



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.02.2021

PRONOUNCED ON : 02.03.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No. 1089 of 2008

and

M.P.No.1 of 2008

1. Annakkili
W/o. Late Ganapathi @ Aaruviral

2. Sivaprakasam
S/o. Late Ganapathi @ Aaruviral

... Appellants/ Defendants 4 & 5

Vs.

1. Pushpaganthi
W/o. Jayaraman

... 1st Respondent/Plaintiff

2. Irudayanathan
S/o. Selvaraj

3. Suzanne
W/o. Kuiesdave Lasique

4. Thandraj ... 2 to 4 Respondents/1 to 3 Defendants

Prayer: Second Appeal filed under Section 100 of CPC, 1908 against the judgment and decree dated 05.03.2007 made in A.S.No.36/2005 on the file of the principal sub judge, Puducherry, reversing the judgment and decree dated 23.12.2003 made in O.S.No.500/2002 on the file of the court of the II Addl. District Munsif, Puducherry.

For Appellants : Mr. T.M.Naveen
for M/s. K.P.Jotheeswaran



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For Respondents

For R2 and R3 : Mr.T.Sai Krishnan

for M/s. Sai & Bharath

R1 : No appearance. Set exparte vide order dated 16.02.2021.

R4 : Given up.

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 05.03.2007 passed in A.S.No.36/2005 on the file of the Principal subordinate court, Puducherry, reversing the judgment and decree dated 23.12.2003 passed in O.S.No.500/2002 on the file of the II Addl. District Munsif Court, Puducherry.

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

3. The defendants 4 and 5 in O.S.No.500 of 2002 are the appellants in the Second Appeal.

4.Suit for permanent injunction.

5. The case of the plaintiff, in brief, is that the defendants 1 to 3 are the owners of the suit property and they had leased out the suit property one Muttramkarar for cultivation, who in turn agreed to the pay the rent by way of giving 5 bags and 5 marakas of paddy every year and Muttramkarar was in the possession and enjoyment of the suit property as the cultivating tenant and he had no issues and entrusted the suit property for cultivation to his younger brother's daughter Annakili @ Janaki and accordingly, Annakili @ Janaki was paying the rent and the owners also recognised her possession and enjoyment and after the demise of Annakili @ Janaki, her daughter, namely the plaintiff, succeeded as the cultivating tenant of the suit property and paying the rent and the same had also been recognised by the owners by issuing necessary receipts in favour of the plaintiff and the defendants, particularly the defendants 4 and 5,without any entitlement, right or interest over the suit property threatened to interfere with the plaintiffs possession and enjoyment and hence, according to the plaintiff, she has been necessitated to lay the suit for appropriate relief.

6. The defendants 1 and 2 resisted the plaintiffs suit contending that the suit property originally belonged to Arulnathan Larcher and after his demise the suit property



devolved upon his legal heirs including the first defendant, and the second defendant is the power agent of the other owners of the suit property and the third defendant is the previous power agent and admitted that the suit property was originally leased out to one Muttramkarar in 1960's and after his demise, one Annakili, Wife of Ganapathy was cultivating the suit property and around 1995 Annakili gave the suit property to one Sekar on bogium and on complaint subsequently the said Sekar executed the surrender deed and handed over the suit property to the fourth defendant and the fourth defendant with the permission of defendants 1 and 2 allowed the plaintiff to cultivate the suit property and accordingly the plaintiff had been cultivating the suit property by paying necessary rents . However, the plaintiff was not regular in the payment of rent and hence the suit is liable to be dismissed.

7. The fourth defendant mainly resisted the plaintiffs suit contending that the suit property was originally cultivated by Muttramkarar and he was married to one Anjalai, who had the sister by name Magadambal. Magadambal had three daughters and the name of the eldest daughter is Janaki, who is the mother of the plaintiff and the said Janaki did not have any alias name as Annakili. The plaintiffs mother Janaki died in the year 1971 and at that point of time the plaintiff was a small child and after the demise of Muttramkarar, his wife Anjalai and the fourth defendant continued to cultivate the lands and the fourth defendant was taken as the foster daughter of Muttramkarar and after the demise of Anjalai, it is only the fourth defendant who had been enjoying the suit property as the cultivating tenant and paying the rent to the owners and the rent receipts issued in favour of the fourth defendant had been stealthily removed by the plaintiff when she visited the fourth defendant's house frequently and the same had come to the knowledge of the fourth defendant only after the institution of the suit and hence the plaintiff is not entitled to obtain the relief as prayed for and the suit is liable to be dismissed.

8. In support of the plaintiff's case P.Ws.1 to 4 were examined and Exs.A1 to A12 were marked. On the side of the defendants, D.Ws.1 to 2 were examined and Exs.B1 to B7 were marked.

9. On a consideration of the oral and documentary evidence adduced in the matter and the submissions put forth by the respective parties, the trial court was pleased to dismiss the plaintiff's suit and on appeal by the plaintiff, the first appellate court was pleased to set aside the judgment and decree of the court below and by way of allowing the appeal preferred by the plaintiff, decreed the suit in favour of the plaintiff as prayed for. Challenging the same, the defendants 4 and 5 have



preferred the present second appeal.

10. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

1) "Whether the reason recorded and the finding rendered by the lower appellate court in its judgment are contradictory and mutually destructive of each other and the judgment is vitiated?

2) Whether the lower appellate court has omitted to consider the plea of impersonation pleaded by the fourth defendant against the plaintiff and its judgment is vitiated ?"

11. Inasmuch as the suit has been laid simplicitor for the relief of permanent injunction and as the plaintiff and the fourth defendant are claiming to be the cultivating tenants of the suit property and entitled to the protection under the Cultivating Tenants Protection Act 1970, as rightly contended by the defendants' counsel, it is found that only the proper Revenue Court would have the jurisdiction as to who is the cultivating tenant of the suit property and the civil Court may not have the jurisdiction to determine the said plea.

12. Be that as it may, from the pleas put forth by the respective parties and the materials placed on record, it is found that the first defendant had been admitted to be one of the legal owners of the suit property, who is managing the suit property and the second defendant is the power agent of other owners of the suit property. The third defendant is stated to be the previous power agent. It is also not in dispute that one Muttramkarar was inducted into the suit property as the lessee by the owners during 1960's and he had agreed to pay necessary rent to the owners for the enjoyment of the suit property. Therefore, it is seen that the enjoyment of the suit property by Muttramkarar as the cultivating tenant had not been disputed either by the plaintiff or by the owners, namely, the defendants 1 and 2 or the contesting defendants, namely, D4 and D5. Now according to the plaintiff, she is the younger brother's daughter of Muttramkarar. However, the materials placed on record go to show that the plaintiff is only the co-brother's daughter of Muttramkarar. It is thus noted that the plaintiff is also closely related to the deceased cultivating tenant, namely, Muttramkarar. The fourth defendant would claim that she had been taken as the foster daughter of Muttramkarar by Muttramkarar and his wife Anjalai as they had no issues. Therefore, considering the abovesaid factors, it is found that both the plaintiff and the fourth defendant are claiming to be in the possession and enjoyment of the suit property as being related to Muttramkarar one way or the other.



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13. Asfaras the owners, namely, the defendants 1 and 2, they had taken the plea that after Muttramkarar, it is the fourth defendant who have been enjoying the suit property and further put forth the case that the fourth defendant had permitted the plaintiff to cultivate the suit property and following the same, it is only the plaintiff who has been cultivating the suit property by paying necessary rent and also put forth the case that the plaintiff is not regular in the payment of rent.

14. Inasmuch as the suit has been laid simplicitor for the relief of permanent injunction and as the civil court has no jurisdiction to determine the status of the vying parties as to who is the actual cultivating tenant of the suit property, in my considered opinion, the case has to be disposed of by considering the documents of possession projected by the respective parties with reference to their claim of possession and enjoyment of the suit property. The kist receipts marked as Exs.A1 to A4 stand in the name of Annakili for the period 1994, 1995, 1997 and 1999. However, merely on the footing that Exs.A1 to A4 stand in the name of Annakili, it cannot be straightaway held that it is only referring to the fourth defendant. As rightly held by the first appellate court, when there is no material worth acceptance to hold that the fourth defendant is the foster daughter of Muttramkarar and pointing to the same, we have only the interested testimony of the fourth defendant, the first appellate court is found to be justified in holding that the fourth defendant has failed to establish that she is the foster daughter of Muttramkarar. When Exs.A1 to A4 receipts standing in the name of Annakili had been produced only by the plaintiff and when the plaintiff claims that her mother is also known as Annakili @ Janaki and as above pointed out, the plaintiff is admittedly related to the original tenant, namely, Muttramkarar, if really, the fourth defendant had paid the rent under Exs.A1 to A4, the abovesaid receipts should have been produced only by the fourth defendant and not by the plaintiff. To obviate the abovesaid facts, the defendants 4 and 5 would project the case as if the plaintiff had stealthily taken away the said receipts from the residence of the fourth defendant and the same had come to their knowledge only after the institution of the suit and as rightly concluded by the first appellate court, if as alleged by the defendants 4 and 5, the plaintiff had stealthily removed the receipts Exs. A1 to A4 from the custody of the fourth defendant one way or the other, nothing prevented the defendants 4 and 5 from lodging appropriate criminal action against the plaintiff. Even assuming that it had come to the knowledge of the defendants 4 and 5 only after the institution of the suit, even then the defendants 4 and 5 should have initiated appropriate action against the plaintiff as per law. The defendants 4 and 5 having not initiated any complaint or action against the plaintiff, hence



their vague claim that the receipts marked as Ex.A1 to A4 had been stolen by the plaintiff from their custody cannot be accepted and rightly rejected by the first appellate court.

15. Not stopping with Exs.A1 to A4, the plaintiff has also produced the subsequent rent receipts as Exs.A5 and A6 pertaining to the year 2001 and 2002. They stand in the name of the plaintiff showing her as the daughter of Annakili. Exs. A5 and A6 are found to be issued prior to the institution of the suit. When the plaintiff has been described as the daughter of Annakili, the case by the defendants 4 and 5 that the plaintiff's mother has no alias name as Annakili and her name is only Janaki, as such, cannot be readily countenanced.

16. The receipts marked by the defendants 4 and 5 as Exs. B1 to B4, as rightly concluded by the first appellate court, are found to be issued by the fourth defendant's husband Ganapathy for having paid the rent. When the receipt of rent should be acknowledged only by the owners of the suit property, it does not stand to reason as to how come the receipts marked as Exs. B1 to B4 have been issued by the husband of the fourth defendant, namely one Ganapath containing the LTI of the fourth defendant and therefore, on the face of it, Exs.B1 to B4 are found to be against the normal conduct of human affairs and therefore, their genuineness, as such, cannot be readily accepted and rightly rejected by the first appellate court.

17. It is also the case of the defendants 1 and 2, who are the owners of the suit property that, even the fourth defendant had handed over the suit property to the plaintiff and the same had been acknowledged by them and accordingly, it is only the plaintiff who had been cultivating the suit property and paying the rent. This is the clear stand of the defendants 1 and 2 in the written statement. However, during the course of trial, the second defendant examined as D.W.1 would give prevaricative evidence as to who actually is Annakili, whether it is denoting the plaintiff's mother or only pointing to the fourth defendant. Considering the evidence of D.W.1, when he is unable to point out clearly and put forth the case that Annakili referred to by him is only denoting the fourth defendant and not the plaintiff's mother Annakili, the first appellate court is found to be justified in not placing reliance upon the evidence of D.W.1, particularly, D.W.1 having given inconsistent contradictory evidence with reference to the same and as above pointed out, the fourth defendant, in particular having failed to establish that she is the foster daughter of Muttramkarar, the original cultivating tenant, and not having disputed that the plaintiff is also related to Muttramkarar and the original owners having admitted in the written statement that the fourth defendant herself had permitted the plaintiff to cultivate the



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suit property and the same had also been acknowledged by the owners and only the plaintiff since then had been paying the rent and the plaintiff having established her case of possession and enjoyment of the suit property by projecting Exs.A1 to A6 receipts and the parties having also approached the police station with reference to the issues pending between them and the above said records marked as Ex.All also pointing to the fact that it is only the plaintiff who is in the possession and enjoyment of the suit property prior to the institution of the suit, all put together, it is found that as held by the first appellate court, the documents projected on the part of the plaintiff only strengthen the case of the plaintiff that she is in the possession and enjoyment of the suit property long prior to the filing of the suit and though the fourth defendant also claims to be in the possession and enjoyment of the suit property, however, no document of possession and enjoyment of the suit property worth acceptance having been filed by the fourth defendant and the documents marked as Exs. B1 to B4 relied upon by her not found to have been issued as in the usual course of human conduct, in such view of the matter, the contention of the counsel appearing for the defendants 4 and 5 that the plaintiff has come forward with the case by way of impersonation and therefore, the reasonings and conclusions of the first appellate court in accepting her case are not to be countenanced, as such, cannot be accepted and on the other hand, when it is found that the first appellate court without going into the claim of the respective parties qua the status of the cultivating tenant vis-avis the suit property, when as above discussed, it is only the plaintiff who is found to be in the possession and enjoyment of the suit property, unless and until the plaintiff is vacated from the suit property as per law, the plaintiff is entitled to seek the relief of permanent injunction against the persons who are endeavouring to interfere with her possession and enjoyment of the suit property and in such view of the matter, the first appellate court is found to be justified in granting the relief of permanent injunction as prayed for by the plaintiff by setting aside the judgment and decree of the trial court.

18. The reasonings and conclusions of the first appellate court for accepting the plaintiff's case being found to be on the proper appreciation of the materials available on record, both oral and documentary, both on factual matrix as well as on the point of law and when they are not shown to be in any manner perverse, illogical or irrational by the contesting defendants, I do not find any valid reason to interfere with the same and in such view of the matter, the substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendants.



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19. The counsel for the defendants 4 and 5 relied upon the decisions reported in

- 1) (2010) 2 Supreme Court Cases 114 (Dilip Singh v. State of Uttar Pradesh and others)
- 2) (1994) 1 Supreme Court cases 1 (S.P. Chengalvaraya Naidu (dead) by Lrs vs. Jagannath (dead) by Lrs and others).

The principles of law enunciated in the above said decisions are taken into consideration and followed as applicable to the case at hand.

20. In conclusion, the judgment and decree dated 05.03.2007 passed in A.S.No.36/2005 on the file of the Principal subordinate court, Puducherry, reversing the judgment and decree dated 23.12.2003 passed in O.S.No.500/2002 on the file of the II Addl. District Munsif Court, Puducherry, are confirmed and resultantly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

bga

To

1. The principal subordinate court,
Puducherry.
2. The II Additional District Munsif Court,
Puducherry,

Copy to :
The Section Officer,
VR Section, High Court,
Madras.

+1cc to K.P.Jotheeswaran, Advocate, S.R.No.12979
+1cc to Mr.T.Sai Krishnan, Advocate, S.R.No.13282

S.A.No.1089 of 2008

SSI(CO)
HS(14/09/2021)