



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD) No.2531 of 2015

A.Palanivel

.. Petitioner/Petitioner/
Appellant

-vs-

Subramani @ K.S.Mani

.. Respondent/Respondent/
Respondent

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 07.01.2015 made in I.A.No.146 of 2014 in A.S.No.21 of 2013 on the file of the learned Principal District Judge, Thanjavur.

For Petitioner : Mr.B.Jameel Arasu

For Respondent : Mr.P.Sesubalan Raja

ORDER

The appellant, in A.S.No.21 of 2013, on the file of the learned Principal District Judge, Thanjavur, is the revision petitioner before this Court challenging the order passed by the learned Judge dismissing his application in I.A.No.146 of 2014 in A.S.No.21 of 2013. This application was filed by the petitioner/appellant for impleading the proposed 2nd respondent/temple.

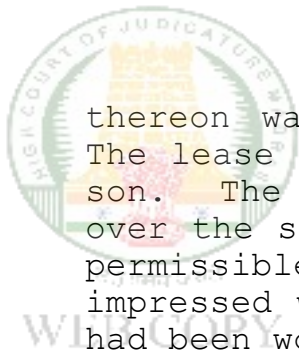
2.A.S.No.21 of 2013 was filed by the petitioner herein challenging the judgment and decree in O.S.No.26 of 2008, dated 25.03.2013 of the learned Additional Sub Judge, Kumbakonam.

3.O.S.No.26 of 2008 was filed by the respondent herein seeking delivery of vacant possession of the suit property; and for a direction to the defendant to pay past profits for three years preceding the suit and future profits from the date of plaint till the date of delivery of possession; and consequently for a direction to the defendants to return the movables mentioned in the schedule or its value; and for costs.

4.For the sake of convenience, the parties shall be referred to as per their rank in the suit in O.S.No.26 of 2008.

5.The brief facts are as follows:-

5.1.The suit site admittedly belonged to Arul Mighu Srinivasa Perumal Temple (the proposed party). However, the superstructure



thereon was constructed by the plaintiff's vendor, Krishnamurthy. The lease in respect of the site stood in the name of Swaminathan's son. The plaintiff had purchased the superstructure and the lease over the site. The defendant, the plaintiff's employee, was put in permissible occupation of the suit property, as the plaintiff was impressed with his loyalty, sincerity and hard work. The defendant had been working under the plaintiff from the year 1995 onwards.

5.2.The plaintiff would state that he had purchased a site in the name of the defendant and helped him in constructing a house and after the defendant had constructed a house, the defendant had vacated the plaintiff's property in the year 2002 and started residing in his own property in Thirunaraiyur. Therefore, from the year 2002, the defendant has not been residing in the suit property. The plaintiff leased out the shop, residential portion and the brass lamp smithy to various persons.

6.While so, the defendant, taking advantage of certain documents in his custody, filed O.S.No.24 of 2005, on the file of the learned District Munsif, Valangiman, for a permanent injunction, as he was in possession and enjoyment of the suit property. Though the plaintiff had contested the suit, the suit came to be decreed in favour of the defendant and the appeal filed by the plaintiff in A.S.No.59 of 2006 on the file of the Sub Court, Kumbakonam also ended in dismissal. The defendant, thereafter, had filed the suit as if he was an oral usufructory mortgagee, who had parted with a sum of Rs.1,00,000/-. Though the Courts had held that the defendant had failed to prove the above, however, since the plaintiff had admitted his possession upto the year 2002, but had failed to prove that the defendant had vacated the premises, the suit in O.S.No.24 of 2005 was decreed in favour of the defendant.

7.In the light of the above circumstances, the plaintiff had come forward with the present suit for recovery.

8.The plaintiff would contend that the defendant's contention that he was a usufructory mortgagee in the earlier suit has been rejected and therefore, there was no impediment in granting the relief of possession back to the plaintiff.

9.The suit was decreed and challenging the same, the defendant has filed A.S.No.21 of 2013.

10.Pending the appeal, the impugned application was filed by the defendant seeking impleadment of the proposed temple by stating that the temple was a proper and necessary party and they ought to have been impleaded.

11.The plaintiff had contended that the learned Additional Subordinate Judge, Kumbakonam by judgment and decree dated 25.03.2013, has failed to decree the suit as prayed for. One of the



issues that has been raised by the learned Additional Subordinate Judge is whether the suit is hit by non-joinder of necessary parties. The learned Additional Subordinate Judge has clearly held that the dispute between the parties was only with regard to the superstructure. Both had agreed that the land belonged to the temple. Therefore, the Court below had held that the suit was not bad for non-joinder of necessary parties. The judgment and decree has been taken on appeal by the defendant in A.S.No.21 of 2013 before the Principal District Judge, Thanjavur. It is pending the appeal, this application to implead the temple has been taken. The same has been rejected by the learned Principal District Judge, Thanjavur and challenging the same, the defendant is before this Court.

12.Heard the learned counsel.

13.This Court is of the considered view that the defendant had taken out this application to implead the temple on the ground that the land upon which the superstructure is constructed belonged to the temple. This defence has been taken by the defendant in his written statement and an issue had also been framed. The learned Additional Subordinate Judge, Kumbakonam, has given a finding that the dispute between the parties was not with reference to the land, but was only with reference to the superstructure and therefore, the suit was not bad for non-joinder of necessary parties. After the learned Judge has held so, the present application to implead the temple is nothing but an attempt to protract the proceedings. That apart, the plaintiff, who is the *dominus litus* can choose the parties against whom, he seeks a relief. Admittedly, the land belongs to the temple and the plaintiff is claiming recovery of possession in respect of the superstructure, in which, he had permitted the defendant to be in possession.

14.In the light of the above discussion, I do not find any infirmity in the order dated 07.01.2015 passed by the learned Principal District Judge, Thanjavur in I.A.No.146 of 2014 in A.S.No.21 of 2013 and consequently, this Civil Revision Petition stands dismissed. There shall be a direction to the learned Principal District Judge, Thanjavur, to dispose of the appeal within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-III)

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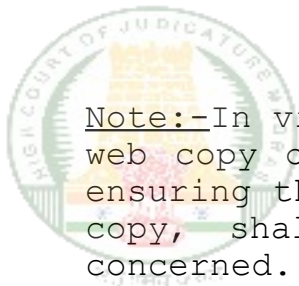
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Sub Assistant Registrar(CS)

abr

<https://hcservices.ecourts.gov.in/hcservices/>

P.T.ASHA, J.



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.

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To

The Principal District Judge, Thanjavur.

Copy to:

1.The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai.

2.The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

C.R.P. (NPD) (MD) No.2531 of 2015

Dated: 06.12.2021

RD(28.01.2022) 4P 5C