



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE:12.8.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

S.A (MD)No.482 of 2021

Nagaraj

... Appellant

vs.

1.Tamil Nadu Government
rep. by District Collector,
Tiruchirappalli.

2.The Tahsildar,
Tahsildar Office,
Manapparai Taluk,
Tiruchirappalli District.

3.The President,
Palakurichi Village,
Palakurichi Union,
Manapparai Taluk,
Tiruchirappalli District.

4.Palanisamy

5.Arumugam

6.Chinnasamy

7.Rasu

8.Karuppaiah

9.Palanisamy

10.Perumal

11.Palani

12.Shanmugam

13.Periasamy

... Respondents

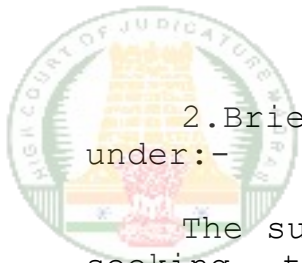
PRAYER: -

Second Appeal filed under Section 100 of CPC against the Judgment and Decree dated 11.1.2021 passed in A.S.No.1 of 2019 on the file of the Subordinate Judge, Manapparai confirming the Judgment and decree dated 10.9.2019 passed in O.S.No.310 of 2012 on the file of the District Munsif, Manapparai.

For Appellant : Mr.T.Vadivelan

JUDGMENT

The plaintiff, who failed before both Trial Court and the Appellate Court has come up with the present Second Appeal raising various grounds.



2. Brief facts leading to filing of the Second Appeal are as under:-

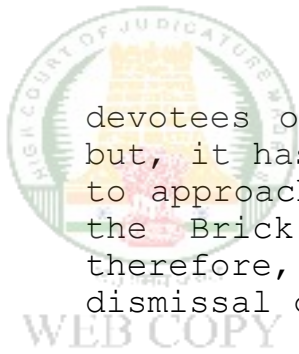
The suit was originally filed by the plaintiff/appellant herein seeking the relief of permanent injunction restraining the defendants 1 to 3/respondents 1 to 3 herein from interfering with the plaintiff's peaceful possession and enjoyment of two items of suit properties by running a Brick Kiln under the name and style of Naga Bricks.

3. According to the plaintiff, item 1 of the suit properties in S.No.74/1 of Palakurichi Village, Manapparai Taluk, Trichy belongs to Arulmigu Sree Naganathaswamy Temple and item 2 of the suit properties situated on the western side of item 1 of the suit properties in S.No.46/1 of Palakurichi Village, Manapparai Taluk, Trichy belongs to Arulmigu Thoondi Karuppa Kovil and the plaintiff had been in possession of both the lands jointly having obtained the possession of item 1 of the suit properties on lease from the temple authorities and on payment of lease amount regularly. Whiles, it is claimed by the plaintiff that the third defendant, without any authority, had threatened to dispossess the plaintiff from the suit properties on 5.9.2012 or else it would be removed by force for which, the plaintiff had replied that he got necessary permission/approval to run the Brick Kiln from the Authority concerned, however, again on 13.9.2012, the third respondent with the staff of the second respondent had once again threatened the plaintiff to remove the Brick Kiln and hence, he had to file the suit seeking the relief of permanent injunction against defendants 1 to 3.

4. It is the further case of the plaintiff/appellant that during the pendency of the suit, defendants 4 to 13 alongwith one Chinnu had demolished the Brick Kiln in the suit properties and hence, they had been impleaded as defendants in the suit.

5. The second defendant, Tahsildar, Manapparai Taluk had filed a written statement denying the contentions of the plaintiff with respect to item 2 of the suit properties alone to the effect that it is a Government Poramboke land and the plaintiff had made some temporary encroachments over the said land and at the instance of some individuals of the locality, the matter went to the Madurai Bench of Madras High Court in W.P.No.15664 of 2012 seeking removal of encroachment by the plaintiff and it was disposed of with a direction to the authorities to consider the grievance expressed therein and therefore, the second defendant prayed for dismissal of the suit.

6. The 7th defendant had filed a written statement contending that the suit properties are temple and Government Poramboke land and they are adjacent to the temple viz., Arulmigu Thoondi Karuppa Kovil and it is being used by the villagers and the



devotees of the temple to gather at the time of temple festivals, but, it has been encroached by the plaintiff and therefore, they had to approach the Madurai Bench of Madras High Court and resultantly, the Brick Kiln had been removed from the suit property and therefore, the suit had become infructuous and therefore, prayed for dismissal of the suit.

7.During the trial, the plaintiff had examined himself as PW1 apart from examining 3 witnesses as P.Ws.2 to 4 and 11 documents were marked as Exs.A1 to A11. On the side of the defendants, Proof Affidavit of one Gomathi (DW1) was filed apart from examining the 6th defendants as DW2 and three documents were marked. Apart from the above, the Commissioner's Reports, Plan, Surveyor Plan and Legal Opinion were marked as Exs.C1 to C4 and X1 and X2.

8.On examination of the oral and documentary evidence, the Trial Court, finding that there was no issue between the parties in respect of item 1 of the suit properties and further finding that the plaintiff himself had admitted that he has vacated from the property pending the suit, pursuant to the orders of this court in Contempt Petition MD No.271 of 2013, had dismissed the suit.

9.The plaintiff filed an Appeal challenging the judgment and decree of the Trial Court.

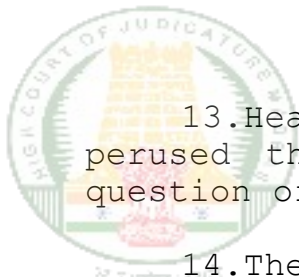
10.The Appellate Court framed the following questions for determination:-

i)Whether there was any legal ground or infirmity to interfere in the Appeal? and

ii)Whether any other reliefs have to be granted to the appellant?

11.The Appellate Court, after analysing the evidence and materials on record, concurred with the finding of the Trial Court and dismissed the suit.

12.The learned counsel for the appellant would submit that the courts below failed to consider the fact that the appellant has proved his possession by producing number of documents and the official of the temple had admitted that the appellant was the lessee in respect of item 1 of the suit properties and was running a Brick Kiln. He would further submit that the the Superintendent of the temple has been examined as PW3 to speak about the leasehold right of the plaintiff and he has also produced Ex.A2, computerised patta standing in the name of Naganathaswamy Temple and Ex.A3 lease receipts, but, the courts below have erred in dismissing the suit without considering those aspects and the fact that the Appellant falls within the purview of Tenant as per Section 2(ii)(a) of the Tamil Nadu Cultivating Tenants (Protection) Act, 1955.



13.Heard the learned counsel appearing for the appellant and perused the judgments of the courts below in the light of the question of law raised by the Appellant.

14.The plaintiff had filed the suit seeking the relief of permanent injunction, originally against the official defendants 1 to 3 and subsequently, defendants 4 to 13 also came to be impleaded.

15.The issue revolves around two items of the suit properties. The first item of the suit properties belongs to Sri Naganathaswamy Temple and item 2 of the suit properties belong to Thoondi Karuppa Koil, which is classified as Temple Poramboke land. In respect of first schedule property, the plaintiff, has examined the Superintendent of the temple as PW3 and also marked the lease receipts.

16.As far as the first item of the suit properties is concerned, the Trial Court has held that there was no issue at all and thereby dismissed the suit and the Appellate Court has also concurred with the finding in respect of first item of the suit properties.

17.To prove his possession and enjoyment of the suit properties, the plaintiff mainly relies upon Exs.A2 to A4, viz., patta standing in the name of Arulmigu Sri Naganatha Swamy Temple, receipts for payment of lease by him in respect of the said land and the certificate issued by the Government Authority to the plaintiff to run the Brick Kiln. He also intends to rely upon the evidence of PW3, the Superintendent of Sri Naganatha Swamy Temple to contend that he has been in possession and enjoyment of the suit properties by running a brick industry. It is pertinent to note that the plaintiff has failed to implead the officials of Sree Naganathasamy Temple and no averment has been made by him that he was attempted to be evicted by the officials of Sree Naganathasamy Temple.

18.However, the admitted case of the plaintiff himself is that he had been in possession of item 1 of the suit property having obtained it on lease from the temple and alongwith that land, he had been in possession of item 2 of the suit properties, which is claimed by the defendants to be the land used by the village people and the devotees of the temple called Thoondi Karuppasamy Koil while conducting temple festivals.

19.On perusal of the oral and documentary evidence, viz., patta and receipts marked as Exs.A2 and Ex.A3 on the side of the plaintiff, the Trial Court had observed that they relate only to item 1 of the suit property and the Superintendent of Arulmigu Naganatha Swamy Temple, examined as PW3 also deposed in respect of first item of the suit properties alone whereas, Exs.A5 and A6 Settlement Register and 'A' Register show that the second item of



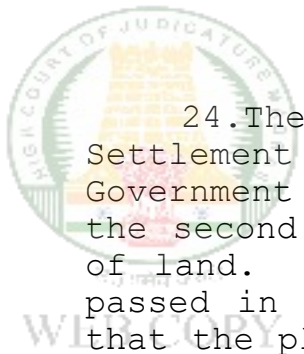
property. It has also been observed by the Trial Court that PW2, an individual running a Hotel at Manaparai, examined on the side of the plaintiff also had not supported the version of the plaintiff with regard to his possession and enjoyment of the suit properties.

20.The further observation of the Trial Court makes it clear that Ex.A11 order passed in Contempt Petition MD No.271 of 2013 filed by the plaintiff reveals that the plaintiff himself had admitted in that proceedings that he had been evicted from the suit property and thereby he is not in possession of the same. The Trial Court had also found that Ex.C3 Advocate Commissioner's Report also speaks about the possession of item 1 of the suit properties by the plaintiff. Thus, the Trial Court, while holding that there was no issue in respect of item 1 of the suit properties, had come to the conclusion that the plaintiff has failed to prove his possession over the suit properties with sufficient material and thereby he is not entitled to the relief of permanent injunction as claimed by him.

21.The Appellate Court, while endorsing the findings of the Trial Court, had also dealt with the plea of the plaintiff to appoint a second Advocate Commissioner as some confusion had crept in the Commissioner's Report with regard to the Survey Numbers of the two items of the suit properties and it had observed that it is only a slight interchange of Survey Numbers between the two items of the suit properties, which would not have any impact in coming to a conclusion on the issue raised by the plaintiff and thereby rejected such a plea made on behalf of the plaintiff.

22.So far as the plea of possession and enjoyment of item two of the suit properties, the Appellate Court has analysed Ex.A4 relied upon by the plaintiff viz., the approval granted by the Government Authority to the plaintiff to manufacture the bricks and found that it reflects the site for running the industry as place nearby the Thoondi Karuppasamy Koil alone and it does not contain any Survey Number and further the first item of the suit properties is also adjacent to the said land and thereby disbelieved the version of the plaintiff basing his reliance on Ex.A4.

23.Before the first Appellate Court, the plaintiff had made an attempt to take advantage of the Commissioner's Report to the effect that the plaintiff had been utilising the second item of the suit properties for storing the raw materials for his brick industries and by installing the a 5 HP motor and a water tank, but, the Appellate Court has rightly rejected such a plea holding that Appointment of Advocate Commissioner is only for identifying the property and its nature and position to the Court and fishing expedition cannot be permitted by Appointment of Advocate Commissioner.



24.The Appellate Court had also examined Exs.A5 and A6 Settlement Register and 'A' Register and found that they relate to Government Poramboke land of more than 4 Hectares and the temple and the second item of the suit properties also come under such extent of land. The Appellate Court had also analysed Ex.A11, the order passed in the Contempt Petition filed by the plaintiff and found that the plaintiff himself had admitted in such proceedings that he had been evicted from the suit properties and ultimately concluded that the plaintiff has not proved his possession and enjoyment of the suit properties and thereby dismissed the Appeal filed by him.

25.Having failed before both the courts below, the plaintiff intends to take advantage that he is a cultivating tenant and therefore, his possession and enjoyment has to be protected under the provisions Tamil Nadu Cultivating Tenants (Protection) Act, 1955.

19. Section 2(ii) (a) of the Act reads as under:-

"2. Definitions.-

In this Act, unless the context otherwise requires-

... ..

(aa) -- "Cultivating tenant"-

(ii) includes -

(a) any such person who continues in possession of the land after the determination of the tenancy agreement."

26.On one hand, by claiming to be a lessee in the suit 1st schedule property, the plaintiff had attempted to camouflage and make a claim in respect of the second schedule property without producing any document. On the other hand, the plaintiff himself made a contra claim that he was running a Brick Kiln in the first item of the suit properties, which was leased to him by Sree Naganathasamy Temple as stated above. The plaintiff had, without there being any resistance in respect of suit schedule one property, had attempted to grab the second schedule property, which belongs to Thoondi Karrupa Koil.

27.The courts below, rightly finding that there was no issue in respect of the first schedule property and that the plaintiff has not proved his case by documentary and oral evidence in respect of second schedule property, had dismissed the suit. This court does not find any error or infirmity in the judgments of both the courts below.

28. In the opinion of this court, the Appellant has not made any substantial question of law to admit this Second Appeal. The Hon'ble Apex Court in **Kirpa Ram (D) Tr.Lrs. . vs Surender Deo Gaur (2020 Scc OnLine SC 935)** has categorically held as under:-

"23. Sub-section (1) of Section 100 of the Code contemplates that an appeal shall lie to the High



Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of Section 100 of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re-formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."

29. In the result, the Second Appeal fails and the same is, accordingly, dismissed. However, it is made clear that both the courts below have held that there is no issue or dispute in respect of the suit first schedule of the property. No costs.

Sd/-

Assistant Registrar (CS II)

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/ /2021

Sub Assistant Registrar(CS)

To

1. Subordinate Judge,
Manapparai

2. District Munsif,
Manapparai.

3. District Collector,
Tiruchirappalli.

4. The Tahsildar,
Tahsildar Office,
Manapparai Taluk, Tiruchirappalli District.



5.The President,
Palakurichi Village,
Palakurichi Union,
Manapparai Taluk,
Tiruchirappalli District.

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+1CC to The Special Government Pleader (SR-26406)

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