

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN
S.A.No.291 of 2016

1. T.S.Kesavalu
2. K.Ankaiyyan
3. K.Murali
4. K.Vinayagam
5. K.Vallimurugan
6. K.Agasthiyan
7. K.Shyamala
8. K.Sugunavalli

..Appellants/ Appellants/ defendants

Vs.

V.P.Balasubramaniyan ..Respondent/ Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the Subordinate Judge, Ponneri, dated 18.12.2014 in A.S.No.41 of 2008, confirming the judgment and decree of the District Munsif, Ponneri, dated 31.10.2007 in O.S.No.80 of 2001.

For Appellants : Mr.N.R.Anantharamakrishnan
For Respondent : Mr.R.Krishnaswamy

J U D G M E N T

The defendants in O.S.No.80 of 2001 having suffered a decree for possession, on its confirmation in A.S.No.41 of 2008, have come forward with the second appeal.

2. The plaintiff filed a suit for recovery of possession contending that the 1st defendant became a tenant in the year 1986 in respect of the suit properties, agreeing to pay annual rent of Rs.500/-. It is also claimed that the 1st defendant did not pay the rent for three years up to 1991 inspite of several demands. The plaintiff determined the tenancy and issued a notice calling upon the 1st defendant to hand over the possession on 27.09.1991.

3. The 1st defendant along with his wife, sent a reply notice on 23.12.1991 denying the tenancy and also claiming that his wife T.K.Govindammal was in possession in part performance of the agreement of sale, dated 12.03.1975. In view of the said reply, the plaintiff had come forward with the above suit seeking possession.

4. The defendant 2 to 8 are the children of the 1st defendant and T.K.Govindammal, who died during the interregnum. The defendants resisted the suit contending that the 1st defendant was not a tenant. He would also claim that his wife T.K.Govindammal entered into an agreement of sale with the plaintiff on 12.03.1975 and she was put in possession in part performance of the said agreement. It is also claimed that since the major portion of the sale consideration has been paid by the 1st defendant's wife, the possession was handed over to them in the year 1975 itself.

5. The Courts below, upon consideration of the evidence on record, concluded that the case of part performance pleaded by the defendants, is not true. The Courts below also found that there was no written agreement and the defendants would not get the benefit of Section 53 (A) of Transfer of properties Act.

6. The Courts below also found that the defendants have denied the tenancy under the plaintiff and claimed possession only under the principle of part performance, the plaintiff is entitled to recovery of possession. On the said findings, the suit was decreed.

7. In the appellate Court, a plea was raised by the 1st defendant claiming that since it is the case of the plaintiff himself that all the defendants are cultivating the lands and the land sought to be recovered being Agricultural land, coming under the purview of Tamilnadu Cultivating Tenants Protection Act, 1955, the Civil Court has no jurisdiction to evict a cultivating tenant.

8. The lower appellate Court rejected the said contention on the ground that the 1st defendant had specifically denied the tenancy and claiming possession in part performance of the agreement dated 12.03.1975 which was never sought to be enforced. On the said finding, the lower appellate Court confirmed the judgment of the trial Court.

9. Aggrieved, the plaintiffs are on appeal.

10. I have heard Mr.N.R.Anantharamakrishnan, learned counsel appearing for the appellants and Mr.R.Krishnaswamy, learned counsel appearing for the respondent.

11. The following question of law was framed at the time of admission:

"Whether the suit filed by the plaintiff for eviction is maintainable based on his pleadings where he admits the first defendant as the tenant of the suit properties and in such event, whether resort to civil remedy is maintainable instead of proceeding under the special enactment viz. Cultivating Tenant Protection Act?"

12. Mr.N.R.Anantharamakrishnan, learned counsel appearing for the appellants, elaborating on the question of law, contended that it is an admitted case of the plaintiff that the 1st defendant is a tenant of the land in question and therefore the Tamil nadu Cultivating Tenants Protection Act, 1953 will stand attracted. In view of the bar in the said enactment, the suit as framed is not maintainable.

13. Contending contra, Mr.R.Krishnaswamy, learned counsel appearing for the respondent would submit that the appellants being the tenants in the suit, cannot be allowed to approbate or reprobate. In the reply notice issued on 23.12.1991. The 1st defendant had specifically denied the tenancy and claimed to be in possession under an agreement of sale dated 12.03.1975. It is under the above back drop, the plaintiff has been forced to sue for recovery of possession and not ejectment against the 1st defendant as well as the children they being the heirs of T.K.Govindammal. Having taken a stand that he is not a tenant and that he is in possession under agreement dated 12.03.1975 entered into between his wife and the plaintiff, the 1st defendant/1st appellant cannot now contend that he is the cultivating tenant under the Tamil Nadu Cultivating Tenants protection Act, 1955.

14. I have considered the rival submissions.

15. No doubt, the plaintiff has stated that the defendants are cultivating tenants and has also claimed that the tenancy is duly terminated. However, in view of the stand taken by the 1st defendant that he was not a tenant and his possession is in part performance of the agreement of sale dated 12.03.2017. Hence, the plaintiff has filed the suit for recovery of possession. Even in the written statement filed before the trial Court, the

1st defendant did not project the tenancy. In the very first paragraph in the written statement, it is stated that the 1st defendant is not a tenant under the plaintiff with regard to the suit properties.

16. Hence, I do not think that it is open to the 1st appellant to claim that he is entitled to protection under the Tamil Nadu Cultivating Tenants Protection Act. No doubt true that the defendants can raise contradictory pleas but they cannot approbate and reprobate.

17. Hence, the question of law is answered against the appellants. The appeal fails and dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vum
To

1. The Subordinate Judge,
Ponneri.
2. The District Munsif,
Ponneri.

Copy to:

The Section Officer, VR Section, High Court, Madras.

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A.SK(03/03/2020)

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