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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.53 of 1999

1. Vijayam Pillai (Deceased)
2. Rajeswari
3. Rajendran
4. Rajalakshmi
5. Kalaiselvi
6. Sakthivel
7. Arul

[Appellants 3 to 7 brought on record
as LRs of the deceased 1st appellant
vide order of Court dated 18.07.2012

made in C.M.P.No.228/2009 in S.A.No.53/1999]

...

Appellants/ Appellants/Defendants

.. Vs ..

Ramakrishna High School, Kothandapuram

Represented by its Secretary and

Correspondent Venkataparthasarathy

....Respondent/

Respondent/Plaintiff

Prayer :- Second Appeal filed under Section 100 of the Civil Procedure Code against the Decree and Judgment dated 18.04.1996 made in A.S.No.61 of 1995 on the file of the Additional Sub Judge, Mayiladuthurai confirming the Decree and Judgment dated 13.03.1995 made in O.S.No.395 of 1990 on the file of the District Munsif, Sirkali.

For Appellant : Mr.S.Sounthar

For Respondent : No appearance

J U D G M E N T

None appeared for the respondent and hence, the respondent is set ex-parte.

2. The respondent/plaintiff has filed the suit for injunction restraining the appellant/defendant from altering physical features of the suit property on the ground that the



defendant/appellant is the tenant and the eviction proceedings are pending.

3. In the written statement, the appellant/defendant denied the ownership and title of the respondent in respect of the suit property and also denied the tenancy and stated inter-alia that the 'B' schedule property is a part of 'A' schedule property, which is in this joint land and hence, the tenant being in possession of the property is deemed to be the owner of the property and relied upon Ex.B1 patta.

4. Before the trial Court, on behalf of the plaintiff P.W.1 was examined and Exs.P1 to P18 were marked. On the side of the defendant, D.W.1 and D.W.2 were examined and Exs.B1 to B24 were marked and Exs.C1 and C2 are the Commissioner's Report and Sketch. After trial, the suit was decreed and the appeal was dismissed and hence, the Second Appeal.

5. The above Second Appeal was admitted on 28.01.1999 on the following Substantial Questions of Law.

(a) Whether the respondent can claim right over the suit property, which is a natham Jari land in possession of appellant, in the absence of any evidence to show that his right was recognized by the Government? Whether the appellant is deemed to be owner of the suit property in view of his possession over suit natham Jari property?

(b) Whether suit for bare injunction is maintainable in the absence of prayer for declaration especially when the respondent/plaintiff's right over the suit property is specifically denied by the appellant/defendant?

6. Mr.S.Sounthar, learned counsel for the appellant/defendant could contend that in the absence of any document to show that the respondent / plaintiff is the owner of the property especially when the defendant/appellant denied title and ownership of the respondent/plaintiff in the written statement as well as in the evidence. The trial Court has committed error and made submissions in support of the Substantial Question of Law No.II.

7. Furthermore, the finding rendered by the trial Court that the respondent/plaintiff is the owner of the property is also against the appreciation of the evidence and thereby, made submission in support of the Substantial Question of Law No.I.

8. It is seen from the records that the suit 'A' schedule



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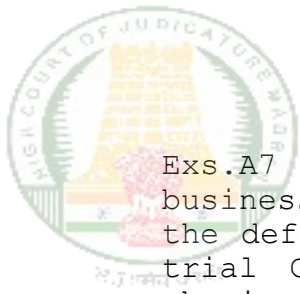
property is a larger extent measuring 20 cents. While, 'B' schedule property is measuring 10 cents and 'B' schedule property is a small portion of the 'A' schedule property. It is a specific pleading of the respondent/plaintiff that on 10.04.1979 there was an oral agreement, based upon which, the appellant/defendant was put in possession and in support thereof, they have filed documents Exs.A1 to A8 and the defendant entered into the witness box and marked Ex.B1 certified copy of Tahsildar proceedings, dated 14.06.1990 to show that he is in possession of the property on his own right. However, the said order of the Tahsildar under Ex.B1 was cancelled in the proceedings of the Sub-Tahsildar and R.D.O in Ex.A3, Ex.A4 and Ex.A18 and hence, both the Courts below has rightly come to the conclusion that Ex.A3 would substantiated the plea of the defendant.

9. After going through the Ex.B1 in connection with Ex.A3, Ex.A4 and Ex.A18, I find that the said finding does not suffer from any illegality or irregularity, warranting interference.

10. Under Ex.A1 Settlement Deed, the enjoyment was created in favour of the respondent/plaintiff coupled with Ex.B3, Ex.B4 and Ex.B18. Both the Courts below has rightly comes to the conclusion that the respondent/plaintiff has right and title over the property as against the appellant/defendant. Furthermore, the electricity connection service in the name of the respondent/plaintiff in Ex.A6. In the cross examination, D.W.1 has categorically admitted that the service connections are standing in the name of the respondent/plaintiff and continued to enjoy the same and hence, in view of the admission of D.W.1 coupled with Exs.A7, A8 and A5, the lower Appellate Court has rendered a specific finding that the appellant/defendant is only a tenant, under respondent/plaintiff and in the absence of any positive evidence to substantiate the case of the defendant, the lower Appellate Court is right in holding so.

11. In view of the specific finding rendered in the previous paragraph, on a combine reading of Exs.A1, A2, A3, A4, A5, A6, A7 and A8, the finding rendered by the both Courts below that the plaintiff has better title over the suit property as against the defendant and coupled with the admission of the defendant as D.W.1 in the witness box that the electricity connections are standing in the name of the respondent/plaintiff only and hence, both the Courts below have correctly come to the conclusion that the respondent/plaintiff got the better title and the defendant is a tenant and therefore, the Substantial Question of Law does not arise for ascertaining on the point of first Substantial Question of Law.

12. In view of the documentary evidence discussed supra and also coupled with the statement of the respondent/plaintiff, in



Exs.A7 to A17, which are maintained in the regular course of business and in the absence of any positive evidence in favour of the defendant/appellant, I find that the finding rendered by the trial Court that the defendant/appellant shall not alter the physical feature of the suit property is well created and well merited and does not warrant any interference. Hence, both the Substantial Questions of Law are held against the appellant.

13. In the result, this Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Sub Judge,
Mayiladuthurai
2. The District Munsif,
Sirkali.

+lcc to Mr.S.Sounthar, Advocate, S.R.No.12900/21

S.A.No.53 of 1999

VG-II(CO)
RGA(14/09/2021)