

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.556 of 2007

Subramaniam ... Appellant/Respondent/Plaintiff

Vs

1.Kittappa (Died)

2.Seethalakshmi

3.Murugavel

4. Singaravel

5.Selvi

6.Mala ... Respondents/Appellants/Defendants

(Respondents 2 to 6 brought on record as Legal representatives of the deceased sole respondent viz., Kittappa vide order of this Court dated 05.09.2019 made in C.M.P.No.6825, 6831 & 6833 of 2019 in S.A.No.556 of 2007 by AQJ)

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 06.12.2006 made in A.S.No.43 of 2006 on the file of the Sub Court, Nagapattinam, reversing the Judgement and Decree dated 23.04.2004 made in O.S.No.85 of 2004 on the file of the District Munsif Court, Nagapattinam.

For Appellant : Mr.S.Sounthar
For Respondent 1 : Died
For Respondents 2 to 6 : Mr.Srinath Sridevan

J U D G E M E N T

The plaintiff is the appellant before this Court. The Second Appeal arises from the Judgement and Decree in A.S.No.43 of 2006 of the Sub Court, Nagapattinam reversing the Judgement and Decree in O.S.No.85 of 2004 by the District Munsif Court, Nagapattinam. The facts in brief necessary for disposing of the above Second Appeal are as follows. The parties are referred to in the same array as in the suit.

2. The plaintiff had filed a suit for declaration, recovery of possession and damages against the defendant in respect of the suit schedule property. It is the case of the plaintiff that the suit schedule property which was originally a Kovil Porambokku belonged to his father. The plaintiff's father had permitted the defendant to occupy the same on a monthly rental of Rs.25/-, which was thereafter increased to a sum of Rs.75/-. In the year 1993, the plaintiff's father had died and an assignment patta was granted to the plaintiff under Ex.A.1. in respect of suit schedule property.

3. The revenue records was also mutated in the name of the plaintiff and the tax receipts has been marked as Ex.A.2. It is the case of the plaintiff that in view of the default being committed by the defendant the lease was terminated and since the defendant did not vacate the suit schedule property the plaintiff was constrained to issue a notice dated 09.06.2001, directing the defendant to vacate and hand over the possession of the property.

4. The said notice was received by the defendant and on 08.07.2001, the defendant had sent a reply contending that the suit schedule property was a temple Porambokku. In a total extent of 37 cents, the temple was existing on 10 cents of land and the remaining extent of 27 cents was vacant site. This site was occupied by the defendant 20 years ago by constructing a house and he was paying 'B' memo charges to the revenue authorities. There was no landlord - tenant relationship between the defendant and the plaintiff. The defence filed by the defendant was more or less on these lines.

5. In the written statement, the defendant would contend that the house constructed on the suit schedule property was assessed as door No.19. He would contend that the plaintiff had no right, title or interest in the suit schedule property. The only aim of the plaintiff was to somehow grab the property of the defendant. The defendant would further contend that he has challenged the assignment patta granted to the plaintiff and the same was pending before the Appellate Authority.

6. The learned District Munsif, Nagapattinam by Judgement and Decree dated 23.04.2004 was pleased to decree the suit.

7. Challenging this Judgement and Decree the defendant had filed A.S.No.43 of 2006 on the file of the Sub-Court, Nagapattinam. By Judgement and Decree dated 06.12.2006, the learned Subordinate Judge, Nagapattinam allowed the appeal and set aside the Judgement and Decree of the Trial Court.

8. Pending the appeal filed by the defendant, the assignment patta, Ex.A.1 was cancelled. The Appellate Court had also found that the plaintiff had not let in any evidence to show that they had been in possession and the documents Ex.A.9 to Ex.A.27 which were the various suits filed by the father of the plaintiff did not prove possession. It is challenging this Judgement and Decree that the plaintiff is before this Court.

9. The above Second Appeal is admitted on the following Substantial Questions of law:

"a) Whether the findings of the Lower Appellate Court that the appellant herein has not let in any evidence in support of Landlord-Tenant relationship between the parties is vitiated by non consideration of material evidence on record?

b) Whether the Lower Appellate Court committed an error of law in discarding certified copies of Judgement and Decree passed in prior Civil Suits in favour of the appellant / plaintiff?"

10. Heard the counsels and perused the records.

11. The order cancelling the assignment patta has not been challenged and has become final. The appellant / plaintiff has based his title to the property only on the assignment patta which has now been cancelled. Ex.A.1, assignment patta having been cancelled and there being no challenge to the same the order cancelling the patta has become final. The Appellate Court has rightly allowed the appeal since the plaintiff has not able to prove his title or the fact that there is an existing landlord - tenant relationship between himself and the respondent herein.

12. The Substantial Questions of law are answered against the appellant / plaintiff. The Second Appeal stands dismissed. There shall be no order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Sub Judge, Nagapattinam

2.The District Munsif, Nagapattinam.

3.The Section officer

VR Section

High Court, Madras 104.

+1 CC to Mr.S.Sounthar,Advocate sr 20576.

+1 CC to Mr. Srinath Sridevan, Advocate sr 21600.

S.A.No.556 of 2007

NRL (CO)
SP (07/09/2020)



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