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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.01.2021

PRONOUNCED ON : 22.01.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.665 of 2008
and
M.P.Nos.1 & 2 of 2008

S.Rajasekar ... Appellant/2nd Defendant

Vs.

1.A/M.Marudeeswarar Temple
Reptd by its Executive Office,
Tiruvanmiyur, Chennai-600 041. ..1st Respondent/Plaintiff

2.Venkatalakshmi
58, Pillaiyar Koil Street,
Tiruvanmiyur, Chennai-600 041. .. Respondents/1st Defendant

(Since R2 was set exparte in the lower Courts
notice to her may be dispensed with and her
address is not known)

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 05.07.2007 passed in A.S.No.553 of 2006 on the file of the III Additional Judge of City Civil Court, at Chennai, confirming the Judgment and Decree dated 22.03.2006 passed in O.S.No.482 of 2003 on the file of XVI Assistant Judge of City Civil Court, Chennai.

For Appellant : Mr.R.Kannan

For Respondent :Mr.A.K.Sriram
No.1 for M/s.A.S.Kailasam and Associates

For Respondent : Given up
No.2

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 05.07.2007 passed in A.S.No.553 of 2006 on the file of the III Additional Judge of City Civil Court, at Chennai, confirming the Judgment and Decree dated 22.03.2006 passed in O.S.No.482 of 2003 on the file of XVI Assistant Judge of City Civil Court, Chennai.



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

3. The second defendant in O.S.No.482 of 2003 is the appellant in the second appeal.

4. Suit for recovery of possession and damages.

5. Briefly stated, according to the plaintiff, the plaintiff's temple is the sole and absolute owner of the suit property and the first defendant was a tenant in respect of the same on a monthly rent of Rs.3/-. The tenancy is being computed as per the English Calander month and the first defendant had put up a superstructure on the land leased out to her and been enjoying the same and after demolishing the said superstructure, she attempted to put up a superstructure in the month of November, 2002 without the consent and approval of the plaintiff's temple and hence, the plaintiff's temple chose to terminate the tenancy of the first defendant by the expiry of the end of the month of November, 2002 by a notice dated 08.11.2002 and despite the same, the first defendant attempted to proceed with the construction and hence, the plaintiff's temple filed a suit in O.S.No.5732 of 2002 against the first defendant on the file of the XV Assistant City Civil Court, Madras, for the relief of permanent injunction restraining her from proceeding with the construction and the same is pending. The legal notice sent to the first defendant had been returned as vacant land and the plaintiff's temple has come to know that the first defendant had handed over the suit land to the second defendant and the second defendant is proceeding with the construction and the possession of the suit property by the second defendant is in the nature of trespass. The second defendant has no right over the suit property and hence, according to the plaintiff, the suit has come to be laid for appropriate reliefs.

6. The second defendant resisted the plaintiff's suit contending that the suit property is notified as Village Natham as per the Settlement Register of the Department of Survey and Settlement, Chengalpet District and therefore, the second defendant, who is in occupation of the suit property, cannot be treated as a trespasser. The plaintiff is put to strict proof that it is the owner of the suit property. The second defendant is the owner of the suit property and not claimed any right over the suit property through the first defendant. The first defendant is not the owner of the suit property. The allegation that the second defendant is proceeding with the construction in the suit property on behalf of the first defendant is false. The first defendant has never been in the possession and enjoyment of the suit property. The plaintiff has wrongly made the second defendant as a party to the suit. There is no cause of action for the



suit. The suit has to be dismissed, since the plaintiff has not placed any evidence evidencing its claim of title to the suit property. The said superstructure has been independently put up by the second defendant as the occupant of the suit property being Village Natham. The plaintiff has also not placed any proof to show that a lease agreement is in existence between the plaintiff's temple and the first defendant in respect of the suit property and for handing over the possession of the suit property by the first defendant to the second defendant as claimed by it and therefore, according to the second defendant, the suit is devoid of merits and liable to be dismissed.

7. In support of the plaintiff's case, PW1 was examined and Exs.A1 to A5 were marked. On the side of the second defendant, DWs1 & 2 were examined and no document has been marked. The first defendant has remained exparte in the Courts below.

8. On an appreciation of the materials placed on record by the respective parties, both oral and documentary and the submissions made, the Courts below were pleased to decree the suit in favour of the plaintiff qua the relief of recovery of possession. Impugning the judgment and decree of the Courts below, the present second appeal has been preferred by the second defendant.

9. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration:

"Whether the Courts below were right in decreeing the suit which is for recovery of possession based on the title without any findings on the title of the plaintiff, based only on the weakness of the defence?"

10.M.P.No.1 of 2008

The petition has been filed under Order 41 Rule 27 CPC. The second defendant is the petitioner herein. According to the petitioner/appellant, he had filed an application to receive the additional documents in the first appellate Court. However, the first appellate Court, without taking the said application, chose to dismiss the appeal on an erroneous view of law and hence, the second appeal has been preferred by the petitioner and inasmuch as the additional documents now filed along with the petition substantiate the defence version projected by the petitioner/appellant viz., Copy of the Settlement Register of Survey and Settlement Department, Employment Certificate, Adangal Extract, hence, according to



11.No counter has been filed by the respondent/plaintiff to the abovesaid petition.

14. The first defendant has remained exparte and did not contest the plaintiff's case.

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the suit property and that the first defendant is not the tenant in respect of the suit property under the plaintiff's temple as claimed by the plaintiff and according to the second defendant, the suit property is notified as Village Natham in the Settlement Register and therefore, the second defendant being the occupant of the suit property independently cannot be treated as a trespasser as alleged by the plaintiff and the second defendant is in the possession and enjoyment of the suit property independently and not in the possession and enjoyment of the suit property through the first defendant and the plaintiff, without establishing it's claim of title, case of lease arrangement between it and the first defendant, it's claim of the second defendant's enjoying of the suit property through the first defendant, is not entitled to seek the reliefs prayed for and accordingly, prayed for the dismissal of the plaintiff's suit.

16. In the light of the abovesaid versions put forth by the second defendant, the plaintiff having laid the suit against the defendants for the recovery of possession and damages claiming that the suit property belongs to it and that the first defendant had been a tenant under it on a monthly tenancy and when the abovesaid case of the plaintiff has been stoutly challenged by the second defendant and on the other hand, the second defendant having put forth the defence version that the suit property is Village Natham and he has independently occupied the suit property, when admittedly, the second defendant is in the possession and enjoyment of the suit property, in view of the abovesaid facts, as rightly contended by the second defendant's counsel, the plaintiff has to establish that the suit property belongs to it and that the first defendant was a tenant under it qua the suit property on a monthly tenancy as claimed by it and that the first defendant attempted to put up a superstructure in the suit property and thereafter, the second defendant was inducted into the suit property by the first defendant without any right and hence, it is entitled to maintain the suit, more particularly, against the second defendant also. Despite the denial of the plaintiff's title to the suit property on the part of the second defendant, the plaintiff has not placed any material worth acceptance to show that it has a valid claim of title to the suit property. The plaintiff has examined PW1 and marked Exs.A1 to A5 in support of its case. Ex.A1 is claimed to be a termination notice dated 08.11.2002, Ex.A2 and 3 are the returned covers said to have been received from the first defendant, Ex.A4 are the photographs with negative and Ex.A5 is the receipt pertaining to the taking of Ex.A4 photos. The abovesaid documents, per se, as rightly contended by the second defendant's counsel, would not establish the claim of the plaintiff's temple to the suit property. Therefore, none of the documents projected by the plaintiff would advance the plaintiff's case to uphold its claim of title to the suit property.



17. PW1 examined on behalf of the plaintiff though would claim that the plaintiff's temple is in the possession of the documents to show its claim of title to the suit property, however, for the reason best known to the plaintiff or PW1, no document is forthcoming evidencing the plaintiff's claim of title to the suit property. If really, the plaintiff has ownership over the suit property as claimed by it and if the documents are available with the plaintiff's temple, pointing to the same, nothing prevented the plaintiff from placing the said materials for consideration. However, the plaintiff, for the reason best known to it, has not evinced any interest to exhibit the materials pointing to its ownership over the suit property, despite PW1's claim of the possession of the said documents. In addition to that, no material has been placed by the plaintiff worth acceptance to show that the first defendant was a tenant under the plaintiff's temple qua the suit property on a monthly tenancy. No lease agreement has been projected by the plaintiff and no material has been put forth by the plaintiff evidencing that the first defendant has been paying rent to the plaintiff's temple for the occupation of the suit property as its lessee. Therefore, the claim of the plaintiff that the first defendant was a tenant under it on a monthly tenancy cannot be ipso facto accepted sans any material pointing to the same as above noted. The documents projected by the plaintiff would not serve the abovesaid case of the plaintiff. In the light of the abovesaid factors, when the plaintiff has failed to establish its claim of title to the suit property in any manner, the point which has to be considered is whether the Courts below are justified in upholding the plaintiff's suit mainly on the failure of the second defendant to establish his defence version.

18. The second defendant, as above pointed out, would claim that the suit property is the Village Natham and as the occupier of the same, he is enjoying the suit property. No doubt, the second defendant has not placed any acceptable material before the Courts below to evidence that the suit property has been notified as Village Natham in the Revenue records as claimed by him. On that basis, the Courts below had proceeded to hold that the suit property belongs only to the plaintiff's temple. As rightly contended by the second defendant's counsel, the weakness of the defence version cannot be the factor for upholding the plaintiff's case without any material projected by the plaintiff to substantiate its case. The plaintiff having come forward with the suit seeking the reliefs of recovery of possession and damages against the defendants on a particular set of facts and when as above discussed, the plaintiff has not placed any material worth acceptance evidencing its claim of title to the suit property, evidencing its claim of lease arrangement between it and the first defendant qua the suit property on a monthly tenancy, evidencing its claim that the second defendant had been inducted into the suit property by the



first defendant and more so, when the plaintiff has not placed any material to hold that the first defendant was ever in the occupation of the suit property as its tenant and enjoying the same by putting up a superstructure and even as per the case of the plaintiff, the termination notice sent by it to the first defendant has been returned as vacant plot, all would go to show that the case projected by the plaintiff that the suit property belonging to it and the first defendant has been a tenant under it qua the suit property on a monthly tenancy and the second defendant was inducted into the possession of the suit property by the first defendant cannot at all be believed and accepted in any manner. On the other hand, the Courts below seem to have accepted the plaintiff's case in toto on the footing that the second defendant has failed to establish his case by placing acceptable and reliable materials. The plaintiff being the suitor and having come forward with the suit seeking distinct reliefs based on a specific case and when the abovesaid case projected by the plaintiff has been seriously challenged by the second defendant in toto and furthermore, when the plaintiff has not even endeavoured to show that the suit property had been in its possession and enjoyment at any point of time, the approach of the Courts below in upholding the plaintiff's case without any material qua the title of the plaintiff in respect of the suit property and only on the weakness of the defence version, as such, cannot at all be countenanced in any manner and in such view of the matter, the judgment and decree of the Courts below are liable to be set aside.

19.The plaintiff has to stand or fall on the strength of its own case and not on the weakness of the defence version put forth by the defendant. In view of the abovesaid factors, the substantial question of law formulated in the second appeal is answered in favour of the second defendant and against the plaintiff.

20.For the reasons aforesaid, the Judgement and Decree dated 05.07.2007 passed in A.S.No.553 of 2006 on the file of the III Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 22.03.2006 passed in O.S.No.482 of 2003 on the file of XVI Assistant Judge, City Civil Court, Chennai are set aside and resultantly, the suit laid by the plaintiff in O.S.No.482 of 2003 is dismissed and accordingly, the second appeal is allowed. Considering the facts and circumstances of the case, there is no order as to costs. Consequently, connected M.P.No.1 of 2008 is dismissed and M.P.No.2 of 2008 is closed.

Sd/-

Deputy Registrar(P & A)

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Sub Assistant Registrar



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To

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1.The III Additional Judge of City Civil Court,
at Chennai.

2.The XVI Assistant Judge of City Civil Court,
Chennai.

3.The Section Officer, V.R.Section,
High Court, Madras.

+1cc to Mr.R.Kannan, Advocate SR.No.3510

+1cc to M/s.A.S.Kailasam and Associates, Advocate SR.No.3675

S.A.No.665 of 2008
and
M.P.Nos.1 & 2 of 2008

CNR(CO)
GMY(18/11/2021)