

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Reserved on	Delivered on
28.02.2020	23.03.2020

CORAM:

THE HONOURABLE MRS. JUSTICE V.PARTHIBAN

S.A.No.809 of 2013 and
CMP No.4639 of 2020

Mr.E.Manoharan ... Appellant /Appellant/Plaintiff

versus

1.K.Kurugesan (Died), by his L.Rs.,
2.Arputham
3.Jeyachandran
4.Kumaran
5.Poorkodi
6.Anandan
7.Siva

... Respondents 2 to 7

Prayer: Appeal filed against the judgement and decree dated 30.11.2011 in A.S.No.459 of 2009 passed by the IV Addl.Judge, City Civil Court, Chennai, confirming the judgment and decree dated 22.08.2008 in O.S.No.6368 of 2005 passed the XVII Assistant Judge, City Civil Court, Chennai.

For Appellant :: Mr.AM.Kkrishnamoorthy
For Respondents :: No appearance

JUDGMENT

This Second Appeal has been directed against the judgement and decree dated 30.11.2011 in A.S.No.459 of 2009 passed by the learned IV Addl.Judge, City Civil Court, Chennai, confirming the judgment and decree dated 22.08.2008 in O.S.No.6368 of 2005 passed by the learned XVII Judge, City Civil Court, Chennai.

2. According to the plaintiff, the property belonged to Shri Sundaraja Perumal and Anjaneya Swami Devasthanam. One Tmt.Rajammal was the tenant of the suit property to an extent of 1383 sq.ft. and she was in possession of the same from 1983

onwards and as such, the suit property was in continuous possession and enjoyment of said Tmt.Rajammal. Originally, the temple filed a suit in O.S.No.4074 of 1979 for recovery of possession from Tmt.Rajammal before III Asst.Judge, City Civil Court, Madras and in the proceedings, she had filed an interlocutory application in I.A.No.19523 of 1979 under the Madras City Tenants Protection Act 1921 for the purchase of land in her possession. The said I.A. was allowed on certain terms. Thereafter, the said Rajammal had sold the land with existing building to the plaintiff by virtue of two sale agreements dated 3.12.1984 and 19.4.1989 respectively. As against the order passed by the trial Court in the above said I.A., granting relief to Tmt.Rajammal, an appeal in C.M.A.No.209 of 1983 was filed by the Temple and the same came to be dismissed on 31.10.1986 by the VI Addl.Judge, City Civil Court, Madras. According to the plaintiff, since Rajammal sold her interest in the property to the plaintiff, the plaintiff had been brought on record by virtue of an order made in C.M.P.No.10 of 1984 dated 19.12.1984. While dismissing the CMA No.209 of 1983, the lower appellate Court enhanced the land value based on the Commissioner's report dated 10.12.1982 and according to the plaintiff, he had paid the entire sum payable to Devasthanam and the receipt was also filed along with the plaint as averred by him in the plaint.

3. Eversince the plaintiff has been in absolute possession and enjoyment of the suit property to the extent of 1383 sq.ft., according to the plaintiff, the defendant who was a neighbour, attempting to disturb his possession in order to grab the property and hence, a suit was filed in O.S.No.6368 of 2005 for permanent injunction.

4. The above suit was resisted by the defendant by filing a Written Statement, stating that the plaintiff had no interest whatsoever over the suit property and the Madras City Tenant Protection Act, 1921 which invoked by the said Rajammal was not applicable to the temple properties and therefore, any order obtained by Tmt.Rajammal was not valid and binding. The defendant would also deny that the plaintiff was not in possession since the sale was not completed. The defendant also pleaded that earlier the same plaintiff filed a suit in O.S.No.4729 of 2004 for the same relief against the defendant and the same was dismissed by the learned IV Assistant City Civil Judge, Chennai and therefore, the present suit was hit by res judicata under Section 11 of CPC.

5. The trial Court which went into the issues, has ultimately dismissed the suit. The trial Court found that there was no evidence by either parties in order to render any finding to the respective claims and possession of the suit property. According to the trial Court, even the sale agreement produced by the plaintiff which was marked as Ex.A4, was a xerox copy. The trial Court further held that the suit was also hit by the principle of res judicata. In fact, the trial Court held that the merit of the case need not be addressed at all in view of the suit being hit by the principle of res judicata. However, after holding so, the trial Court has also held against the plaintiff on merits as well. As against that, the plaintiff filed an appeal in A.S.No.459 of 2009 before the IV Addl.Judge, City Civil Court, Chennai.

6. The lower Appellate Court which dealt with appeal A.S.No.459 of 2009, has concurred with the findings of the trial Court and dismissed the appeal vide judgment dated 30.11.2011. The lower Appellate Court has also found that the earlier suit filed by the plaintiff in O.S.No.4729 of 2004 as between the same parties, was dismissed and therefore, the second suit for the same prayer was not maintainable. It appears that the lower Appellate Court has also concurred with the other findings of the trial Court and ultimately dismissed the appeal. As against that, the present Second Appeal has been filed.

7. Learned counsel appearing for the appellant/plaintiff would submit that the earlier suit filed by the plaintiff in O.S.No.4729 of 2004 though was dismissed against the plaintiff, an appeal was preferred in A.S.No.388 of 2006 and the said appeal was heard by the II Addl.District Judge, Fast Track Court, Chennai and by judgment dated 04.10.2010, the said appeal was allowed in favour of the plaintiff herein. In that suit proceedings, it appears that the temple was also a party along with the present defendant. The judgment of the lower Appellate Court in A.S.No.388 of 2006 has become final and no further appeal had been filed against the said judgment and decree. Therefore, the learned counsel would submit that as on date, the injunction is in operation as against the defendant as well as the temple.

8. As far as the present suit is concerned, the learned counsel would submit that after the Original Suit in O.S.No.4729 of 2004 was dismissed, a fresh cause of action arose since again an attempt was made by the defendant in trespassing into the suit property which prompted the plaintiff to file the second suit in O.S.No.6368 of 2005 for the same prayer on the basis of different cause of action. The learned counsel would

draw attention of this Court to the judgment and decree of the lower Appellate Court made in A.S.No.388 of 2006, wherein, it has been held that several exhibits relied upon by the present plaintiff, would unequivocally show that he was in possession of the suit property. In fact, additional documents were filed, viz., Exs.A8 to A23 which supported the case of the plaintiff in regard to the possession of the property. The lower Appellate Court in that appeal has found that tax receipts, electricity connection standing in the name of the plaintiff and the bank pass book, etc., would show that the factum of the possession of the plaintiff over the suit property. The lower Appellate Court in that appeal has also held that several writ proceedings initiated before this Court would also show the relationship of the plaintiff and the temple and finally held that the possession was proved and the learned lower Appellate Court in that appeal has set aside the judgment and decree of the trial Court made in O.S.No.4729 of 2004.

9. In view of the admitted position that the injunction as against the defendant is still in force, he would urge this Court to dispose of the appeal in terms of judgment and decree of the lower Appellate Court in A.S.No.388 of 2006, dated 4.10.2010. Certified copies of judgment and decree were also produced before this Court for perusal.

10. At this juncture, the learned counsel was confronted as to whether entire payments due to the temple were paid in respect of the property in his occupation, an affidavit was filed by the plaintiff on 26.02.2020. As per the affidavit, the plaintiff has averred that the entire instalments due to the temple were paid, however, no regular sale deed had ever been executed in respect of all the temple properties in the locality.

11. Although notice was served on the respondents and the receipt of the same was acknowledged and their names were printed in the cause list, there was no representation on behalf of the respondents.

12. Considered the submissions of the learned counsel appearing for the appellant/plaintiff and perused the materials and the pleadings placed on record.

13. The point for consideration in the Second Appeal is whether the appellant/plaintiff has been in possession of the suit schedule property?

14. Though both the Courts below dismissed the claim of the plaintiff on both the grounds, viz., res judicata and on merits, yet the fact remains that the appeal which emanated from the earlier suit proceedings, i.e. O.S.No.4729 of 2004, the lower Appellate Court had allowed the appeal by granting permanent injunction to the plaintiff as against the present defendant. Admittedly, the said judgment and decree of the lower Appellate Court dated 4.10.2010 has become final without any second appeal being preferred against the said judgment and decree. Once the plaintiff has been granted permanent injunction as against the present defendant, for all practical purposes, the injunction would have to necessarily operate both against the plaintiff as well as against the temple. Moreover, it appears that the entire amounts due to the temple authorities had been paid as claimed by the plaintiff in the affidavit filed on 26.02.2020 before this Court, which is taken on file. The lower Appellate Court which dealt with the earlier appeal in A.S.No.388 of 2006, has correctly held that the possession alone was the subject matter of civil proceedings and therefore, the trial Court ought not to have looked into the aspect of title which, in the opinion of this Court, was the correct approach when a prayer for permanent injunction was sought for. Once the possession is established through documents and as in this case, it appears that sufficient documents were filed to prove the possession, the relief of injunction cannot be denied. In the case on hand, though the plaintiff herein has lost before both the Courts below, yet in the earlier suit proceedings initiated by them for the same prayer, he had succeeded in the appeal in A.S.No.388 of 2004 and the fact of his succeeding in the earlier proceedings would certainly take care of his interest in future as well regardless of the present proceedings. In any event, this Court cannot lose sight of the said fact about the judgment and decree of the lower Appellate Court passed in A.S.No.388 of 2006 in favour of the plaintiff herein and cannot take an independent decision in respect of the present Second Appeal. The development in the earlier proceedings in favour of the plaintiff cannot be ignored at all.

15. In the said circumstances, this Court is of the considered view that the present Second Appeal is disposed of as no adjudication is called for at present as the plaintiff herein has already succeeded before the lower Appellate Court in A.S.No.388 of 2006 and relief of permanent injunction granted by the said Court would operate against the defendants.

16. In view of the peculiar circumstances of the case, the substantial questions of law framed need not be answered one way or the other. The present Second Appeal is disposed of without

testing the correctness and validity of the judgment and decree of both the Courts below in view of the subsequent development as narrated above. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

Suk

To

1. IV Addl.Judge, City Civil Court, Chennai,
2. XVII Assistant Judge, City Civil Court, Chennai.

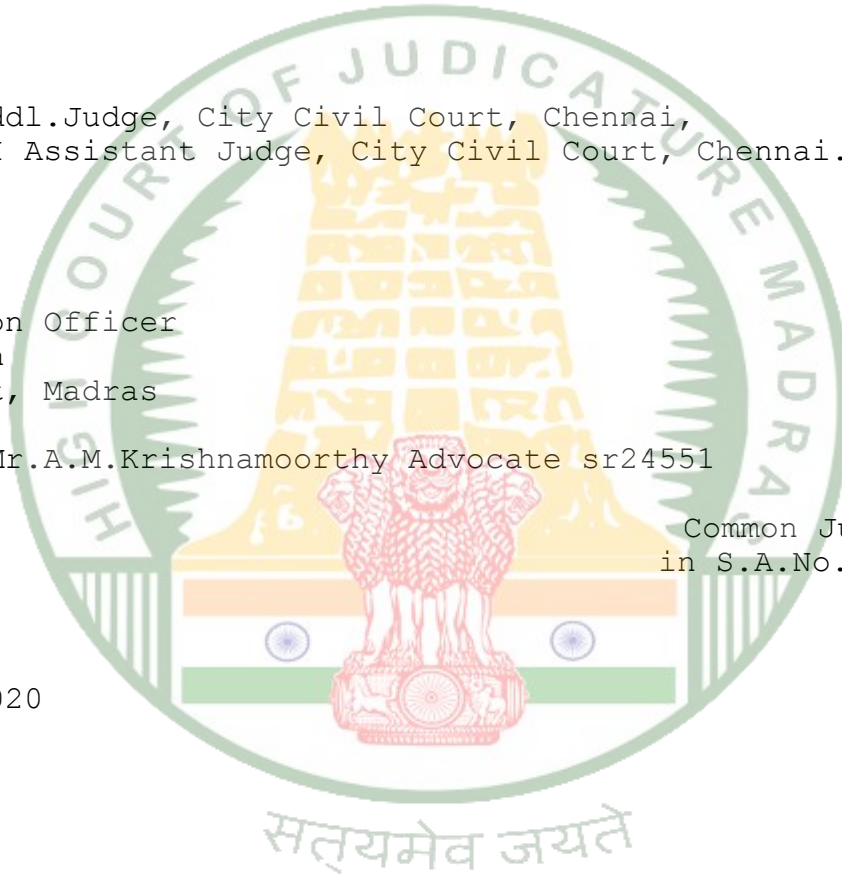
copy to

The Section Officer
VR Section
High Court, Madras

+2 cc to Mr.A.M.Krishnamoorthy Advocate sr24551

Common Judgment
in S.A.No.809 of 2013

bs(co)
aa14/10/2020



WEB COPY