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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2021

PRONOUNCED ON : 12.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.990 of 2008
& M.P.No.1 of 2008

T.Chenthamarakshan ...Appellant/Respondent/Plaintiff
Vs.

T.Janarthanan ...Respondent/Appellant/Defendant

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Code of Civil Procedure, against the Judgment and decree dated 17.09.2007 passed in A.S.No.73 of 2007 on the file of the I Additional Subordinate Court, Coimbatore reversing the judgment and decree dated 16.02.2007 passed in O.S.No.1086 of 2005 on the file of the I Additional District Munsif Court, Coimbatore.

For Appellant : Mr.S.S.Mathivanan

For Respondent : No appearance

J U D G M E N T

The plaintiff in OS.No.1086 of 2005, on the file of the learned I Additional District Munsif, Coimbatore, is the appellant herein. Before the said Court, he has filed the above referred suit, as against the respondent/defendant, seeking the relief of permanent injunction restraining him, his men etc., from interfering in any manner with the plaintiff's possession and enjoyment of the suit property and for Costs.

2. By judgment and decree dated 16.02.2007, the learned I Additional District Munsif, Coimbatore, had allowed the suit and passed a decree, as prayed for.

3. Aggrieved over the said findings, the respondent in this appeal preferred an appeal, in AS No.73 of 2007 on the file of the learned I Additional Subordinate Judge, Coimbatore. By judgment and decree dated 17.09.2007, the learned I Additional Subordinate Judge, Coimbatore, had allowed the said appeal and



set aside the decree, which stood in the name of the appellant/plaintiff. Feeling aggrieved over the said findings, the plaintiff in the suit, has preferred the second appeal.

4. For the sake of convenience, hereinafter, the appellant is called as 'plaintiff' and the respondent is called as 'defendant'.

5. The laconic averments made in the plaint, are as follows:

(i) Originally, an extent of 3.46 acres comprised in Thirumalaipalayam Village G.S.No.981/2 is the absolute property of the plaintiff. From the above, he sold an extent of 1.06 acres of land to one Geethamani through a registered sale deed dated 18.01.2005 and retained the remaining extent of 2.40 acres with him. The plaintiff has purchased the above said property, through a registered sale deed dated 14.12.2000 from one P.K.K.Raja, P.K.M.Raja, P.K.Manorama Thambatti and one P.K.Krishna Verma.

(ii) After made purchase, the plaintiff has been in possession and enjoyment of the above said extent of 2.40 acres of agricultural land viz., the suit property. Patta also stands in the name of the plaintiff. He used to pay the kist in respect of the suit property. The defendant does not have any right over the suit property. Further, on 25.02.2006, the defendant attempted to hew the standing timbers therein licentiously and the same was thwarted by the plaintiff with the help of his neighbours. Thereafter, the defendant is making continuous threat to the plaintiff. Hence, the suit.

6. Opposing the claim made by the plaintiff, the defendant filed written statement and states as follows:

(i) The plaintiff and the defendant are the sons of One Theethi, S/o.Kanduj. The agricultural land measuring an extent of 2.540 acres comprised in Thirumalaipalayam Village in S.F.No.981/2 and another extent of 1.06 acres comprised in S.F.No.959/B belonged to one T.K.Kunthathi Thamburathi originally. The father of the plaintiff and defendant viz., Theethi was a cultivating tenant in the above said extent of 3.46 acres.

(ii) Previous to filing the suit, several proceedings are initiated in connection with records to tenancy, right of collection of arrears of rent, enhancement of rent etc. All the proceedings are pending before the Special Deputy Collector, Authorised Officer, Coimbatore. The Revenue Divisional Officer, Coimbatore recorded the tenancy, as the Theethi is the tenant. During his life time, the said Theethi, executed a registered Will dated 01.06.1984, bequeathing the tenancy rights in respect



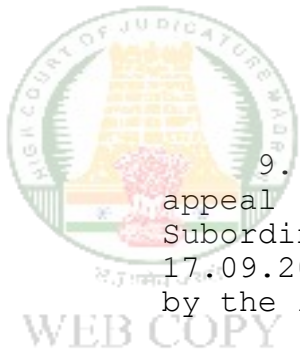
of the above said agricultural lands measuring an extent of 3.46 acres in favour of the plaintiff and defendant.

(iii) Accordingly, the plaintiff and the defendant had become tenants in respect to the said property. During such time, the plaintiff was residing at Coimbatore, whereas the defendant was residing in the suit village. In view of the arrangement made between the plaintiff and the defendant, they were in possession and enjoyment of the extents of 2.40 and 1.60 acres of lands respectively and separately. The successors in title of the above said land viz., the alleged vendors of the plaintiff had been receiving the rents from the plaintiff and the defendant in respect of the respective lands for the past 15 years.

(iv) Lastly, the defendant paid annual rent of Rs.2,400/- in the year 2003. The vendors of the plaintiff sold the above said land to the plaintiff surreptitiously, by veiling the existing rights of the defendant. After mooted the above said alienation, the defendant issued legal notice dated 11.04.2005 to the vendors of the plaintiff viz., the landlords of the suit tenement. All the plaintiff's vendors received the suit notice, but the defendant did not receive either the acknowledgment or the reply from them so far. The plaintiff filed a suit in O.S.No.250 of 1985 against the defendant on the file of the learned Principal District Munsif, Coimbatore, on a fabricated pro note dated 14.02.1996, claiming a sum of Rs.50,000/- only with a view to drive away the defendant from the suit property, the plaintiff filed the above suit. The defendant has been in possession of the suit property by cultivating it. The defendant is ready to purchase the suit property at a reasonable market price from the plaintiff. The defendant is the statutory tenant in the suit property and he cannot be evicted therefrom except by due process of law. Hence, the suit deserves to be dismissed.

7. Based on the abovesaid pleadings, the learned I Additional District Munsif, Coimbatore, framed necessary issues and tried the suit. On the side of the plaintiff, the plaintiff himself examined as PW1 and marked four documents, as Ex.A1 to A4. On the side of the defendant, the defendant and one S.Santhosekumar, were examined as DW1 and DW2, respectively and marked seventeen documents as Exs.B1 to B17.

8. Having considered the materials placed before him, the learned I Additional District Munsif, Coimbatore, vide judgment and decree dated 16.02.2007, concluded the suit in favour of the plaintiff.



9. Aggrieved over the same, the defendant preferred an appeal in AS No.73 of 2007. The learned I Additional Subordinate Judge, Coimbatore, by judgment and decree dated 17.09.2007, allowed the appeal and set aside the decree granted by the learned I Additional District Munsif, Coimbatore.

10. Aggrieved over the said findings, the plaintiff is before this Court with the present Second Appeal. When the Second Appeal came up for admission, this Court formulated the following substantial questions of law.

"a. Whether the learned Subordinate Judge misconstrued the oral and documentary evidence.

b. Whether the learned Subordinate Judge failed to properly appreciate Ex.A1, A2, A3 and A4?

c. Whether the learned Subordinate Judge failed to follow the judgment in AIR 1972 Supreme Court 2299 in granting relief of injunctions?"

11. The learned counsel appearing for the plaintiff would contend that the documents exhibited on the side of the plaintiff will clearly prove the plaintiff's case. When at the time of giving evidence as DW1, the defendant has admitted that the Adangal extract pertains to the suit property stands in the name of the plaintiff. Learned counsel would specifically, submit that the defendant himself admitted that no document is available to prove his possession. But the learned 1st Additional Subordinate Judge, Coimbatore, without considering the validity of the documents produced by the plaintiff and also without going into the fact of admission made by the defendant, set aside the judgment rendered by the learned I Additional District Munsif, Coimbatore. Therefore, the findings arrived at by the first appellate Court is erroneous in law and accordingly, it is necessary to allow this appeal.

12. In otherwise, in order to substantiate the case of the defendant, despite of repeated adjournments, none have appeared on behalf of the respondent/defendant. Therefore, the respondent's side argument is suo motu closed.

13. Upon considering the submissions made by the learned counsel for the appellant, admittedly, the present suit has been filed for the relief of bare injunction simpliciter. For availing the said relief, necessarily, the plaintiff is having the duty to prove his title and possession. Utmost, he has to prove his settled possession of the suit scheduled property. In this regard, in the judgment of Anathula Sudhakar Vs. P.Buchi Reddy (Dead), by LR's. and others, reported in AIR 2008 Supreme Court 2033, our Hon'ble Apex Court has held as follows:



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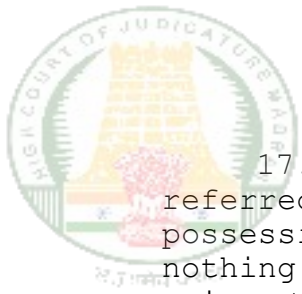
"As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession."

14. By applying the ratio laid down in the judgment referred to above, herein also, the property now decided as an agricultural land is a vacant one. For proving his possession on the side of the plaintiff four documents were exhibited as Ex.A1 to Ex.A4. Ex.A1, is the copy of the sale deed dated 14.12.2000, which stands in the name of the plaintiff. Through this document, the plaintiff has purchased the suit property on 14.12.2000. Further, in respect to the validity of the said documents, the defendant himself has admitted that the suit property was purchased by the plaintiff. Secondly, the copy of the Patta Passbook and the kist receipts were marked as Ex.A2 and Ex.A3. The said documents also stand in the name of plaintiff.

15. In general, all are aware, revenue documents can be relied only for accepting the possession. On that score, for proving his possession, plaintiff has produced the above Ex.A2 and Ex.A3. Further, in respect to the possession, the defendant during the time of giving evidence as DW1, had admitted that there is no document available to show that he was alone cultivating the suit property. In otherwise, in his cross examination, he has specifically admitted that the Adangal extract pertains to the suit property stands in the name of the plaintiff.

16. In this regard, it is necessary to understand, Adangal is a specific document to show who cultivated the said land. Therefore, since the said Adangal Extract itself stands in the name of the plaintiff, the same is sufficient to prove that the plaintiff alone is in the possession of the suit property. Further, the above said aspect is admitted by the defendant. In respect to the strength of the admissions made by the defendant, in a judgment of Union of India Vs. Ibrahim Uddin and Another, reported in 2012 (8) SCC 148, our Hon'ble Apex Court has held as follows:

"Admission made by a party though not conclusive, is a decisive factor in a case unless the other party successfully withdraws the same or proves it to be erroneous."



17. Therefore, applying the ratio laid down in the judgment referred to above with the case herein, after admitting the possession of the plaintiff, in order to disprove the same, nothing was produced on the side of the defendant. Secondly, on going through the judgment of the first appellate Court, the learned Subordinate Judge by relying on the exhibits marked on the side of the defendant, held that due to the Will executed by the father of the plaintiff and defendant, tenancy and possession were also passed on to the plaintiff and defendant and accordingly, came to the conclusion that the plaintiff alone is not in the possession of the suit schedule property.

18. Now, on considering the said findings with the relevant records, during the course of trial proceedings on the side of the defendant, 17 documents were marked as Ex.B1 to Ex.P17. Ex.B1 to Ex.B7 are the documents related to the revenue court. Those documents reveals the fact that before made purchase by the plaintiff, there was a dispute between the father of the plaintiff and the defendant and the erstwhile owners of the suit property.

19. Though, it was contended that the father of the plaintiff and the defendant Theethi, is a cultivating tenant, in order to show the specific order in agreeing the tenancy, no document has been produced on the side of the defendant. Ex.B8, is the copy of the plaint filed in O.S.No.2248 of 1992, which is irrelevant for this case. Ex.B9, is the copy of the Adangal extract dated 29.06.1984, which shows that during the said period, the father of the plaintiff viz., Theethi has cultivated the said land. Ex.B10 is the certified copy of the Will dated 01.06.1984.

20. Now, coming to the validity of the Will, the executor of the said Will had stated in the alleged Will as he is the tenant. Further, he has stated that after his life time, the tenancy have to pass on to his two sons. Of course the right of tenancy, is a heritable right, but, in this case, the defendant himself admitted that the dispute in respect to the tenancy has ended in 1987. Further, he has admitted that he has not produced the result of dispute. So, without knowing the result in respect to the dispute raised by Theethi, this Court cannot come to the conclusion that the said Theethi is having the tenancy right. More than that the alleged Will dated 01.06.1984 is not proved in terms of the Indian Evidence Act, and also the defendant fairly conceded that there was no document to show that he is cultivating the land. Therefore, the admissions made by the defendant is very clear that the plaintiff is alone in the suit schedule property. Ex.A1, title deed also stands in the name of the plaintiff. In otherwise, the documents exhibited on the side of the defendant does not prove the defendant's possession.



21. Ultimately, this Court is of the opinion that the plaintiff is having the better title than the defendant and further, the possession of the plaintiff is also admitted by the defendant. In the said circumstances, the plaintiff is entitled to the relief of bare injunction simpliciter. The learned I Additional Subordinate Judge, Coimbatore, without considering the same with perspective nature, set aside the judgment rendered by the learned I Additional District Munsif, Coimbatore.

22. Therefore, in the light of the above discussions, the substantial questions of law raised in this appeal are all answered as above and the Judgment and decree dated 17.09.2007 passed in A.S.No.73 of 2007 on the file of the I Additional Subordinate Court, Coimbatore, reversing the judgment and decree dated 16.02.2007 passed in O.S.No.1086 of 2005 on the file of the I Additional District Munsif Court, Coimbatore, is set aside. The Second Appeal is Allowed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The I Additional Subordinate Judge,
Coimbatore
2. The I Additional District Munsif,
Coimbatore

Copy to

The Section Officer,
VR Section,
High Court, Madras - 104.

+1cc to Mr.M.Parthasarathy, Advocate, S.R.No.32509

S.A.No.990 of 2008

NR[co]
NSK 26/11/2021