



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

WEB COPY

S.A. (MD) .No.408 of 2019

and

C.M.P. (MD) .No.8090 of 2019

1.Kathayee

2.Sekar

3.Bojan

4.Muthukumar

5.Parvathi

... Appellants/Appellants/Plaintiffs

Vs.

Sowmi Narayanan

... Respondent/Respondent/Defendant

Prayer: The Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree of the II Additional Sub Judge, Trichy dated 23.04.2019 in A.S.No.137 of 2015, confirming the decree and judgment in O.S.No.1025 of 2009, dated 20.04.2015 on the file of the Principal District Munsif, Trichy.

For Appellants : Mr.S.Vinayak

J U D G M E N T

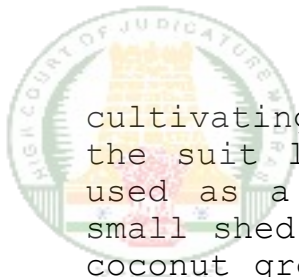
The plaintiffs are the appellants in the second appeal. The second appeal is filed challenging the judgment and decree passed in A.S.No.137 of 2015 on the file of the Subordinate Court, Trichy, in and by which, the learned II Additional Subordinate Judge, Trichy, has reversed the judgment and decree passed by the learned Principal District Munsif, Trichy in O.S.No.1025 of 2009.

2. The facts in brief, which are necessary to dispose of the above second appeal are as follows:

The parties are referred to as per their litigating status in the trial Court.

The plaintiffs have filed the suit for bare injunction on the following basis:

It is the case of the plaintiffs that their father one Arumugam was cultivating the suit lands as a lessee under the defendant and that his name has been recorded as a cultivating tenant in the record of cultivating tenancy rights register. After his demise, the plaintiffs have been continuing with the lease and they have been



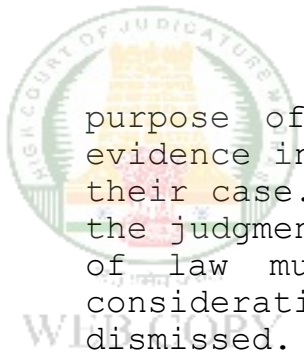
cultivating the lands. The plaintiffs would submit that adjacent to the suit lands, there is a land measuring 7 cents which is being used as a threshing floor and the plaintiffs have also put up a small shed for storing the paddy and other materials. It also has a coconut grove in which there are several coconut trees and yield of coconut has been taken by the plaintiffs. The plaintiffs would submit that the defendant is negotiating for the sale of this property with the third parties and for this purpose, the defendant made an attempt to dispossess the plaintiffs. The specific case of the plaintiffs is that on 09.08.2009, there was an attempt made by the defendant to trespass into the suit property and to dispossess the plaintiffs, which had been successfully thwarted by the plaintiffs. Therefore, they have filed the suit in question.

3. The defendant had filed a written statement, wherein he would admit that the plaintiffs are cultivating the first item of suit property and that the second item of the property which includes the threshing floor as well as the coconut grove is not in possession of the plaintiffs. He would further contend that taking advantage of the fact that the 4th plaintiff's wife is a Councillor, the revenue records have been created. The defendant would contend that the distance between the second item of property and the first item of property is over a kilometre and not adjacent as pleaded by the plaintiffs. The defendant would contend that he has not disturbed the possession of the plaintiffs and that there is no cause of action for filing the above suit.

4. The trial Court was pleased to dismiss the suit by holding that the very location of the items 1 and 2 of the suit property would clearly falsify the case of the plaintiffs and all the revenue documents have been created just prior to the filing of the said suit. The said judgment and decree was taken up on appeal before the II Additional Sub Judge, Trichy in A.S.No.137 of 2015. The learned Subordinate Judge, Trichy has confirmed the judgment and decree of the trial Court and dismissed the appeal. Challenging the same, the plaintiffs have preferred this appeal before this Court.

5. Heard the learned counsel for the appellants.

6. A perusal of the judgment of the Courts below would clearly show that as regards the first item of suit property, there is no quarrel, since the defendant had admitted the possession. Further, the defendant has come forward to categorically deny that there has been no attempt on his part to disturb the possession of the plaintiffs. In this regard, the plaintiffs have not been able to show proof that there has been a threat on 09.08.2009 as alleged by them. As regards the item No.2, the documents which have been put forward to show possession are all just prior to the filing of the suit. The suit has been filed on 11.08.2009 and the documents in question have been created on 10.08.2009 and on 11.08.2009, all of



purpose of the suit. Both the Courts below have considered the evidence in detail and concluded that the plaintiffs have not proved their case. This Court does not find any reason for interfering with the judgment and decree of the Courts below and there is no question of law much less the substantial question of law arises for consideration in the second appeal and hence, the second appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. II Additional Sub Judge,
Trichy.
2. The Principal District Munsif,
Trichy

+1 CC to Mr.P.JEYA PRAKASH NARAYANAN, Advocate (SR-85522[F] dated 06/09/2019)

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