



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2022

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

S.A.No.1277 of 2010 and
M.P.No.1 of 2010

R.Mani .. Appellant/Appellant/Plaintiff

Versus

1. The Executive officer,
Senthamangalam Panchayat
Senthamangalam
Namakkal Taluk & District

2. Duraisamy ... Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the Judgment and Decree dated 07.01.2010 made in A.S.No.328 of 2003 on the file of the Additional District Court, Fast Track Court, Namakkal confirming the Judgment and Decree dated 30.07.2003 made in O.S.No.234 of 2002 on the file of Additional District Munsif, Namakkal.

For Appellant :Mr.S.Mukunth for
M/s Sarvabhauman Associates

For Respondents :Mr.G.Sankaran for R1
R2 - No appearance

J U D G M E N T

Aggrieved over the concurrent findings made in O.S.No.234 of 2002 on the file of the learned Additional District Munsif, Namakkal dated 30.07.2003 and in A.S.No.328 of 2003 on the file of the Additional District Munsif Court (Fast Track Court), Namakkal dated 07.01.2010, the appellant, who is the plaintiff in the above referred suits is before this court with the present Second Appeal.



2. The appellant is the plaintiff and the respondents are the defendants. For the sake of convenience, the parties herein are referred according to their litigative status before the trial court.

WEB COPY

3. The averments found in the plaint filed by the plaintiff are as follows:-

The suit schedule properties belongs to the 1st defendant / Panchayat. As a lessee, for the past 15 years, the plaintiff is in possession of the suit schedule property. As of now, the plaintiff has cultivated mango trees. Recently, the 2nd defendant by saying that he has purchased the suit schedule property requested the plaintiff to vacate the suit schedule property. Since the plaintiff has cultivated so many crops in the suit property, he is not in a position to handover the same because the same would cause damage to the crops / trees. Either of the defendants have not sent notice to the plaintiff for the recovery of possession. On 20.03.2002, the 2nd defendant has attempted to interfere with the plaintiff's possession and enjoyment of the suit property. Hence it was necessary to grant relief that the plaintiff cannot be evicted without due process of law, hence the suit.

4. The 1st defendant remained ex-parte, the averments found in the written statement filed by the 2nd defendant is as follows:-

The averments found in the plaint are all denied. The 1st defendant leased out the suit property to the plaintiff only for a period of three years. After the lapse of three years, alleged lease stated by the plaintiff is not in existence. At the time of entering into the lease, the plaintiff had executed a letter of undertaking, wherein he gave undertaking to vacate the suit property immediately, after the termination of lease. The alleged standing crops found in the suit property does not belong to the plaintiff. The suit property was given to the plaintiff up to 30.03.2002, therefore, after the said date, the plaintiff is not tenant and also the suit property is not under the plaintiff's lawful possession. There is no cause of action and hence the suit filed by the plaintiff is liable to be dismissed.

5. Based on the above averments, the trial court framed necessary issues and tried the suit. On the side of the plaintiff, the plaintiff himself was examined as P.W.1 and marked sixteen documents as Exs.A.1 to A.16. On the side of the defendants, D.W.1 and D.W.2 were examined and seven documents were marked as Ex.B.1 to B.7.



7. Having considered the materials placed before the courts below, the trial court came to the conclusion that the plaintiff has not proved his lawful possession and therefore, the relief asked cannot be granted in his favour. In the appeal preferred by the plaintiff, the first appellate court has also come to the same conclusion and dismissed the appeal. Aggrieved over the said findings of the court below, the plaintiff is before this Court with the present Second Appeal.

8. At the time of admission of Second Appeal, this Court has formulated the following substantial questions of law for consideration:-

"(i) Are the Courts below justified in overlooking the evidence that the appellant is in juridical possession over the suit property and he cannot be evicted, except under due process of law?

ii) Are the courts below justified in dismissing the suit without considering that the 1st respondent is estopped from evicting the appellant forcefully, more particularly when the 1st respondent had acknowledged appellant's settled possession from 02.03.1990 and till date had not issued notice of eviction nor had taken steps to evict the appellant under due process of law?"

9. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

10. It is not in dispute that the suit schedule property belongs to the 1st defendant. It is also not in dispute that the plaintiff is a tenant to the suit schedule property. In the said circumstance, while at the time of granting lease, the same was granted only for a period of three years and the same was reduced in writing. The plaintiff also conceded the same and gave an undertaking vide Ex.B.10. Therefore, in view of the undertaking given by the plaintiff, it should be necessary for him to vacate the suit property immediately after the completion of lease period. Here it is a case after violating the said undertaking, the plaintiff has approached the trial court for the relief that he has to be evicted only on due process of law. Therefore, the filing of the suit itself is against the undertaking given by him.

11. Accordingly, I am of the considered view that at the time of filing the suit, the plaintiff is not in the lawful possession of the suit schedule property and there is a termination of tenancy. The courts below have also come to the same conclusion that the plaintiff is not in the lawful possession of the suit schedule property and therefore, he is



not entitled to the relief of injunction. The said finding is based on correct factual position. The learned counsel appearing for the appellant has also fairly conceded that plaintiff's possession in respect of the suit property is unlawful possession, accordingly, I am of the opinion that no substantial questions of law arises for consideration in this Appeal.

In the result, the Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

To

1. The Additional District Court,
Fast Track Court, Namakkal
2. The Additional District Munsif,
Namakkal.

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.1516

S.A.No.1277 of 2010 and
M.P.No.1 of 2010

RSV(CO)
CB(24/03/2022)