

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.02.2020

Date of Verdict: 05.03.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1930 of 2003
& C.M.P.No.17539 of 2003

M.Karthikeyan
S/o. P.Murugian

...Appellant/ Defendant

Vs.

1. A.Karthikeyan (Died)
2. Malar @ Malarvizhi
3. Minor K.Sindhu

Rep. by her mother &
Guardian Malar @ Malarvizhi

(Respondents 2 & 3 are
brought on record as
legal heirs of the deceased
sole respondent vide order
of the Court dated 01.11.2007
made in C.M.P.Nos. 19761 to 19763
of 2005 in S.A.No.1930 of 2003)

...Respondents/Plaintiff

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 24.07.2001 made in A.S.No.79 of 2000 on the file of the Subordinate Court, Gobichettipalayam, confirming the judgment and decree dated 31.07.2000 made in O.S.No.287 of 1998 on the file of the District Munsif Court, Gobichettipalayam.

For Appellant : Mr.V.P.Sengottuvel

For Respondents

R1 : Died

For R2 to R3 : Notice served- No Appearance

JUDGMENT

This second appeal is directed as against the judgment and decree dated 24.07.2001 made in A.S.No.79 of 2000 on the file of the Subordinate Court, Gobichettipalayam, confirming the judgment and decree dated 31.07.2000 made in O.S.No.287 of 1998 on the file of the District Munsif Court, Gobichettipalayam.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for permanent injunction. The plaintiff's father purchased the suit property by the registered sale deeds dated 05.06.1981 and 09.12.1981 from one Kondappan. Ever since from the date of purchase, the plaintiff's father was in possession and enjoyment of the suit property. The plaintiff's father sold a small portion of the property to third party and remaining property was bequeathed by way of registered Will dated 02.02.1998, in favour of the plaintiff. The plaintiff's father died on 14.03.1998. After his demise the plaintiff is in exclusive possession of the suit property and also paying all revenue dues. While being so, the defendant was a tenant under the plaintiff's father till the end of 31.03.1998 and vacated the said premises. Except tenancy relationship, the defendant has no way connected with the suit property. Even then, the defendant is attempted to disturb the possession and enjoyment of the plaintiff over the suit property. Hence the suit.

4. Resisting the same, the first defendant filed written statement stating that after filing the suit, the plaintiff trespassed into the suit property on 14.08.1998 and occupied the suit property. He also caused damages to the tune of Rs.11 lakhs. Therefore, the plaintiff is not entitled for permanent injunction and the defendant filed counter claim for recovery of possession. In fact, the defendant and his mother took the suit property for lease on 25.09.1992 and started business in the name and style of Sri Selva ganapathy Enterprises, for the monthly rent of Rs.1,000/-. Thereafter, it was enhanced to Rs.1,200/- and finally enhanced to Rs.1,500/- per month. The defendant and his mother also paid the advance amount toward the tenancy for a sum of Rs.20,000/- and also received receipt from the father of the plaintiff. While being so, it is completely false to state that on 31.03.1998, the defendant vacated the premises and handed over entire the suit property. In fact, after filing of the suit, they entered into the suit property and prayed for dismissal of the suit.

5. On the side of the plaintiff, he examined P.W.1 & P.W.2 and were marked Ex.A.1 to Ex.A.9. On the side of the defendant, he examined D.W.1 to D.W.3 and were marked Ex.B.1 to Ex.B.26. Witness document was marked as Ex.X.1. Advocate Commissioner's report and plan were marked as Ex.C.1 and Ex.C.2. On perusal of the material produced on record and on considering both the oral and documentary evidence adduced by the respective parties and also the submissions made, the trial Court decreed the suit in favour of the plaintiff and dismissed the counter claim filed by

the defendant. Aggrieved by the same, the defendant preferred an appeal suit in A.S.No. 79 of 2000 and the same was also dismissed by the first appellate Court by confirming the judgment and decreed passed by the trial Court. Aggrieved by the same, the defendant preferred this present second appeal.

6. At the time of admission of this second appeal on 12.03.2004, the following substantial questions of law were formulated for consideration:-

"1. Could the relief of permanent injunction granted by the Courts below are right and legal as contemplated under Section 38 of Specific Relief Act relating to grant of permanent injunction?

2. Whether the Courts below are right in decreeing the suit permanent injunction when the appellant herein clearly established that the respondent broke open the doors of the suit property on 12.08.1998 and looted all the machineries and materials belongs to the appellant herein and the appellant was in possession of the suit property?

3. Is not the Courts below erred in not considering the vital evidence of P.W.1 and documentary evidence of Ex.B.22 to Ex.B.24 regarding cause of action?

4. Whether the Courts below are right in not considering the legal requirements as required under Section 38 of Specific Relief Act for permanent injunction?"

7. Heard Mr.V.P.Sengottuvel, learned counsel appearing for the appellant/plaintiff and no one has been appeared on behalf the respondents.

8. Admittedly, the suit property purchased by the plaintiff's father on 05.06.1981 and 09.12.1981. After demise of his father, the plaintiff is in possession and enjoyment of the suit property. The plaintiff become absolute owner of the suit property. When the plaintiff's father was alive, a portion of the suit property was leased out to the defendant. After vacating and handed over the suit property, the defendant attempted to trespass into the suit property as such, the plaintiff filed this suit for permanent injunction. The sale deeds stand in the name of the plaintiff's father were marked as Ex.A.1 and Ex.A.2. The bill issued in favour of the defendant was marked as Ex.B.2. The letter written by the defendant dated 01.01.1998, thereby vacating the premises and handed over the vacant possession of the suit property to the plaintiff, was marked as Ex.A.8.

9. However, the defendants stated that they never vacated the suit property on 31.03.1998 and for the past several years, the defendant and her mother were in possession and enjoyment of the suit property as tenant under the plaintiff's father and also running the company in the name and style of Sri Selvaganapathy Enterprises. They also spend more than Rs.10,000/- to maintain the suit property. While being so, on 14.08.1998, the plaintiff along with his henchmen trespassed into the suit property and taken away all the valuable goods from the company. The defendants also marked the electricity bills, tax receipt and also details to show that the defendant were doing business in the name and style of Sri Selvaganapathy Enterprises in the suit premises. These documents were proved that the defendant was running the business in the name and style of Sri Selvaganapathy Enterprises, but it would not prove the possession and enjoyment of the suit property by the defendant. That apart the said documents are not continuous one and the rental receipts are not marked to prove their possession and enjoyment of suit property.

10. Admittedly, the defendant is a tenant under the plaintiff's father. Though initially on the complaint lodged by the defendant, FIR was registered and subsequently it was closed as "mistake of fact", in respect of the allegations made by the defendant as if the plaintiff trespassed into the property and had taken away the machinery worth about Rs.11 lakhs. Therefore the deposition of the plaintiff that the machinery also already were shifted to some other places by the defendant and the false complaint has been filed by the defendant is proved. Further the defendant lodged this complaint only for the purpose escape from the liability of the loan borrowed for the purchase of the machines, the false complaint has been lodged against the plaintiff. Therefore, both the Courts below hold in favour of the plaintiff and decreed the suit as prayed for.

11. In view of the above discussion, this Court does not find valid reason to interfere with the findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the suit filed by the plaintiff. Accordingly, this Court is of the considered opinion that no substantial question of law involved in this appeal. Be that as it may, all the substantial questions of law, formulated by this Court in this Second Appeal, are answered in favour of the plaintiff and as against the defendant.

12. In fine, the second appeal stands dismissed by

confirming the judgment and decree passed by the Courts below.
Consequently, connected miscellaneous petition is closed. There
is no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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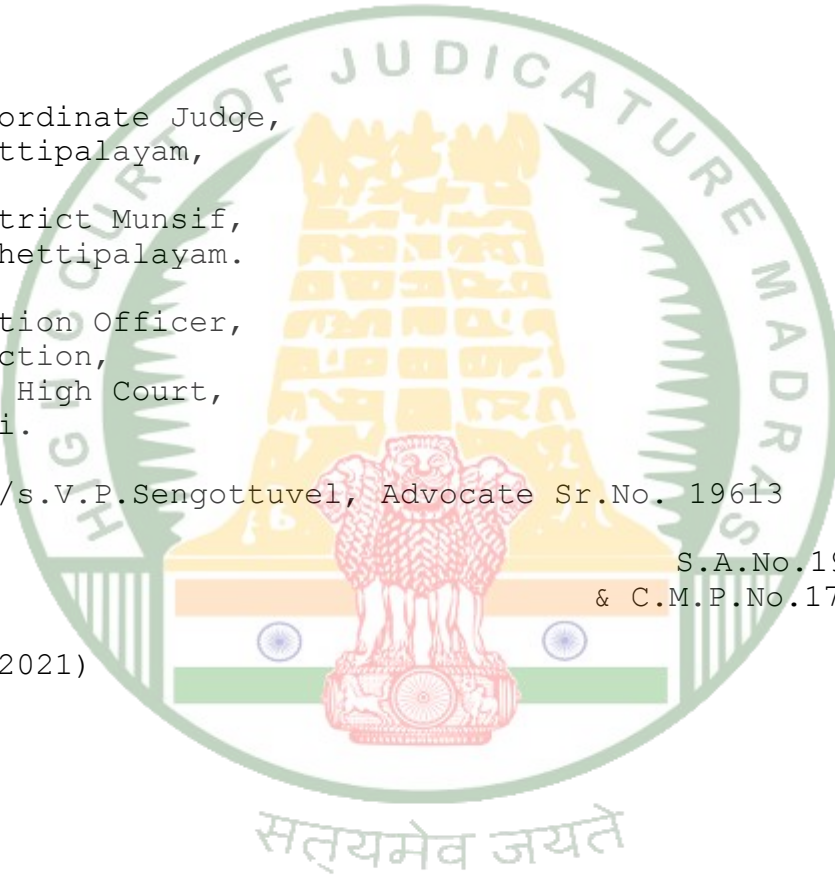
To

1. The Subordinate Judge,
Gobichettipalayam,
2. The District Munsif,
Gobichettipalayam.
3. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1 cc to M/s.V.P.Sengottuvel, Advocate Sr.No. 19613

S.A.No.1930 of 2003
& C.M.P.No.17539 of 2003

GP (CO)
RMP (11/01/2021)



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