



S.A.No.275 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.275 of 2013

and

MP.No.1 of 2013

1.Mr.K.Lingamani (Deceased)

2.L.Sivakumar

3.K.Umamaheswari

.. Appellants/Appellant/Defendant

[Appellants 2 and 3 brought on record as
Lrs of the deceased sole appellant vide
order of Court dt.08.03.2019 made in
CMP Nos5020, 5022 & 5022/2019 in
S.A.No.275/2013 (PRMJ)]

-Vs-

Arulmighu Vembadi Vinayagar Thirukovil,
Rep. By its Executive Officer,
No.19, Vaikolkaran Street
Purasaiwakkam
Chennai 600 007.

..Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 03.08.2011 made in A.S.No.20 of 2010 on the file of the V Additional Judge, City Civil Court at Chennai by confirming the Decree and Judgment dated 04.08.2009 in O.S.No.428 of 2006 on the file of the IV Assistant Judge, City Civil Court at Chennai.



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For Appellants : Mr.G.Sundaram

For Respondents : Mr.A.K.Sriram
for M/s.A.S.Kailasam & Associates

JUDGMENT

The defendant is the appellant in this Second Appeal. The sole appellant died during the pendency of the Second Appeal and his legal heirs have been impleaded as the 2nd and 3rd appellants.

2.The respondent/plaintiff filed a suit seeking for the relief of delivery of vacant possession of the property and for damages for use and occupation of the suit property from the date of plaint till the date of handing over vacant possession.

3.The case of the plaintiff is that they are the owner of large extent of properties in and around Purasawakkam, Chennai. According to the plaintiff, one Smt.Meenambal was a tenant in a portion of the suit property measuring an extent of 629 Sq.ft., which was described as the suit schedule property. It is stated that after her death, the defendant continued to be in possession of the property and was paying a monthly rent of Rs.830/-. The further case of the plaintiff is that the defendant was irregular in payment of rents and had accumulated huge arrears. Hence, a notice dated 26.09.2005, marked as



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Ex.A-1 was issued terminating the tenancy of the defendant. This notice was purportedly issued under Section 106 of the Transfer of Property Act, 1882.

The defendant inspite of receiving the notice, failed to vacate and deliver vacant possession of property. Hence, the suit suit came to be filed seeking for the relief of delivery of possession.

4.The defendant filed a written statement and took a stand that the plaintiff Temple is not the owner of the suit property. According to the defendant, one Nethambakkam Munusamy Mudaliar had constructed the Temple and was residing in the adjacent property. The suit property where he was residing was never dedicated to the Temple and he continued to be the owner of the property. Th defendant claimed that he is the descendent of late Nethambakkam Munusamy Mudaliar. Thereby, he claims to be the absolute owner of the suit property. Accordingly, the defendant took a stand that Meenambal was never a tenant in the suit property and the defendant, who is her grand-son was also not a tenant in the suit property. The defendant therefore, sought for the dismissal of the suit.

5.Both the Courts below on appreciation of oral and documentary evidence and on considering the facts and circumstances of the case, concurrently held in favour of the plaintiff and the suit was decreed as prayed for. Aggrieved by the same, the defendant has filed this Second Appeal.



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6.Heard Mr.G.Sundaram, learned counsel for the appellants and Mr.A.K.Sriram for M/s.A.S.Kailasam & Associates, learned counsel for respondent. This Court has also carefully considered the materials available on record and the findings of both the Courts below.

7.The learned counsel for the appellant submitted that none of the documents that were filed by the plaintiff Temple established their right and ownership over the suit property. The learned counsel also pointed out to various discrepancies with respect to the so called rent that was collected from Smt.Meenambal. For this purpose, the learned counsel drew the attention of this Court to Exhibits A-3 to A-10. The learned counsel for the appellant also submitted that the plaintiff Temple had suppressed various material facts and filed the suit. To substantiate the same, a petition was filed under Order 41 Rule 27 of CPC in CMP Nos.21474 and 23870 of 2019 and this Court allowed the petitions by an order dt.18.02.2020. Thereby, the additional documents were marked on the side of the defendant as Exhibits B-6 to B-21. The learned counsel submitted that there was a Will executed by the said Munusamy Mudaliar, wherein, he had only dedicated the property where the Temple was put up and the suit property was never bequeathed in favour of the Temple. This Will was never produced by the Temple. That apart, there was an earlier proceeding initiated by the Managing Trustee of the Temple to evict the very same defendant and it



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reached this Court in S.A.No.1192 of 1992 and the matter was remanded back to the file of the City Civil Court through an order dated 21.07.1997.

While that being so, the present suit initiated by the Temple for the same relief is not maintainable.

8.Both the Courts below on appreciation of the oral and documentary evidence found that rents were collected from Smt.Meenambal in her capacity as a tenant and the defendant who claims to be the grand-son of Smt.Meenambal, was also continuing to occupy the property only in his capacity as a tenant.

9.The appellant was claiming title and ownership over the property on the ground that he is the legal descendent of late Nethambakkam Munusamy Mudaliar. The defendant having taken such a specific stand must have proved that he is infact the descendent of the said Munusamy Mudaliar and he should also have established his title over the property by filing necessary documents. The lower Appellate Court on appreciation of evidence, found that the defendant did not even produce a single document to show his relationship with Nethambakkam Munusamy Mudaliar. Therefore, the very basis on which the defendant was claiming right over the property was not proved. Unless, the defendant proves this fact, there is no question of assuming that he is continuing to occupy the property that was originally



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occupied by Munusamy Mudaliar as his residence. This crucial factor has

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been taken into consideration by the lower Appellate Court. On the other hand, there were *prima facie* materials to show that Smt.Meenambal, was a tenant in the suit property and rents were collected from her and after her lifetime, the defendant who claims to be her grand-son is occupying the property only in his capacity as a tenant. The finding rendered by the lower Appellate Court in this regard is perfectly in order and does not warrant any interference of this Court.

10.The additional documents that are relied upon by the appellant in this Second Appeal does not require the consideration of this Court since the defendant has failed to prove his ownership or title over the suit property. The onus of proof was on the defendant to prove his title over the property and since he has failed to discharge his onus, it never shifted to the side of the plaintiff. Under such circumstances, it was enough for the plaintiff to prove that the property was let-out under tenancy.

11.The findings rendered by the lower Appellate Court does not suffer from any perversity and it does not warrant the interference of this Court. In any event, this Court does not find any substantial question of law involved in this Second Appeal.



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12.In the result, this Second Appeal is dismissed. The appellants are given six months time from today to vacate and hand over the possession of the suit property to the respondent subject to the condition that the appellants properly pay the monthly rent and also settle the arrears of rent to the respondent. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

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Index :Yes/No

Internet :Yes/No

KP

To

- 1.Additional Judge, City Civil Court,Chennai.
- 2.IV Assistant Judge, City Civil Court at Chennai.
- 3.The Section Officer
V.R.Section, High Court, Madras.



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N. ANAND VENKATESH, J.
KP

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