner of T.S.No.888 and therefore, the respondent is not entitled to evict the appellant from T.S.No.889 and the Judgement and Decree of the Courts below are set aside the suit in O.S. 283 of 2003 is dismissed and the Second Appeal is allowed.

11. In the result, the Judgement and Decree of the Courts below are set aside and the Second Appeal is allowed. No Costs.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The District Munsif,  
District Munsif Court,  
Nagapattinam.



2. The Subordinate Judge,  
Subordinate Court,  
Nagapattinam.

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2 CCs to Mr.C.Manohar, Advocate, SR.61553

S.A.No.365 of 2009

MRD (CO)  
SRA (25/11/2011)