

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.06.2019

PRONOUNCED ON : 17.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.NO.50 OF 2016

AND

CMP NO.1389 OF 2016

1. Jayaraman
2. Selvaraj
3. Kumar

...Appellants/
Plaintiffs

Vs.

Sivakolunthu

...Respondent/
Defendant

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Additional District and Sessions Court and Chief Judicial Magistrate at Ariyalur, dated 16.11.2015 in A.S.No.11 of 2015 reversing the judgment and decree of the District Munsif Court at Jayankondam, dated 10.11.2010 in O.S.No.47 of 2009.

For Appellants : Mr.P.Valliappan

For Respondent : Mr.S.Kamadevan

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 16.11.2015 passed in A.S.No.11 of 2015 on the file of the Additional District and Sessions Court and Chief Judicial Magistrate court, Ariyalur, reversing the judgment and decree dated 10.11.2010 passed in O.S.No.47 of 2009 on the file of the District Munsif Court, Jayankondam.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for declaration, possession and mesne profits.

4. The case of the plaintiffs, in brief, is that the suit property belongs to the plaintiffs ancestrally and the plaintiffs are engaged in their ancestral and family occupation of playing drums and music and eking income out of the same and they had been leasing out their ancestral properties in favour of the others and also deriving income therefrom and the plaintiffs are now necessitated to engage in the agricultural activities and accordingly, it is pleaded by them that the total extent available in the suit survey number is 1.01.0 hectre and the same had been leased out to one Radhakrishnan, son of Swaminathan for the past 20 years on the basis of the oral lease arrangement and the plaintiffs, thereafter, retained the northern portion of the same of an extent of 0.36.0 ares and leased out the remaining extent of 0.65.0 ares on the southern side to Radhakrishnan on lease arrangement and accordingly, the portion retained by the plaintiffs abovesated is the suit property and the plaintiffs had been enjoying the same by raising crops and the defendant, without any entitlement, interfered with their possession and enjoyment and also unlawfully encroached into the suit property and hence, according to the plaintiffs, they had been necessitated to lay the suit against the defendant for appropriate reliefs.

5. The defendant resisted the plaintiffs' suit contending that the suit property is not the ancestral property of the plaintiffs as put forth in the plaint and no doubt the plaintiffs are engaged in their ancestral and family occupation but disputed the claim of the plaintiff that they had been leasing out the ancestral properties and earning income and also disputed the case of the plaintiffs that they had retained 0.36.0 ares in the suit survey number for their agricultural activities and leased out the remaining extent of 0.65.0 ares to Radhakrishnan on lease arrangement and also disputed the case of the plaintiffs that following the abovesaid arrangement with Radhakrishnan, they had been enjoying the suit property and that the defendant had encroached into the same and according to the defendant, the extent of 2.50 acres in survey No.174/3, from the origin, had been in the possession and enjoyment of the defendant and his brother Radhakrishnan and it is only Swaminathan (the father of the defendant and Radhakrishnan), who had been the original lessee under the plaintiffs' father Rajam Pillai in respect of the abovesaid extent of the property and thereafter, they had endeavoured to purchase the abovesaid property orally, however, as the abovesaid property is the maniam land and the sale transaction could not be effected with reference to the said property, as advised and as Swaminathan, the father of the defendant and Radhakrishnan had become old, the lease arrangement was continued by Rajam Pillai (the plaintiffs' father) with Radhakrishnan (the defendant's brother) in respect of the abovesaid extent and accordingly,

Radhakrishnan's name had also been recorded in the tenancy register and further according to the defendant, Radhakrishnan and he had orally divided their properties and accordingly, it is pleaded that Radhakrishnan had been entrusted 1.50 acres in the abovesaid survey number towards his share and the defendant was entrusted 1.00 acres in the abovesaid survey number towards his share. In this connection, they have also executed a partition chit dated 11.06.1989 and accordingly it is only the defendant, who has been in the possession and enjoyment of an extent of 1.00 acres by putting up the house construction paying kists, tax etc., and according to the defendant, on account of enmity, Radhakrishnan, his brother has instigated the plaintiffs to lay the false suit and the plaintiffs are not entitled to seek the reliefs as prayed for and hence prayed for the dismissal of the plaintiffs' suit.

6. On the basis of the materials placed on record, both oral and documentary and the submissions made, the trial court was pleased to decree the suit in favour of the plaintiffs as prayed for. Impugning the same the defendant had preferred the first appeal and the first appellate court was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the defendant, dismissed the suit laid by the plaintiffs. Challenging the same, the second appeal has been preferred by the plaintiffs.

7. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

"a) Whether the lower appellate court is correct in law in holding that the civil court has no jurisdiction in view of the provisions of Section 16(A) of the Tamil Nadu Cultivating Tenants Protection Act, 1955, especially when it is not the case of the respondent that he is a tenant of the suit property and no such issue was framed by the trial court?

b) Whether the lower appellate court is correct in law in upholding the contention of the respondent that he is a tenant and also the owner of the suit property on the basis of Ex.B7 partition list?

c) Whether the lower appellate court is correct in law in placing reliance upon Ex.B7 partition list which is an unregistered and unstamped document, executed between the persons having no right over the suit property?

d) Whether the lower appellate court is correct in law in not considering the admissions

made by the respondent examined as D.W.1, wherein he has categorically admitted the right and title of the appellants over the suit property?

8. The plaintiffs have come forward with the suit seeking the reliefs of declaration, possession and mesne profits. For claiming title to the suit property, the plaintiffs would put forth the case that the suit property is their ancestral property. However, considering the materials placed on record, particularly, the plaintiffs having not come forward with any specific case as to how they had claimed the suit property as their ancestral property and when from the evidence of P.W.1 and admission made by him, it is found that the extent comprised in the suit survey number inclusive of the suit property is only the maniam land and the same had been given to the plaintiffs' grand father as maniam by the temple for rendering service to the temple, in such view of the matter, when accordingly it is found that it is only the temple who is the owner of the suit property and at the most, the plaintiffs through their ancestors would only be entitled to claim possessory right in respect of the same and not the declaration of title to the same as the owners of the same and furthermore, when there is no material on the part of the plaintiffs that the suit property had been derived by them ancestrally, in such view of the matter, in my considered opinion, the relief of declaration of title sought for by the plaintiffs qua the suit property cannot at all be countenanced.

9. From the materials placed on record, it is found that the suit property had been entrusted to the plaintiffs for rendering service to the temple and hence at the most, the plaintiffs would be entitled to claim only the possessory right with reference to the same. Now, according to the plaintiffs, they had been leasing out the suit property, the larger extent comprised in the suit survey number to one Radhakrishnan, son of Swaminathan. As could be seen from the materials projected in the matter, it is found that, particularly the proceedings of the Tahsildar and Record officer, Jayamkondam, the defendant's brother Radhakrishnan had been recognised as the lessee in respect of the total extent of 2.50 acres in survey No.174/3 and the plaintiffs' father had also not put forth any objection to the same and conceded the abovesaid lease arrangement in favour of Radhakrishnan, the defendant's brother. Now, according to the defendant, from the origin, the abovesaid extent of 2.50 acres in the suit survey number had been under the lease arrangement only with his father Swaminathan and thereafter, on account of his old age, the lease arrangement was continued in the name of the eldest member of the family, Radhakrishnan, his brother, and accordingly, it is found that recognising the same, the plaintiffs' father had also acceded to the continuation of the

lease arrangement with Radhakrishnan in the proceedings marked as Ex.A5 and thus it is found that as put forth by the defendant, the suit property had been in the possession of the defendant's family of a larger extent, namely 2.50 acres in the suit survey number. Now according to the defendant, on the basis of the partition arrangement effected between him and his brother, his brother was allotted 1.50 acres and he had been allotted 1.00 acres in the suit survey number and in this connection, reliance is placed upon Ex.B7 partition chit by the defendant. However, Ex.B7 chit is not a registered instrument, in such view of the matter, on the basis of the same, the defendant cannot be allowed to claim any title or interest over the suit property as such. All the more, considering the kists receipts projected by the defendant and when it is seen that the defendant's father Swaminathan was also paying the kists in respect of the suit property to the extent covered under survey number 174/3 comprised in patta No.815 and with reference to the same, as the plaintiffs have not come forward with any explanation and considering the lease arrangement effected between the plaintiffs' father and the defendant's brother Radhakrishnan under Ex.A5 proceedings, it is found that the total extent available in the suit survey number has been only in the possession of the defendant's family. No doubt, by way of Ex.A6 proceedings, it is found that an extent of 0.65.0 ares in the suit survey number had been agreed to be continued on lease arrangement in favour of Radhakrishnan and on a combined reading of Exs.A5 and A6 proceedings and when it is seen that the defendant's father and the defendant are also found to be in the possession and enjoyment of the extent comprised in suit survey number and when the plaintiffs have miserably failed to establish that the defendant had encroached into the suit property as put forth by them and as rightly determined by the first appellate court, if really the defendant had unlawfully encroached into the suit property, the plaintiffs would have instituted proper criminal action against the defendant and when there is no material on the part of the plaintiffs with reference to the same and when according to the defendant by way of the family partition chit, he had been allowed to continue the enjoyment of an extent of 1.00 acres in the suit survey number inclusive of the suit property and the remaining extent of 1.50 acres had been in the possession and enjoyment of his brother Radhakrishnan and in particular, when there is no material on the part of the plaintiffs that they had lawfully recovered the possession of the suit property in particular from Radhakrishnan or from the defendant's family as such, in such view of the matter, as rightly found and determined by the first appellate court, though the defendant's case could not be accepted based on Ex.B7 partition chit, however, when considering the total materials available on record cumulatively, it is found that the suit property, from the origin, had been only in the enjoyment of the

defendant's family from the days of his father Swaminathan and thereafter with Radhakrishnan (the defendant's brother), the eldest member of the defendant's family and as there is no proof on the part of the plaintiffs that they had recovered the possession of the suit property from the family of the defendant and his brother and as abovenoted, the plaintiffs having failed to establish the plea of encroachment said to have been made by the defendant in the suit property in any manner and when there is no material on the part of the plaintiffs to evidence that they had been in the possession and enjoyment of the suit property at any point of time after their alleged claim of taking the lawful possession of the same from the defendant's family as above pointed out, in such view of the matter, as held by the first appellate court, the defendant having also pleaded the lease arrangement for retaining the possession of the suit property i.e. the larger extent of 1.00 acres in the suit survey number and as above noted, the plaintiffs, as such, are not the lawful owners of the suit property and only having the possessory right in respect of the same and the defendant having established his tenancy right in respect of the suit property prima facie by way of preponderance of probabilities on the strength of the materials placed on record, in such view of the matter, when with reference to the property comprised in the suit survey number there had been various proceedings before the Tahsildar and Record Officer as could be seen from Exs.A5 and A6, in such view of the matter, if at all, the plaintiffs are entitled to recover the possession of the suit property from the defendant on the basis of their possessory right, their remedy is only before the appropriate forum and not by way of a civil action and as determined by the first appellate court, when the civil action laid by the plaintiffs has been barred under Section 16A of the Tamilnadu Cultivating Tenants' Protection Act, 1955, it is seen that the suit laid by the plaintiffs is found to be not legally sustainable and in all, I do not find any valid reason to interfere with the judgment and decree of the first appellate court for declining the reliefs sought for by the plaintiffs by way of setting aside the judgment and decree of the trial court.

10. The first appellate court has not based its reasonings and conclusions on Ex.B7 family partition chit as sought to be made out by the plaintiffs' counsel and on the other hand, has based its determination only on the appreciation and analysis of the materials available on record in the right perspective and thereby determined that as pleaded and put forth and established by the defendant on the basis of the preponderance of probabilities, the larger extent of 2.50 acres in the suit survey number has been enjoyed by the family of the defendant from the days of his father by way of some arrangement and subsequently the defendant and his brother Radhakrishnan had been in the possession and enjoyment of the same as per their convenience and

as abovenoted when the plaintiffs have miserably failed to establish that they had lawfully recovered the possession of the suit property, in particular, the extent of 1.00 acres in the possession of the defendant, in such view of the matter, I do not find any acceptance in the arguments put forth by the plaintiffs' counsel that the first appellate court has determined the issues involved between the parties without appreciating the pleadings and the materials available on record and on the other hand, it is found that the first appellate court had assessed every material projected by the respective parties in the correct perspective both factually and legally and rightly non-suited the plaintiffs. The substantial questions of law formulated in this second appeal are accordingly answered in favour of the defendant and against the plaintiffs.

11. In conclusion, the second appeal fails and is dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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Copy to

1. Additional District and Sessions Court and Chief Judicial Magistrate court,, Ariyalur
2. District Munsif Court, Jayankondam,
3. The Section officer, V.R. Section, High Court, Madras

+1cc to Mr.P.Valliappan, Advocate, S.R.No.61095

+1cc to Mr.S.Kamadevan, Advocate, S.R.No.60954

S.A.No.50 of 2016

KK(CO)

CS/29/01/2020

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