



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 02.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.(MD)No.463 of 2004

and

C.M.P.(MD)No.2453 of 2004

WEB COPY

Karuppanna Gounder

... Appellant / Appellant / Plaintiff
Vs.

1.Sellammal

2.Kittusamy

3.Kandasamy

4.Lakshmi

... Respondents / Respondents / Defendants

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 21.07.2004 made in A.S.No.16 of 2004 on the file of the Subordinate Judge, Karur, confirming the judgment and decree dated 21.02.2003 made in O.S.No.4 of 1999 on the file of the District Munsif Court, Karur.

For Appellant : Mr.T.V.Sivakumar

For Respondents : No Appearance

JUDGMENT

This Second Appeal has been filed against the concurrent finding of the Courts below, dismissing the suit filed for bare injunction.

2.This Second Appeal is pending in admission stage from the year 2004.

3.The brief fact, leading to file this Second Appeal reads as follows:-

The suit property originally belonged to one Sellappa Gounder, who had been in possession of the property. The plaintiff was inducted as oral lessee by the Sellappa Gounder. The plaintiff had paid a sum of Rs.20,000/- (Rupees Twenty Thousand Only) as advance amount. Since the landlord is the relative of the plaintiff, no receipts whatsoever have been taken and the lease has not been reduced into writing. However, Sellappa Gounder had handed over the title deeds of the property to the plaintiff and the plaintiff had paid lease amount regularly. The said Sellappa Gounder died 9 years back, leaving behind his wife, namely, Kaliyammal and daughter, namely, Selvi. However, the plaintiff had also paid the lease amount continuously to the wife and daughter of Sellappa Gounder. Unfortunately, the said two persons died in a fatal accident four months back. The first defendant is the sister of Sellappa Gounder and the second defendant is the son of the first defendant. The third defendant is the sister's son of Sellappa Gounder, the fourth



defendant is the daughter-in-law of the third defendant. Taking advantage of the death of Kaliyammal and Selvi, the defendants had attempted to interfere with the peaceful possession of the suit property. Hence, the suit has been filed.

4.It is the contention of the defendants that the plaintiff had never been in possession of the property and never inducted as lessee at any point of time. He was the neighbor of Sellappa Gounder. Taking advantage of the death of the entire family members, he has taken away all the things in the house, including the original title deeds of the property and kist receipts. He is making attempt to claim right over the property, hence, prayed for dismissal of the suit.

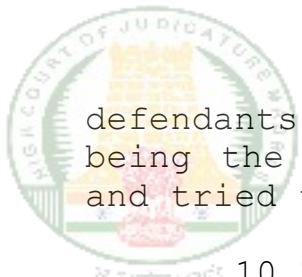
5.The trial Court has framed two issues. On the side of the plaintiff, P.W.1 was examined and Exs.A.1 to A.5 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and no document has been marked. The trial Court, after analyzing the oral and documentary evidence, has found that oral lease has not been established and there is no piece of paper available on the side of the plaintiff to prove his possession and dismissed the suit. The First Appellate Court has also confirmed the finding of the trial Court. As against which, the present Second Appeal came to be filed.

6.Heard the learned counsel appearing for the appellant.

7.The learned counsel appearing for the appellant mainly contended that the title deeds of the property is with the plaintiff, that itself proved that he is the lessee in the property. The Courts below have not taken into consideration this fact. Merely because the lease has not been reduced into writing, the same is not a ground to reject the contention of the plaintiff. Hence, it is the contention of the learned counsel appearing for the appellant that the judgment of the Courts below requires interference.

8.I have perused the entire evidence and pleadings.

9.It is the case of the plaintiff that he was inducted into the suit property as a lessee and has paid a sum of Rs.20,000/- as advance and continued to pay rent to Sellappa Gounder. However, Sellappa Gounder died 9 years back before the suit. Thereafter, his wife and daughter also died in a fatal accident. Therefore, the defendants being the relatives of Sellappa Gounder, have tried to dispossess the plaintiff from the suit property. The plaintiff has mainly relied upon Exs.A.3 to A.5 tax receipts and title deeds of the property said to have been handed over by Sellappa Gounder. It is the contention of the learned counsel appearing for the



defendants that since entire family members died, the plaintiff being the neighbor has collected the title deeds from the house and tried to create a right over the property.

10. Admittedly, the defendants are the second class legal heirs of Sellappa Gounder, which is not in dispute. It is the specific case of the plaintiff that he was inducted into the property as oral lessee and has cultivated the property. Even assuming that the lease has not been reduced into writing, due to the relationship, it is the normal conduct that a person is continuously in possession of the property, he should have some other records even at least to prove the nature of the cultivation done by the person all these years. It is not the case of the plaintiff that his lease was only short period, his pleadings itself indicate that Sellappa Gounder died 9 years before and thereafter, his wife and daughter also died before four months of the suit. The same clearly indicates that the plaintiff has claimed to be the possession of the property for several years. Such being the position, he has to at least file any other documents to show that he has cultivated the lands on the basis of the alleged oral lease and no scrap of paper, evidencing the sale of agricultural products from the property, has been filed by the plaintiff. Therefore, merely on the basis of the oral evidence, lease cannot be presumed. Further, merely on the ground of possession of kist receipts in the name of original owners and title deeds filed by the plaintiff, lease cannot be presumed. Admittedly, the plaintiff is neighbor. This fact is not disputed by both sides. The defence theory that after the death of the entire family members, the plaintiff has entered into the house and taken away the title deeds of the property to create right over the property, is more probablised and cannot be ruled out.

11. In such view of the matter, when the plaintiff has failed to establish the alleged possession over the property as a lessee, he is certainly not entitled for injunction. I do not find any substantial questions of law involved in this Second Appeal.

12. Accordingly, this Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

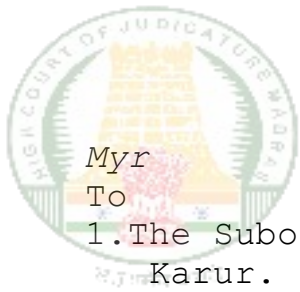
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Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)



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To

1.The Subordinate Judge,
Karur.

2.The District Munsif,
Karur.

Copy to

The Section Officer,-2 copies
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.DEIVANANDAM, Advocate (SR-93[F] dated 03/01/2020)

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