



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2019

CORAM

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

S.A. (MD)No.616 of 2019

and

C.M.P. (MD) .No. 12420 of 2019

Vadivel

.. Appellant /Appellant/Defendant

Vs.

Senthil Arumugam

.. Respondent / Respondent/
Plaintiff

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, against the Judgment and decree dated 01.12.2018, passed in Appeal Suit No.133 of 2017, by the learned Subordinate Judge, Thiruchendur (Originally A.S.No.73 of 2013 on the file of the Subordinate Judge, Thoothukudi), confirming the Judgment and decree, dated 14.03.2013, passed in Original Suit No.55 of 2011, by the learned District Munsif, Srivaikundam.

For Appellant : Mr.G.Aravinthan

JUDGMENT

The defendant in O.S.No.55 of 2011, who had suffered a decree of permanent injunction at the hands of the Courts below has come up with this second appeal.

2. The suit was laid by the plaintiff claiming that the suit property was purchased in the name of the plaintiff, when he was a minor, by his father, Santhanam on 29.07.1989. It is the further case of the plaintiff that his father, Santhanam was in possession of the property till his death and after his death, about 18 years ago, the plaintiff, his wife and mother were in possession of the property. Since the plaintiff happens to be employed in the Tamilnadu Police, he had handed over the Patta passbook to the defendant for the purpose of payment of kist. Misusing the said patta passbook, according to the plaintiff, the defendant claims that he has purchased the property and attempted to interfere with the plaintiff's possession. Hence, the plaintiff was forced to seek



a decree of permanent injunction. The defendant resisted the suit contending that he was put in possession as a tenant in the year 2000. The tenancy is said to be oral. It is the further contention of the defendant that the plaintiff had received a sum of Rs.33,500/- from him agreeing to sell the property to him on 12.12.2004 in the presence of one Ponnammal, wife of Patani. Therefore, according to the defendant, he is in legal possession of the property. Hence the suit for permanent injunction will not lie.

3. The Courts below, upon consideration of evidence, found that the defendant having admitted the title of the plaintiff is bound to prove the alleged oral lease and the oral agreement of sale, set up by him. The Courts below found that there is absolutely no evidence in proof of the said transactions, which are admittedly oral. The Courts below also faulted the defendant for non-examination of Ponnammal, who is said to have been present on the date of the alleged oral agreement, namely 12.12.2004. The Courts below also rejected Ex.B3, which is said to be the receipt issued by Kadambakulam Aayakattudarkal Agricultural Development Society, Thenthirupperai, which describes the defendant as a tenant, as a self generated document. Aggrieved the defendant has come up with this appeal.

4. I have heard Mr.G.Aravinthan, learned counsel for the appellant.

5.The learned counsel for the appellant Mr.G.Aravinthan, would vehemently contend that the Courts below were not right in disbelieving Ex.B3, which is a receipt given by an organisation, which is entrusted with the collection of cess from the Aayakattudars. No doubt, in Ex.B3, the defendant is described as tenant. But the plaintiff is not a party to the said document. As rightly pointed out by the Courts below, no one from the said agricultural development society had been examined in support of the said document. In the absence of the plaintiff being party to the document and in the absence of examination of any person connected with the execution of the document, I do not think that Ex.B3 could be taken as proof of the tenancy. Even otherwise, the defendant has also set up a oral agreement on 12.12.2004. Once the defendant claims that he is in possession, pursuant to an oral agreement of sale, he loses his right to claim as a tenant. The findings of the Courts below are based on material evidence and despite his best efforts, the learned counsel for the appellant is unable to show that the findings are based on no evidence or on wrong appreciation of evidence so that they could be termed as perverse. I do not find any question of law much lesser than substantial question of law to enable me to entertain the appeal.



6. The second appeal therefore fails and it is dismissed without being admitted. No Costs. Consequently, connected miscellaneous petition is dismissed.

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// True Copy //

Sd/-

Assistant Registrar

/ /2020

Sub Assistant Registrar(CS)

PJL

To

1.The Subordinate Judge,
Thiruchendur.

2.The District Munsif,
Srivaikundam.

Copy to:
The Section Officer, (2 Copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.G.ARAVINTAN, Advocate (SR-106113[F] dated 20/12/2019)

**S.A(MD) .No.616 of 2019
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JMN(28.02.2020) 3P : 7C