



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.No.58 of 2022

and

CMP.No.1164 of 2022

[Virtual Mode]

Mariappan

... Appellant/Appellant/4th Defendant

Vs.

1.C.Venkatachalam ...Ist Respondent/Ist Respondent/Plaintiff

2.State Rep.by District Collector,
Salem.

3.Revenue Divisional Officer,
Mettur.

4.Tahsildar,
Mettur. ... Respondents/Respondents/Defendants 1 to 3

Prayer:- Second Appeal filed under Section 100 of the Constitution of India, to set aside the judgement and decree dated 22.10.2021 in A.S.No.33/2014 on the file of the Subordinate Court, Mettur confirming the judgement and decree dated 03.04.2014 in O.S.No.326/2004 on the file of the District Munsif Court, Mettur.

For Appellant :Mr.G.Thangavel

For Respondents :No Appearance for R1
:Mr.D.Gopal,
Government Advocate (C S)
for RR2 to 4

JUDGEMENT

This vexatious Second Appeal has been preferred by the 4th defendant in the suit in A.S.No.33 of 2014 as against the judgement and decree made in O.S.No.326 of 2004 by the learned District Munsif Court, Mettur.



2. Brief facts that are necessary for the disposal of this second appeal are as follows.

3. The 1st respondent in this Appeal, as plaintiff, filed the suit in O.S.No.326 of 2004 on the file of the learned District Munsif, Mettur, seeking for a declaration that 1st respondent/plaintiff is the actual owner of the entire suit property measuring an extent of 16 cents in S.No.197/4 in Gonur Village Mettur Taluk. The suit is also filed for recovery of possession of an extent of 0.5 cent. The suit first item is described as an extent on 0.16 cents including the suit second item out of an extent of 3.08 Acres of lands in S.No.197/4. A thatched shed measuring 20 feet x 11 feet (0.5 cent) is shown as the second item of suit property and in respect of the said thatched shed the further relief in the suit for recovery of possession is sought.

4. It is the case of the 1st respondent/plaintiff in the plaint that the suit property in the first item was purchased by the plaintiff by a registered Sale Deed dated 20.03.1982 from one Kumarasamy and that he is in possession and enjoyment of the suit property right from the date of purchase. It is the further case of the plaintiff that he has established a poultry farm in the suit property and that he has constructed a thatched hut for the purpose of maintaining the poultry farm. It is the specific case of the plaintiff that the 4th respondent and another by name Ramasamy were permitted to stay in the shed to look after the farm. Hence it contended that the 4th defendant /appellant was in permissive possession from 1995. Though it is admitted that the plaintiff had filed a suit for permanent injunction earlier in O.S.No.189/95, it is contended that the suit which was decreed by the trial Court, was ultimately dismissed by the appellate Court in A.S.No.57 of 1995, on the ground that the defendants were in possession under some arrangement with the plaintiff. It is the specific case of plaintiff that the title of plaintiff over the entire suit property was admitted and held so in the earlier suit. The plaintiff stated that he is entitled to a decree against the 4th respondent who is in permissive possession of the suit second item. The suit was resisted by the appellant by raising several issues.

5. It is contended by the 4th defendant that the plaintiff's claim that he is the owner of the property was declined in the earlier suit in O.S.No.189/95. It is further submitted that the suit property is a porambockku land and therefore, the plaintiff cannot get a declaration or recovery of



possession. It is further stated by the 4th defendant that the plaintiff's theory of permissive possession is not true and that the appellant/4th defendant is in peaceful possession and enjoyment of the property by constructing a cattle shed and not as person in permissive possession, but in his right as an independent owner. Very strangely the appellant has also pleaded a contrary case that the plaintiff received a sum of Rs.50,000/- from the 4th defendant and his brother and parted with the property based on a document which was neither filed in the earlier suit nor marked in the present suit.

6. It is also contented by the 4th defendant that the earlier suit which was filed in 1995, was also dismissed by appellate Court on the basis of such transaction relying upon which the appellant also filed a criminal complaint and triggered proceedings under Sec.145 Cr.P.C.,. The trial Court framed necessary issues and found that the plaintiff established his title to the property both in respect of item Nos.1 and 2. It was noticed by the trial Court that the defendant himself has pleaded in the earlier suit that he cannot be evicted otherwise than by following due process of law by pleading tenancy. The plaintiff has marked the judgement in A.S.No.57 of 2001 as Ex.A4. Plaintiff examined himself as PW.1 and two other witnesses as PW.2 and PW.3. While plaintiff marked Ex.A1 to A5, the defendants marked Ex.B1 to B24. Apart from examining DW.1, the Village Administrative Officer, the appellant examined himself as DW.2.

7. Having regard to this specific plea by the 4th defendant/ appellant in the previous suit that the plaintiff cannot evict the defendant without following due process of law the Trial Court has held that the appellant has categorically admitted the title of the plaintiff in the earlier proceedings. Hence the trial Court found that the appellant is in unlawful possession of the property. After holding that the appellant has pleaded tenancy, the trial Court also found that the suit is not barred by limitation as it is filed within 3 years from the date of judgement in A.S.No.57 of 2001 marked as Ex.A4.

8. Since the plaintiff is held to be the owner of the property, the consequential prayer for recovery of possession was also granted by the Trial Court. Aggrieved by the same the 4th defendant has preferred A.S.No.33/2014 before the Sub Court, Mettur. The Lower Appellate Court also confirmed the findings of the Trial Court and dismissed the Appeal. Aggrieved by the concurrent judgements and decrees of the Courts



below, the above Second Appeal has been preferred by the 4th defendant /appellant.

9. The learned counsel for the appellant raised several points. First of all, the learned counsel produced before this Court a document styled as 'Adhaar Kadan Pattiram' dated 29.04.1992. This document is neither stamped nor registered. Therefore it is inadmissible in evidence. Though an attempt was made by the appellant before the lower Court to mark the document, the learned counsel appearing for the appellant admitted that this document was not allowed to be marked as it is neither registered nor stamped.

10. It is interesting to note that even the document relied by the learned counsel appearing for the appellant shows that the appellant has admitted the title of the plaintiff in unequivocal terms. The learned counsel however submitted that the respondent was holding a sum of Rs. 50,000/- and agreed to pay it after the termination of the tenancy. It is recited in the document that in case the plaintiff is unable to pay money, then the plaintiff would sell either to the appellant or to anyone and discharge the loan.

11. The learned counsel raised an issue that the plaintiff cannot be allowed to recover the property without paying the sum of Rs.50,000/- as agreed. When the document is not admissible in evidence there cannot be an argument relying upon the document. It was open to the defendant to prove the nature of the agreement in the previous proceedings by adducing convincing oral evidence which may establish the truth and validity of the transaction. It was also permissible for the appellant to mark this document after paying stamp duty and penalty as required under the Stamp Act. Without doing any such thing it is not open to the learned counsel for the appellant to raise this issue in the Second Appeal.

12. As seen from the judgement in A.S.No.57 of 2001, the appellant admitted that the suit property was leased out to him for a monthly rent of Rs.250/- on 29.04.1992 for a period of 3 years. It is further stated by the appellant that the plaintiff received a sum of Rs.50,000/- as loan from defendant and that the interest payable by the plaintiff is more than the rent payable by defendant. It is further stated that the defendant is entitled to be in possession till he is evicted by due process of law. It is found that the plaintiff did not prove his possession. The appellate Court though observed that the appellant did not prove tenancy held that the appellants here in



had established that they were put in possession by the plaintiff and that they were in permissive possession of the suit property. The Courts also held that the plaintiff is not entitled to pray for injunction and ought to have filed a suit for recovery of possession. Therefore Courts below have rightly rejected one of the plea raised by the appellant that the decree in A.S.No.57 of 2001 would operate as res-judicata. However in the present Appeal, the first question of law is framed, challenging the judgements of Courts below as the judgement in A.S.No.57 of 2001 has been reversed by the Courts below in the present proceeding, ignoring the findings in the said judgement that the plaintiff is entitled to sue for possession. Having admitted the title of plaintiff in the previous proceeding the arguments of learned counsel for the appellant is unsustainable.

13. The learned counsel then submitted that the suit property is a poramboke land and therefore the plaintiff as such cannot get a declaration and consequential relief against the appellant. This contention is contrary to the plea raised by the defendant/appellant in the written statement in the earlier suit. The defendant pleaded title infavour of the Government. Since the appellant admitted that he is in possession of the property by way of an arrangement with the plaintiff he is estopped from setting up title against the plaintiff. If the appellant admits tenancy as indicated in the document now shown, he is estopped from setting up title by virtue of Sec.116 of the Indian Evidence Act.

14. The next point that was argued by the learned counsel for the appellant is that the 4th defendant is in possession of the property as a tenant holding over. This is not a case of defendant in the suit. However it is stated that the unregistered document produced by him shows that there was a tenancy and that the tenancy was not terminated by issuing notice. Hence it is stated that he should be deemed to be a tenant holding over. It is further stated that the suit without issuing notice terminating tenancy is not maintainable. It is not the case of defendant that he is paying rent after the expiry of lease. Since the new ground of 'tenant holding over' is not supported by proper pleading, it cannot be sustained in the Second Appeal. This argument is suicidal to the case of appellant.

15. In this case the appellant has raised several pleas which are not consistent and self contradictory. Though no document was produced, the Courts below have come to the conclusion that the appellant is in permissive possession. Assuming that the appellant is a tenant, it is evident that the



appellant in the written statement has disputed the title of the plaintiff claiming that he is in adverse possession. The counsel also contented that the plaintiff had agreed to execute the Sale Deed if he is unable to pay the sum of Rs.50,000/- which was received by the plaintiff himself from the defendant under the unstamped document which is not even marked. The document is inadmissible in evidence. The argument of the learned counsel has no substance. If tenancy is admitted, the appellant may claim right as a tenant at sufferance after the expiry of lease as pleaded in the previous suit. When the appellant sets up a title in himself, he is not entitled to claim any right as a tenant as the denial of title would lead to forfeiture of tenancy. Hence the appellant cannot claim any right to remain in possession.

16. This Court is unable to find any merits in the arguments of the learned counsel for the appellant. This Court finds that the judgements and decrees of the Courts below are well founded. Considering the pleadings and documents and after appreciation of evidence on all issues the Courts below rejected the case of appellant. The findings of the Courts below are supported by reasons. This Court is unable to find any merits in any of the submissions of the learned counsel for the appellant. The appellant's counsel has argued the appeal with several inconsistencies ignoring the written statement filed by the appellant in the present suit and the previous suit.

17. Hence the second appeal stands dismissed with cost of Rs.10,000/- (Rupees Ten Thousand only) to the State Legal Services Authority (as the respondent has not entered appearance) within a period of four weeks from the date of receipt of copy of this order. Consequently, connected Civil Miscellaneous Petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

jrs

To

1. The Subordinate Judge,
Mettur.



2.The District Munsif,
Mettur.

3.The District Collector,
Salem.

4.The Revenue Divisional Officer,
Mettur.

5.The Tahsildar,
Mettur.

6.The Members/Secretary,
State Legal Services Authority,
Chennai.

7.The Section Officer,
V.R.Section,
High Court, Chennai.

+1cc to the Special Government Pleader Sr.9414

+1cc to Mr.G.Thangavel, Advocate Sr.9770

SA.No.58 of 2022
and
CMP.No.1164 of 2022

rsv[col]
srg 11/03/2022