

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.Nos. 47 & 48 of 2014

Kalyanakumar

..Appellant in both the appeals/
Defendant in S.A No.47 of 2014

...Appellant/Plaintiff in S.A.No.48 of 2014

Vs.

Santha Ammal

..Respondent in both the appeals/
Plaintiff in S.A 47 of 2014

... Respondent/Dependent in S.A.48 of 2014

Prayer in both the appeals: Memorandum of Second Appeals filed under Section. 100 of C.P.C. against the judgment and decree dated 26.08.2013 made in A.S.Nos.108 & 109 of 2012 on the file of the Principal Sub-Ordinate Judge, Myladuthurai as reversed the judgment dated 17.11.2012 made in O.S.Nos.101 of 2010 & 88 of 2008 on the file of the District Munsif Court, Sirkali.

For Appellant : Mr.M.V.Venkateshan

For Respondent : Mr.S.Sounthar

J U D G M E N T

These appeals arose out of the two cross suits filed by the parties herein. While the appellant filed a suit in O.S.No.88 of 2008 seeking a decree for permanent injunction against the respondent, the respondent filed a suit in O.S.No.101 of 2010 against the appellant seeking the very same relief of permanent injunction. It is not in dispute that the suit property belongs to Amirthakadeswararkoil Arthajama Kattalai. The appellant claims to be a tenant under the said Kattalai and in support of the tenancy, the appellant has produced two documents namely, the certificate issued by a person claiming to be the Trustee and a rent receipt dated 05.04.2008. The suit in O.S.No. 88 of 2008 was filed on 15.04.2008 seeking the relief of permanent injunction.

2. The defendant / respondent herein resisted the suit contending that the plaintiff was never a tenant under the Kattalai. Originally one Subramanian was a tenant and he had conveyed his tenancy rights in favour of one Narayanasamy under a registered sale deed dated 12.04.1976. The said Narayanasamy was in possession of the property as a tenant. On the death of Narayanasamy, his son Kaliyaperumal continued as a tenant and he conveyed the tenancy rights to the plaintiff under a sale deed dated 07.01.1998. The said sale deed is an unregistered instrument. The defendant also produced certain receipts evidencing payment of rent by the defendant / respondent's husband to the Kattalai. The defendant filed a cross suit in O.S.No.101 of 2010 seeking the relief of injunction.

3. The Trial Court, on appreciation of the evidence concluded that in view of the certificate issued by the trustee, the plaintiff / appellant has proved the tenancy and the sale deed in favour of the defendant / respondent being unregistered instrument cannot confer any title. On the above conclusions, the learned Trial Judge decreed the suit filed by the appellant namely, O.S.No.88 of 2008, while dismissing the suit filed by the respondent in O.S.No.101 of 2010. Aggrieved, the respondent herein filed two appeals in A.S.No.108 & 109 of 2012.

4. The lower Appellate Court on re-appreciation of the evidence concluded that the plaintiff / appellant has not proved the tenancy. It also concluded that the specific case of the appellant was that the suit property is being used as a trashing floor for the lands occupied by his wife as a tenant. The lower Appellate Court also took note of the fact that the predecessor in interest of the respondent had dealt with the tenancy rights of the property under a registered instrument of the year 1976 and though the sale deed in favour of the respondent is unregistered, it can be relied upon to show the character and possession of the respondent. The lower Appellate Court also took note of the fact that the appellant's wife had filed a suit in O.S.No.293 of 2005 seeking permanent injunction against the respondent and others and in the said suit while describing the suit property in O.S.No. 293 of 2005 which is admittedly situate on the West of the suit property, the eastern boundary is shown as "Punja Land" in occupation of "Santha". The description found in the plaint as extracted by the lower Appellate Court is as follows:-

“ரோடுக்கு தெற்கு
ராஜசேகரன் நஞ்சைக்கு கிழக்கு
வடிகால் வாய்க்காலுக்கு வடக்கு
அலமேலு அம்மாள் நஞ்சைக்கும், சாந்தி புஞ்சைக்கும் மேற்கு”

5. The above description, according to the lower Court would amount to an admission on the part of the appellant that the plaintiff in O.S.No.101 of 2010 is in possession of the suit property. The lower Appellate Court also faulted the Trial Court for rejecting the receipts produced by the respondents which stood in the name of her husband. The lower Appellate Court therefore concluded that the appellant has not proved his possession on the date of the suit. The lower Appellate Court also upheld the claim of the tenancy made by the respondent based on the sale deeds of the year 1976 and 1988 which were marked as Exs.A1 and A9 respectively. On the said conclusions, the lower Appellate Court allowed the appeals and decreed O.S.No.101 of 2010. The suit in O.S.No.88 of 2008 was dismissed. Aggrieved the parties are on appeal. The following questions of law were framed at the time of admission:-

"1) Whether the lower Appellate Court was right in reversing the well considered judgment and decree of the Trial Court when the appellant has proved his possession under Ex.B1 to B3 which are anterior to filing of suit by the respondent ?

2) Whether the lower Appellate Court was right in rejecting the case of the appellant when he has proved his possession of the property belonging to a public charitable Trust as evidenced under Ex.B1?

3) Whether the lower Appellate Court has not committed an error of law in violating the provisions of Order 41 Rule 31 of C.P.C.?"

6. No doubt, the document, Ex.B1 is anterior to the suit but it is just 10 days prior to the suit. The other two documents namely, Exs.B2 and B3 are subsequent to the suit, whereas, the documents that have been produced on the side of the respondent / plaintiff in O.S.No.101 of 2010 are much earlier, having emanated in the years 1976, 1988 and 1998 respectively. Therefore, I do not think the lower Appellate Court was wrong in rejecting Exs.B1 to B3. Hence, the question of law No.1 is answered against the appellant. Ex.B1 is only a certificate given by a person who claims to be a Trustee of the Kattalai. The background in which the said certificate has been issued has not been explained before the Court. The person, who issued the certificate has not been examined. Therefore, the certificate alone cannot be a basis for coming to a conclusion that the appellant had proved his possession as a tenant of the property belonging to a charitable trust. The third question of law,

does not really arise, the lower Appellate Court has examined the evidence on record and reconsidered it and had come to a factual conclusion regarding the possession. The lower Appellate Court has also given its reasons as to why it is not agreeing the findings of the Trial Court. Therefore, I find that the judgment of the lower Appellate Court is strictly in compliance in the provisions of Order 41 Rule 31 of C.P.C. Hence, the 3rd question of law is answered against the appellant. Both the appeals fail and therefore dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:-

1. The District Munsif,
Sirkali.
2. The Principal Sub-Judge,
Mayiladuthurai.

Copy to

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

+1cc to Mr.M.V.Venkataseshan, Advocate Sr.93235
+1cc to Mr.S.Sounthar, Advocate Sr.93423

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srg 14/09/2020

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