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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 30 of 2014

1.R.Ramesh
2.S.Thangavel
3.P.Velusamy

..Appellants/Defendants 1 to 6

Vs.

D.Palanisamy

..Respondent/Plaintiff

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 28.02.2013 made in A.S.No.38 of 2010 on the file of the Sub-Ordinate Judge, Tiruppur confirming the judgment and decree dated 12.02.2010 made in O.S.No. 21 of 2004 on the file of District Munsif Court at Tiruppur.

For Appellants: Mr.Mukunth for M/s.Sarvabhauman Associates

For Respondent : Mr.T.R.Rajagopalan, Senior Counsel
for Mr. P.M.Duraisamy

J U D G M E N T

The defendants in O.S.No.21 of 2004, who had suffered a decree for permanent injunction at the hands of the Courts below are the appellants.

2. The suit was laid by the plaintiff / respondent seeking permanent injunction claiming that he is a cultivating tenant in respect of the suit properties measuring about 3.30 cents in Survey No.438/1 which has now been sub-divided as Survey Nos. 438/1A & 438/1B under the defendants 1 to 3. The defendants 4 to 6 are purchasers of the property from defendants 1 to 3. In support of his claim that he is a cultivating tenant, the plaintiff relied upon a lease deed dated 25.01.1976 and the order of the tenancy by Tahsildhar made in TR/1/1984 dated 12.04.1984 recording him as a tenant in respect of 2.50 acres in Survey No.438/1. It is claimed that he took 2.50 cents of land on lease from the first defendant under Ex.A1 dated 25.01.1976 and sometime in 1990, the defendants 2 and 3



also entered into a lease agreement with him in respect of their 2/6th share in the property and put him in possession. Therefore, according to him, he is a cultivating tenant in respect of the entirety of the property measuring 3.30 acres in Survey No.438/1 and claims that his possession should be protected. He would also claim that the purchasers namely, defendants 4, 5 and 6 are now attempting to dispossess him by using force. The plaintiff would claim that he cannot be evicted except under due process of law, since he is entitled to protection under the Tamilnadu Cultivating Tenants Protection Act, 1955.

3. The suit was resisted by the defendants denying the very lease. According to the defendants, they have been in possession of the property and claim that the plaintiff is a cultivating tenant was stoutly denied. At trial, the plaintiff examined himself as P.W.1 and examined two other witnesses as P.W.2 and P.W.3. He has also produced Exs.A1 to A14. The first defendant was examined as D.W.1 and the 5th defendant, A.S.Thangavel was examined as D.W.2. Exs.B1 to B28 were marked on the side of the defendants.

4. The Courts below, upon a consideration of the evidence on record concluded that the plaintiff has established that he is a tenant in respect of the entire 3.30 acres of land shown as suit property. In coming to the said conclusion, the Courts below relied upon Ex.A1, Lease deed and Ex.A2, order of the tenancy Tahsildhar. The Courts below also took note of the fact that there is no evidence of any partition between the defendants 1 to 3. Therefore, the case of the plaintiff that he has been cultivating the entire 3.30 cents as a cultivating tenant is more probable. On the above findings, the Courts below granted a decree for permanent injunction. Aggrieved, the defendants are on appeal. Notice of motion was ordered and after hearing the counsel on either side, I had framed the following questions of law on 16.09.2019:-

"Whether the Courts below were right in decreeing the suit for entire 3 acres 30 cents when the plaintiff has been registered as a lessee under Act 10/1969 on in respect of 2.50 acres solely based on Kist receipts produced by the plaintiff ?"

5. I have heard, Mr.Mukunth, learned counsel appearing for the appellants and Mr.T.R.Rajagopalan, learned counsel for the respondent.

6. While Mr.Mukunth, learned counsel appearing for the appellant would vehemently contend that when the plaintiff /



respondent has proved the tenancy only in respect of 2.50 acres by producing Exs.A1 and A2, the Courts below were not right in granting a decree in respect of entirety of the property namely, 3.30 acres. According to him, except the evidence of P.W.1, there is nothing on record to establish the tenancy pleaded by him with reference to the 80 cents or 2/6th share of defendants 2 and 3 in the property. Taking me through the plaint, Mr.Mukunth would submit while it is the specific case of the plaintiff that 2.50 acres was leased out to him on 25.01.1976 under Ex.A1. The remaining 2/6 of share of the defendants 2 and 3 was leased to him in 1990. Mr.Mukunth would contend that there is no evidence to prove the lease pleaded in the year 1990. He would also draw my attention to the adangal extracts filed by the defendants as Exs.B15 to B17 to show that the defendants have been in possession of the property. He would also contend that there is no evidence to prove the possession of the plaintiff except Kist Receipts marked as Exs.A3 to A11. He would also point out that the plaintiff as P.W.1 has admitted that he has other lands in the same survey number and also share in the well. Relying upon the above admission, Mr.Mukunth would contend that except Kist Receipts as well as the receipt for payment of additional security deposit to the Tamilnadu Electricity Board filed as Ex.A12 and the receipt for payment of consumption charges filed as Ex.A13 relating to the land owned by the plaintiff in the same survey number, there is no other evidence to prove the plaintiff's possession. Contending that it is Adangal which would establish possession and when the defendants have produced Adangal extracts to show their continuous possession of the suit property, the Courts below were not right in granting an injunction in favour of the plaintiff.

7. Contending contra, Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the respondent / plaintiff would submit that the plaintiff has come to the Court with the specific case that he has taken on lease the entire extent of 3.30 acres and he has deposed regarding the factum lease and the extent of land leased out to him. In the absence of any contra evidence and the defendants 2 and 3 not getting into the box to deny the lease claimed by the plaintiff in the year 1990, the Courts below were right in decreeing the suit. Of course, as far as lease claimed in respect of 2.50 acres, the plaintiff is able to produce documentary evidence namely, Ex.A1 (Lease deed) and the order of record of Tenancy Tahsildhar made on 12.04.1984 recording the plaintiff/respondent as a tenant in the presence of the first defendant. The first defendant in his evidence has admitted that he has not challenged the order of the Tenancy Tahsildhar dated 12.04.1984. As regards the 2.50 acres covered by Exs.A1 and A2, it can be concluded that the plaintiff has made out a prima facie case of tenancy and he is entitled to



injunction.

8. In so far as the remaining extent, there is no written instrument of lease. The plaintiff has also not been recorded as a tenant in respect of 80 cents of land. The plaintiff as P.W.1 in his evidence, particularly, in cross-examination, has admitted that he has filed a suit only in respect of 2.50 acres. He has also admitted that he is possessed of other lands in the same Survey number as owner. Apart from the said admission of P.W.1, the defendants have produced the Adangal extracts for Fasli Years 1396 to 1418 as Exs.B15, B16 and B17. The adangal extracts for all these years stand in the name of the defendants 2 and 3. If a property is occupied by the tenant, the adangal extract would show only the tenants name and not in the name of the owner. The adangal extracts produced namely Exs.B15 to B17 stand in the name of the owner therefore, the claim of the plaintiff with reference to the tenancy in respect of the 80 cents of land has not been established. Though the plaintiff would claim to be in possession of the property from 1990, he is unable to produce any evidence to show possession of entire 3.30 acres.

9. As rightly pointed out by the learned counsel appearing for the appellant, the Kist Receipts and the receipts for payment of electricity consumption charge and security deposit marked as Exs.A3 to A12 will not prove tenancy. The plaintiff himself has admitted that he owned other lands in the same survey number along with a share in the well situated in the said survey number. Therefore, the learned counsel appearing for the appellant is right in contending that those documents only relate to lands owned by the plaintiff and not the leased lands. The plaintiff, who seeks a decree for permanent injunction must establish his actual physical possession on the date of the suit. The documentary evidence available on record does not establish possession of the plaintiff on the date of the suit. Even in his evidence, in cross-examination, P.W.1 has admitted that he has laid the suit only for 2.50 acres covered by Exs. A1 and A2. I therefore find that the Courts below were not right in granting a decree in respect of the entirety of the property. In view of the above, the question of law framed is answered to the effect that the Courts below were not right in granting a decree in respect of the entirety of the property namely, 3.30 acres.

10. In view of the answer to the question of law, this second appeal is partly allowed, the judgment and decree of the Courts below are modified and there will be a decree for permanent injunction only in respect of the 2.50 acres of land covered by Exs.A1 and A2. In respect of the remaining 80 cents of land, the decree for permanent injunction granted by the



Courts below will stand set aside. Taking into account the circumstances and the facts, there will be no order as to costs in the appeal.

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Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

kkn

To:-

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

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.94698

+1cc to Mr.P.M.Duraisamy, Advocate SR.No.95298

S.A.No. 30 of 2014

TM(CO)
GMY(07/08/2020)