

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :30.08.2019

PRONOUNCED ON:25.09.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.395 of 2016

Nilavazhagi ... Appellant/Plaintiff

Vs.

1. The President,
Edakudi Vadapathi Panchayat
Having Office at
Balan Street,
Edakudi Vadapathi Village,
Sirkali Taluk,
Nagapattinam District.

2. The Block Development Officer,
Block Development Office,
Sirkali Town,
Nagapattinam District.

3. Government of Tamilnadu,
Rep. By District Collector,
District Collectorate,
Nagapattinam.

... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of Additional Sub Court, Mayiladuturai, dated 12.01.2016 made in A.S.No.14 of 2015 confirming the judgment and decree of District Munsif Court, Sirkali dated 30.01.2015 made in O.S.No.219 of 2008.

For Appellant : Mr.S.Sounthar

For Respondents : Mr.N.Manikandan
Government Advocate, (CS)

J U D G M E N T

Challenge in this Second Appeal is made to the judgment and decree dated 12.01.2016 passed in A.S.No.14 of 2015 on the file of the Additional Subordinate Court, Mayiladuturai, confirming the judgment and decree dated 30.01.2015 passed in O.S.No.219 of 2008 on the file of the District Munsif Court, Sirkali.

2. The Second Appeal has been admitted on the following substantial question of law:

" Whether the Courts below committed a legal error in rejecting material evidence of P.W.3 and P.W.4 on mere assumption without considering their entire evidence as a whole, especially nothing was elucidated against them in their cross examination".

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. The suit has been laid by the plaintiff against the defendants for permanent injunction and mandatory injunction.

6. Two items of the suit properties are described in the plaint and according to the plaintiff, the first item belongs to Vaithiswaran Koil Devasthanam and the second item is lying adjacent to the first item and according to the plaintiff, she had taken both the suit items from one Kaliyamurthy who had taken the same on lease from Vaithiswaran Koil Devasthanam and according to the plaintiff by way of oral arrangement, she had taken the suit properties from Kaliyamurthy and it has also been pleaded that pending suit, the defendants without any right or authority put up the constructions in the first item of the suit properties and accordingly the plaintiff would putforth that she has been necessitated to claim the relief of mandatory injunction against the defendants.

7. The defendants resisted the plaintiff's suit contending that it is false to state that the plaintiff has been in the possession and enjoyment of the suit properties as putforth in the plaint and also disputed the case of the plaintiff that the defendants had put up the construction in the

first item of the suit properties pending suit and according to the defendants, the defendants had taken lawful action against the plaintiff's husband for dereliction of duty and consequent thereupon, according to them, the plaintiff has come forward with the false suit and hence the suit is liable to be dismissed.

8. From the materials placed on record, it is found that the parties are not in dispute that the first item of the suit properties belongs to Vaithiswaran Koil Devasthanam. According to the plaintiff, one Kaliyamurthy had taken the same on lease from Vaithiswaran Koil, however, there is no acceptable and reliable material evidencing that Kaliyamurthy had taken the first item on lease from Vaithiswaran Koil Devasthanam. In this connection, the Kists receipt marked as Ex.A1 is pressed into service. Ex.A1 is found to be pertaining to patta No.1. However as rightly held by the Courts below, the plaintiff has miserably failed to establish that the patta No.1 in particular relates to the first item of the suit properties and more so when there is nothing to indicate in Ex.A1 that it relates to the first item, the Courts below are found to be justified in not placing reliance upon Ex.A1 for accepting the plaintiff's case.

9. The plaintiff relied upon the Gazette Notification of Tamil Nadu Government marked as Ex.A11 and from the same it is found that the first item belongs to Vaithiswaran Koil Devasthanam and three persons are shown to be in the occupation of the lands belonging to the temple. However, the name of the plaintiff is not reflected therein. One Srinivasa Reddiyar name is found and according to the plaintiff, Srinivasa Reddiyar is the father of Kaliyamurthy from whom the plaintiff is found to have entered into the arrangement qua the enjoyment of the suit properties. However, from Ex.A11, when there is no indication contained therein that it also pertains to the extent of 5 cents described in item 1 of the plaint and when there is no proof on the part of the plaintiff to show that she had taken the first item of the suit properties from Kaliyamurthy and in this connection, the plaintiff having not examined Kaliyamurthy or his legal representatives, in such view of the matter, merely from Ex.A11 we cannot infer or hold that the plaintiff had taken the first item of the suit properties from Kaliyamurthy who is stated to have taken the same on lease from Vaithiswaran Koil Devasthanam.

10. The plaintiff would also rely upon the miscellaneous receipt marked as Exs.A10 dated 28.01.2009, however as held by the Courts below, Ex.A10 being found to have come into existence after the institution of the suit and in such view of the matter, the Courts below are found to be

justified in not relying upon Ex.A10 for sustaining the plaintiff's case.

11. In this connection, the plaintiff's counsel mainly relied upon the witnesses examined on her side as P.Ws.3 and 4 who are said to be associated with the Vaithiswaran Koil Devasthanam. However as held by the Courts below merely from the oral evidence of P.Ws.3 and 4, we cannot conclude that the first item of the suit properties in particular has been in the lawful possession and enjoyment of the plaintiff. When it has been admitted by P.Ws.3 and 4 that there is no record in the name of the plaintiff that she has occupied the first item of the suit properties as a lessee of the temple and as above noted, when the plaintiff has miserably failed to establish that she had taken the first item from Kaliyamurthy lawfully, in such view of the matter, merely on the oral testimony of P.Ws.3 and 4 without any material buttressing their version, we cannot conclude that the plaintiff is in the lawful possession and enjoyment of the first item of the suit properties.

12. As regards the second item, the plaintiff would rely upon the Kists receipts marked as Exs.A2 to A9 to sustain her case. However, when there is nothing contained in Exs.A2 to A9 to link the same with the second item and when the materials placed on record go to show that the second item is reflected as a well in the village accounts and when the same is also not been controverted by the plaintiff, in such view of the matter, on the basis of Exs.A2 to A9, particularly when the abovesaid documents do not point out that the same relates to the second item, in all, it is found that the Courts below are justified in not accepting the plaintiff's case qua the second item of the suit properties.

13. In the light of the abovesaid discussions, the Courts below are found to have analyzed the oral and documentary evidence projected in the matter in the right perspective and rightly disbelieved the evidence of P.Ws.3 and 4 and when the plaintiff has miserably failed to establish her claim of lawful possession and enjoyment of the suit properties as putforth by her and when the oral evidence of P.Ws.3 and 4 is not substantiated with reliable and convincing materials, in all, it is found that the reasonings and conclusions of the Courts below for rejecting the plaintiff's case do not warrant any interference.

14. For the reasons aforestated, the substantial question of law formulated in the Second appeal is accordingly answered against the plaintiff and in favour of the defendants.

15. In conclusion, the Second Appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

mfa

To

1. The Additional Subordinate Judge,
Additional Sub Court,
Mayiladuturai.

2. The District Munsif,
District Munsif Court,
Sirkali.

Copy to

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

+1cc to Mr.S.Sounthar, Advocate, SR.No.82435.
+1cc to Government Pleader, SR.No.82245.

Judgment made in
S.A.No.395 of 2016

SAI (CO)
CSR: 17.02.2020

WEB COPY