



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 02.12.2021
CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.388 of 2021

Kannan ... Appellant/Appellant/Plaintiff

Vs.

1.Ramalingam

2.Arulmigu Venkatesala Pathi Perumal Aalayam
Thiruvemba Nallur,
Rep. by its Executive Officer,
Arulmigu Pasupatheswarar Swami Devasthanam,
Pantha Nallur,
Office : Main Road, Pantha Nallur,
Thiruvidaimarudur Taluk,
Thanjavur District.

... Respondents/ Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 07.02.2020 passed in A.S.No.40 of 2019, on the file of the Additional Subordinate Court, Kumbakonam, confirming the judgment and decree dated 14.03.2019 passed in O.S.No.197 of 2013 on the file of the I Additional District Munsif Court, Kumbakonam.

For Appellant : Mr.G.Gomathi Sankar

JUDGMENT

The appeal is directed against the Judgment and Decree passed in A.S.No.197 of 2013, by the learned Additional Subordinate Court, Kumbakonam, in confirming the Judgment and Decree in O.S.No.197 of 2013, passed by the learned I Additional District Munsif Court, Kumbakonam.

2. For the sake of convenience, the parties are referred to herein, as their own ranking as before the Trial Court.

3.The case of the plaintiff, as per the averments made in the plaint, in short, is as follows :

Originally the suit property was in possession and enjoyment of one Malathi, who was a lessee with the second defendant temple. On 20.09.2009, she has executed a lease deed, which is transferring a right to the plaintiff and the plaintiff has paid appropriate tax to the second defendant on 15.12.2010 and on 01.08.2011 and this would show that the plaintiff is in possession and enjoyment. He has also paid house tax and the house tax receipts



were also marked. Further, other than the suit property, some poramboke lands has been in possession and enjoyment of the plaintiff, for which, also he has paid the house tax to the revenue authorities. Further, the plaintiff has also tried to construct a new house replacing the old house in the poramboke land, which is in a dilapidated condition.

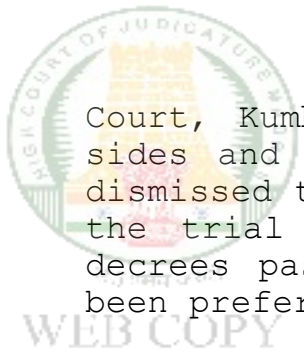
4.It is further submitted that the first defendant has got no right over the property and he is residing in a Mangalore tiled house which situates in a PWD poramboke land. When the first defendant has tried to encroach upon the southern side portion of the plaintiff's property and tried to construct a house, the plaintiff prevented the same and has given a complaint before the Pantha Nallur Police Station and the same is pending. Further on 05.05.2013, the first defendant tried to trespass into the property of the plaintiff with the help of henchmen and hence, the plaintiff has filed a suit for permanent injunction.

5.The defendant filed a written statement contending *interalia* that the averments made in the plaint are false. The plaintiff was never in possession and enjoyment of the suit schedule property and the said schedule of property belongs to the second defendant, which is a temple and originally one Malathi was in possession of the said land and constructed a shop and rented the same. Later on, Malathi had executed a transfer lease deed on 20.09.2009 in favour of the plaintiff is a false statement. The above said document, is a created and forged document by the plaintiff and he was never in possession and enjoyment of the disputed property. Further, the first defendant is residing behind the shops in the southern side. Further the first defendant having possession of the back side of the shop, has wants to extend the shop portion. When the plaintiff tried to construct a house in the pathway leading to the house of the first defendant and when he prevents the same, the plaintiff has with false averments lodged the present complaint. As stated by the plaintiff, there was no occurrence took place on 05.05.2013 and hence, suit has to be dismissed with costs.

6. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1, one Veeramani and Thirunavukkarasu were examined as P.W.2 and P.W.3 and Exs.A1 to A6 were marked. On the side of the first defendant, the first defendant examined himself as D.W.1 and Exs.B.1 to B.3 were marked.

7. On the basis of the rival pleadings on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has dismissed the suit.

8. Aggrieved by the Judgment and decree passed by the trial Court, the plaintiff, as appellant, had filed an Appeal Suit in



Court, Kumbakonam. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, had dismissed the appeal and confirmed the Judgment and decree passed by the trial Court. Challenging the said concurrent Judgments and decrees passed by the Courts below, the present second appeal has been preferred at the instance of the plaintiff, as appellant.

9. Heard the learned counsel for the appellant / plaintiff and also perused the materials available on record.

10. The learned counsel for the appellant/plaintiff would submit that the Courts below have failed to take note that the second defendant Temple's Executive Officer was examined as P.W.3 and he stated that the suit property belongs to the Temple and the documents in Exs.A.1 to A.3 were issued by the second defendant Temple and therefore, the plaintiff has proved his case and the plaintiff was a sub-tenant under the second defendant Temple and the same was recognised by them and they have collected rent from the plaintiff and they have issued the rent receipt, which clearly proved that plaintiff was in possession and enjoyment of the said property, but the Courts below does not consider the same and dismissed the suit which is against law and unsustainable and the first respondent did not file any documents to prove his possession and enjoyment and hence, prayed to allow the Second Appeal.

11. In the Memorandum of Second Appeal, the plaintiff / appellant sought to raise the following Substantial Questions of Law.

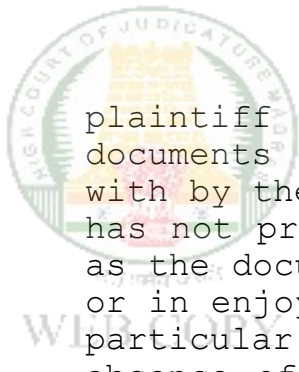
"1. Whether the plaintiff is having the right to seek for the relief of injunction as against the stranger of the suit property ?

2. Whether the Courts below dismissed the suit is justified when the plaintiff has proved his possession and enjoyment by producing documents in Exs.A.1 to A.5 ?

3. Whether the second defendant received the rent from the plaintiff and issued the rent receipt which will recognise the plaintiff as a tenant under the second defendant's temple and therefore, the plaintiff has protected his possession and enjoyment against the first defendant / stranger ?

12. This Court paid its anxious consideration to the rival submissions made and also carefully perused the materials placed on record.

13. On going through the averments, it is seen that the plaintiff has got no absolute right over the property, as the said property belongs to the Temple / second defendant herein. The

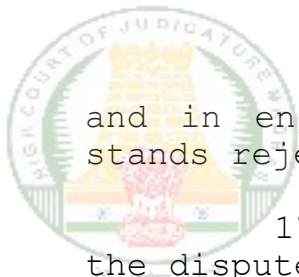


plaintiff has proved his possession and enjoyment by producing documents marked as Exs.A.1 to A.5, which has been clearly dealt with by the Courts below and by the facts of the case, the plaintiff has not proved his possession and enjoyment over the suit property, as the document do not point out that the plaintiff is in possession or in enjoyment of the said property and receipts are issued for the particular shop or particular schedule of property and in the absence of any such evidence to show that the plaintiff has proved his possession, the Courts below has rightly dismissed the case of the plaintiff.

14.Further, the plaintiff has produced the documents alleged to have been executed by one Malathi, who is the original lessee of the said Temple/ second defendant and the plaintiff cannot have a sub-lease from the said Malathi and no such documents whatsoever has not been produced to support the case of the plaintiff and hence, the claim of the plaintiff has to be rejected and the question of law framed by the plaintiff are all only facts, which has not been substantiated by producing any evidence or documents in support of the same.

15.The plaintiff has neither proved his case that the said rental receipts are only for a particular property nor for a particular disputed area and hence he has not proved the tenancy under the second defendant Temple and therefore, the plaintiff cannot be protected, as if he is in possession and enjoyment as claimed by him and that he should be protected as against the first defendant and he has to be considered only as a stranger to the suit property. The first defendant never claimed any right over the said property and it is his case that it is only a general pathway meant for the public usage and the plaintiff has not proved his case that he is the owner of the said property and he has no right to get any relief as against the first defendant and it also stands rejected.

16.The documents, which has been marked as Exs.A.1 to A.5 are only rental receipts and these receipts do not convey any right or possession over the suit property by the plaintiff and as well as P.W.3, who was an official of the Temple Management, had submitted that the said receipts have been issued by them, has been admitted, but that cannot be accepted as the rental receipts related to the disputed area or not and in that case, he also further submitted that the survey No.188/1 is in whose possession is not known to him and he is not able to pinpoint and tell in whose possession, the same is in enjoyment. Regarding the survey No.188/1 which is marked as 'ABCD' portion in the plaint sketch, has not been proved by the plaintiff that he is in uninterrupted possession and enjoyment of the same. The said possession has also not been admitted by the Temple, as the same was let out to one Malathi, for running a shop and that the said Malathi, cannot sub-let the same to some other person. That being the case, the plaintiff was not in a position to prove that Survey No.188/1 was in absolute possession



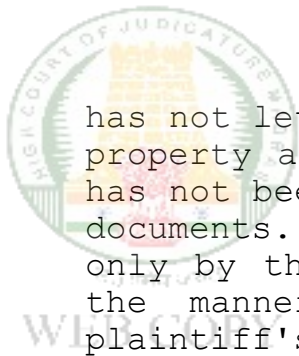
and in enjoyment and the said claim made by the plaintiff also stands rejected.

17. Further in the plaint itself, it has been admitted that the disputed property belongs to the Temple/second defendant and how the plaintiff was in possession of the same and what right he has got to stay in possession of the said property and that whether the said Malathi was in possession or given lease by the said temple or the said Malathi has given a transfer of lease deed or not, are only vague and oral statements and the plaintiff has not produced any such document to prove his case.

18. The first defendant in his written statement itself has admitted that he never trespassed into the property or interfered with the possession of the said disputed property and it is also further seen that if the plaintiff is claiming right over the property, he should have proved the same by let in appropriate evidence to the effect that the first defendant has trespassed and tried to interfere with the property. Other than the complaint filed before the Pantha Nallur Police Station that the defendant has trespassed into the property and his peaceful possession and enjoyment over the property. As the plaintiff has not proved his case that the first defendant is trying to interfere with his right over the property and in the absence of any document to prove his right over the property, both the Courts below have rejected the claim of the plaintiff for permanent injunction.

19. Further all the receipts do not contain the survey number and there are many discrepancies and corrections made in the document. That being the case, the document for door No.2 /320, whether there was any house available or not as stated in the house tax receipts and P.W.3 submitted that the said receipt Nos.1 and 2 do not belong to the said disputed property and it is only a receipt, issued for money paid to the Temple and not proved that it is issued to the plaintiff for the house tax paid by him. That being the case, when the said documents were not proved to be issued for the disputed property and pertains to any building or vacant site was not proved by both the parties. The said claim made by the plaintiff that the said Malathi was in possession as a lessee and from her, the plaintiff has got right by way of transfer of lease hold right and the first defendant has been trying to trespass into the property were also not proved by any suitable evidence. It is also seen that the plaintiff is having more shops in the neighbouring Temple lands and pay rents. The Temple has to safeguard its property from encroachers.

20. It is further submitted that when the second defendant has been made as a party and when the plaintiff claims title only through one Malathi and the said Malathi who got right from the second defendant Temple as a lessee and the second defendant Temple



has not let in any evidence, how the said Malathi had right over the property as lessee, the plaintiff claims stand failed, as the same has not been substantiated or proved by him by producing appropriate documents. When it is a vacant site the possession has to be proved only by the plaintiff and in the absence of any document to prove the manner of right through which he claims possession, the plaintiff's case was rightly rejected by the Courts below, and this Court finds no reason to interfere with the well reasoned order of the Courts below. That being the case, this Court is not inclined to interfere with the concurrent findings of the Courts below and also there is no question of law much less substantial question of law is involved in this Second Appeal to be decided.

21. In fine, the Second Appeal is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Additional Subordinate Judge,
Kumbakonam.

2.The I Additional District Munsif Court,
Kumbakonam.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.GOMATHISANKAR, Advocate (SR-37088[F] dated 02/12/2021)

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