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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2021

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

SECOND APPEAL Nos.781 and 782 of 1999

S.A.No.781 of 1999:

Mohammed Tahir ..Appellant/Defendant

Vs

Nowshath Ali ..Respondent/Plaintiff
rep by Power Agent Mohammed Iqbal

S.A.782 of 1999:-

Mohammed Tahir ... Appellant/Plaintiff

Vs.

1.Ramu

2.Nowshath Ali ... Respondents/1st and 4th defendants
(rep. By Power Agent Mohammed Iqbal)

Prayer in S.A.No.781 of 1999:- Second Appeal filed under Section 100 CPC against the judgment and decree of the Principal Sub Judge, Mayiladuthurai dated 30.04.1996 made in A.S.No.13/95 confirming the judgment and decree of District Munsif, Mayiladuthurai dated 21.10.1994 made in O.S.No.651/1988.

Prayer in S.A.782 of 1999:- Second Appeal filed under Section 100 CPC against the judgment and decree of the Principal Sub Judge, Mayiladuthuri dated 30.04.1996 made in A.S.No.12/95 confirming the judgment and decree of the District Munsif, Mayiladuthurai dated 21.10.1994 made in O.S.No.369/88.

For Appellants : Mr.S.Sounthar

For respondents : Mr.A.Muthukumar



COMMON JUDGMENT

Second Appeal No.781 of 1999 is filed by the defendant in O.S.No.651 of 1988 against the judgment and decree of the Principal Sub Judge, Mayiladuthurai dated 30.04.1996 made in A.S.No.13/95 confirming the judgment and decree of District Munsif, Mayiladuthurai, dated 21.10.1994 made in O.S.No.651/1988.

S.A.No.782 of 1999 is filed by the unsuccessful Plaintiff in O.S.No.369/1988 against the judgment and decree of the Principal Sub Judge, Mayiladuthuri dated 30.04.1996 made in A.S.No.12/95 confirming the judgment and decree of the District Munsif, Mayiladuthurai dated 21.10.1994 made in O.S.No.369/88.

2. On 16.06.1999, this Court, admitted the Second Appeals on the following substantial questions of law:-

(i) Whether Ex.B.1 is invalid and inoperative by reason of the bar imposed under the Foreign Exchange Regulation Act?

(ii) Whether the lower courts were justified in rejecting the plea of tenancy for want of registration ?

3. Second Appeal Nos.781 and 782 of 1999 arise out of the concurrent judgments passed in O.S.Nos.651 and 369 of 1988 and A.S.Nos.12 and 13 of 1995. The appellant in the above second appeals, is the sole defendant in O.S.No.651 of 1988, wherein, the plaintiff sought for the relief against this defendant for permanent injunction restraining the defendant and his men or agents from in any way causing interference to plaintiff's possession and enjoyment of the suit properties.

4. In the plaint in O.S.No.651 of 1988, the plaintiff who is represented by the Power Agent, averred that he is in possession of the 'A' and 'B' schedule properties. The appellant/defendant is none other than the brother of the plaintiff. Due to family dispute, division of properties taken place. The defendant filed O.S.No.369 of 1988. Stating that the defendant is attempting to cause interference to plaintiff's possession and enjoyment in the suit properties, the plaintiff filed the suit for permanent injunction.

5. The appellant/defendant filed written statement stating that the alleged power deed by the plaintiff in favour of Mr.Abdul Waheed is neither true nor valid nor the same is operative in India. The plaintiff is not in possession and enjoyment of the suit 'A' Schedule property.



6. Plaintiff in O.S.No.369 of 1988 is the appellant herein and sought for the relief of permanent injunction restraining the defendants 1 and 2 in any manner interfering with the peaceful possession and enjoyment of the suit property by the plaintiff till he is lawfully evicted by due process of law by means of a permanent injunction. According to the appellant/plaintiff, the suit property was under the tenancy arrangement of the first defendant herein with the 3rd defendant on certain agreement. The plaintiff averred that even though the document provides that the land is given only for 3 years for cultivation and the terms of the agreement that if the premium is refunded, the plaintiff should surrender his right and give up possession of the property, but such a clause is invalid and unenforceable as the plaintiff is entitled to benefits of Tamil Nadu Cultivating Tenant's Protection Act. Therefore, the plaintiff is entitled to remain in possession until he is duly evicted therefrom by due process of law. According to the plaintiff, 2nd defendant who is the brother of the plaintiff has been creating all sorts of troubles and inconvenience and obstructions in the matter of enjoyment of his family properties. The plaintiff submits that the 1st defendant and the 2nd defendant have no right to interfere with the plaintiff's possession and enjoyment of the suit property. It has been further averred that pending trial, the 2nd defendant died on 01.04.1993. The 4th defendant is the son of the 2nd defendant.

7. The trial court, taken both the suits in O.S.Nos.369 of 1988 and 651 of 1988 together for trial. After both sides letting in evidence and after hearing arguments advanced on both sides, the trial court answered the issues framed by it. The observation of the trial court is that in O.S.No.651 of 1988, two division of properties is given, however, the suit was dismissed in respect of 'B' schedule properties since at the time of arguments, no relief is sought in respect of 'B' schedule property. The trial court given a finding that Ex.B.1 dated 04.07.1988 is a true document and based on that document, 2nd defendant Abdul Wahid taken possession and after the death of 2nd defendant, 4th defendant Noushad Ali is in possession, however, the exhibits produced on the side of the plaintiff in O.S.369 of 1988 are not true and created only for the purpose of suit and the plaintiff in O.S.No.369 of 1988 was never in possession of the suit property. The subject property belongs to the 3rd defendant in O.S.No.369 of 1988 and at the time of filing of the suit, she was not in possession of the property. The trial court given a specific finding that at the time of filing of the suit, the plaintiff in O.S.No.369 of 1988 was not in



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possession of the suit property and therefore, the relief of injunction cannot be granted. On such a finding, the trial Judge dismissed the suit. The trial judge thus held that the plaintiff is not entitled to any relief. The trial court decreed the suit in favour of the plaintiff in O.S.No.651 of 1988/Power Agent.

8. The appellant herein challenged the above findings in A.S.Nos.12 and 13 of 1995. The first appellate court appreciated the evidence, exhibits put forth by the parties once again and discussed the findings given by the trial court and concluded that at no point of time, 'A' schedule property was in possession of the plaintiff in O.S.No.369 of 1988. Further, the first appellate court concluded that Ex.B.1 dated 04.07.1988 clearly shows that 'A' schedule property was in the possession of 2nd defendant and after the death of 2nd defendant, 4th defendant was in possession.

9. Admittedly, the suit property is a nanja land of an extent of 33 1/3 cents situated in Kadalangudy village in Mayiladuthurai Taluk and originally it belongs to the 3rd defendant in O.S.No.369 of 1988 and the suit property was given for cultivating tenancy. The documents produced before the trial court would go to clearly show that the plaintiffs in O.S.No.651 of 1988/2nd defendant is in possession and enjoyment of the said property. The trial court and the First Appellate court given a clear finding that the appellant herein/plaintiff in O.S.No.369 of 1988 was not in possession of the suit property at the time of filing of the suit and only the 2nd and 4th defendants in O.S.No.369 of 1988/plaintiff in O.S.No.651 of 1988 was in possession and cultivating the land.

10. The learned Counsel for the appellant contended that the courts below failed to see that any assignment of agricultural cultivating tenancy right need not be registered and even otherwise, the said document is admissible in evidence to prove the collateral purpose of proving possession of appellant. The respondent was in Foreign shore when alleged transfer of lease in favour of him under Ex.B.1. The courts below erred in interpreting evidence of D.W.1.

11. In my considered view, the arguments made by the learned counsel for the appellant is not convincing. The courts below have perused Ex.B.1 and also considered the oral and documentary evidence let in by both sides and had come to the definite conclusion that the appellant is not in possession of the suit property nor a cultivating tenant. It is also clearly made out that even though the respondent herein/4th defendant in O.S.369



of 1988 and plaintiff in O.S.651 of 1988 was in Foreign shore for his work, his family members continued in possession of the suit property and cultivated the land. In this factual finding, I do not find any infirmity or error warranting interference. On appreciating both oral and documentary evidence, the courts below have concurrently held that plaintiff in O.S.No.651 of 1988 is in possession of the suit property. There is no perversity in the concurrent judgments of the courts below.

12. The appellant has not proved that he is in possession and enjoyment of the suit property. Since the plaintiff has failed to do so, two courts below have dismissed the suit. In view of all the above, in this Second Appeal, the questions of law are answered against the appellant. The questions raised are only on facts which have been resolved by the courts below concurrently. The courts below were right in decreeing the suit in favour of the plaintiff in O.S.No.651 of 1988. Thus, this court do not find any merit in the Second Appeals.

13. In the result, the Second Appeals fail and the same is accordingly dismissed. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

nvsri
To

1.The Principal Sub Judge,
Mayiladuthurai.

2.The District Munsif,
Mayiladuthurai.

+2cc to Mr.S.Sounthar, Advocate Sr.67857, 67859

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srg 29/04/2022