



S.A. No. 654 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No. 654 of 2013

1. M/s.Avanthi Agencies,
rep. by its Power Agent
N.Srinivasan

2. Mr.N.Srinivasan

... Appellants

Vs.

1. Smt. Palaniammal,
W/o. Late Ayyasamy

2. Smt. Mailathal,
D/o.Late Ayyasamy

3. Sri Varadharajan,
S/o. Late Ayyasamy

4. Nallasamy,
S/o. Late Ayyasamy

5. Smt. Nallammal,
D/o. Late Ayyasamy
& W/o. Balakrishnan



S.A. No. 654 of 2013

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6. Smt. Thangammal,
D/o.Late Ayyasamy
& W/o. S.Subbramaniam

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 26.11.2012 passed in A.S.No. 33 of 2011 on the file of I Addl. Subordinate Court, Coimbatore confirming the judgment and decree of the trial court dated 16.12.2011 made in O.S.No.2616 of 2006 on the file of the III Addl. District Munsif, Coimbatore.

For Appellants : Ms. R.V.Gayatri for
Mr. P.B. Balaji

For Respondents : Mr.N.Manokaran
for R1, R3 & R4

R2, R5 & R6 – No appearance

JUDGMENT

The appellants herein are the defendants in the suit in O.S.No.2616 of 2006 on the file of District Munsif, Coimbatore filed by deceased plaintiff Ayyasamy for the relief of permanent injunction in respect of



S.A. No. 654 of 2013

suit property with an extent of 2 acres in S.F. No.696/1, Kurichi Village,
Coimbatore Taluk.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.

3. The contention of plaintiffs is that the suit property absolutely belong to deceased Ayyasamy, father of plaintiffs herein and there was a lease deed in respect of suit property in favour of 1st defendant for doing business of storing coal under the registered lease deed dated 05.02.1991, but within two years, the 1st defendant was not able to continue the business. Hence, he handed over the possession to the deceased plaintiff in the year of 1993 itself. Eversince, the deceased plaintiff is cultivating the suit property, but the 2nd defendant came to the suit property claiming himself that he is a Manager of 1st defendant and attempted to cause interference in the suit property. Hence, the suit.



S.A. No. 654 of 2013

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4. For himself and as a power agent of 1st defendant, the 2nd defendant Srinivasan, contested the suit stating that as per the lease, the 1st defendant is enjoying the property, since he was not able to continue the business, the suit property was handed over to his sister concern viz., NDR Groups. As a manager of that company, the power of attorney was executed in his favour by the 1st defendant and the property is under the enjoyment of 1st defendant only as a lessee, and a permission deed was also executed in his favour to put up construction. But, suppressing all these facts, the deceased plaintiff filed the suit, as such, is not maintainable, besides there is no document for the termination of lease submitted by him. Hence, he prayed to dismiss the suit.

5. Before the trial court, issues were framed and both parties adduced evidence and documents also marked. Considering all the evidence and documents, the trial judge held that the deceased plaintiff proved his possession and enjoyment of the property, that apart, the tenancy was abandoned by the 1st defendant. Moreover, the 2nd defendant not proved that he is a power agent of 1st defendant, thereby the suit was



S.A. No. 654 of 2013

decreed. Aggrieved over that, the 2nd defendant for himself and on behalf of 1st defendant preferred an appeal in A.S.No.33 of 2012 before the I Addl. Subordinate Court, Coimbatore, wherein the lower appellate judge framed separate issues and analysed all the facts and documents independently and finally held that the power of attorney relied on by D.W.1/2nd defendant Srinivasan is not a valid document and the alleged permission deed as well as lease deed also have not been executed properly and one of the executant of the lease deed also not signed in the document. Therefore, those documents are inadmissible in law and also held that the revenue records shows that the plaintiffs are in possession and enjoyment of the property, which is sufficient for bare injunction suit, thereby the findings of the trial judge is confirmed and the appeal is dismissed.

6. Challenging the concurrent findings of the courts below, the defendants preferred this Second Appeal stating that the courts below failed to take note of the fact that the plaintiffs not proved the alleged surrender of lease made by the 1st defendant, inspite of that, the suit is



S.A. No. 654 of 2013

decreed in favour of plaintiffs, as such, is erroneous one and also failed to consider the fact that the lease period fixed as per the document is 99 years and the same was not appreciated by both the courts below. Hence, he prayed to set aside the findings of both the courts below as unjust and improper one. Accordingly, this Second Appeal is admitted on the following question of law :-

- “a) Whether the courts below were right in accepting the case of the plaintiff with regard to surrender of lease when admittedly Section 111 of Transfer of Property Act was not satisfied or fulfilled?
- b) Whether a lessee can be permitted in law to treat the lease as a mortgage thereby entitling the plaintiff to unilaterally redeem the same?
- c) Whether the courts below were right in discarding the evidentiary value of public documents like urban land tax receipts etc. to disprove possession of the plaintiff?
- d) Whether the plaintiff proved his plea of abandonment/surrender of lease as required by law to entitle him to a decree for permanent injunction?”



S.A. No. 654 of 2013

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7. The learned counsel for defendants submitted that as per Sec.111 of Transfer of Property Act, the plaintiffs have to prove their surrender of lease, but before the courts below, there was no evidence with regard to the alleged surrender of lease. However, both the courts below failed to appreciate this legal aspect.

8. The suit property belong to the plaintiffs is an admitted fact. As per the contention of plaintiffs, there was a lease agreement in the year of 1991 and thereafter, within two years, the 1st defendant was not able to continue the lease of storing coal in the suit property and surrendered the possession to the deceased plaintiff, thereby from the year 1993 onwards, he is in possession of the suit property. The lease deed was marked as Ex.A1 on the side of plaintiffs was criticised by both the courts below stating that the parties of the documents have not properly signed and one of the lessor viz., Andi Konar already died on 02.04.1996 as per Ex.A16, death certificate. But, the alleged lease deed Ex.A4 said to have been entered into between Andi Konar, Ayyasamy Konar and Avanthi Agencies, represented by its Managing Partner Naidu Amrutesh Reddy. But, admittedly, the said Andi Konar has not signed in the lease deed and



S.A. No. 654 of 2013

there is no reason offered on either side of the parties for not obtaining signature from the said Andi Konar. Moreover, on behalf of Avanthi Agencies also, the alleged Managing Partner Naidu Amrutesh Reddy has not been appeared before the court and not given evidence as witness. One Srinivasan named as 2nd defendant herein claimed himself as power of attorney holder of 1st defendant Avanthi Agencies deposited evidence on behalf of 1st defendant. Admittedly, about the alleged execution of lease deed, the 1st defendant is the right person to give evidence, but he has not entered into the box. The evidence adduced on behalf of 1st defendant by the 2nd defendant is not admissible in respect of the facts, which are personally known to the knowledge of 1st defendant. Both the courts below rightly appreciated this aspect, which needs no interference.

9. Based upon Ex.B15, Power of attorney, the 2nd defendant claimed himself as power agent of 1st defendant. Admittedly, Ex.B15 power of attorney, in which, the date of execution of the document is not mentioned and the said document itself is not admitted by both the courts below on the ground that execution of Ex.B15 itself creates suspicious in the minds of the courts below, which was not removed by the 2nd



S.A. No. 654 of 2013

defendant through independent evidence. Furthermore, the date mentioned in the stamp paper itself also causes suspicion over the minds of the courts below, which was not removed by the 2nd defendant by adducing independent evidence. As per the contention of 2nd defendant that he was the manager of NDR group of companies, which is the sister concern of 1st defendant Avanthi Agencies. There is no document adduced on the side of 2nd defendant that the 1st defendant is the sister concern of NDR Group of companies and the same was rightly appreciated by the courts below. Further, there is no document adduced how the 2nd defendant represented as a Manager of NDR group of companies entitled to adduce evidence on behalf of 1st defendant. So, all the facts reveal that the 2nd defendant has no locus standi on behalf of 1st defendant as well as about the lease deed. The conduct of 2nd defendant clearly reveals that with ulterior motive, he has caused interference in the plaintiffs' enjoyment of the suit property. The non-appearance of 1st defendant itself causes adverse inference against him and hence, on his part, amounts to admission of the facts, which was relied on by the plaintiffs with regard to abandonment of tenancy. Sec.111 of Transfer of



S.A. No. 654 of 2013

Property Act also accepts the implied surrender of lease by orally. So also, considering the facts of the case, the conduct of 1st defendant itself proves that they abandoned tenancy and surrendered possession of the property to the plaintiffs. The Chitta and adangal extract submitted on the side of plaintiffs proves that the deceased plaintiff is in possession of the property and the report of the Commissioner also reveals that agricultural operation was performed by plaintiffs in the suit property and now, the standing crops are there. There is no coal storage company operated in the suit property. Hence, both the courts below rightly appreciated all these facts and decreed the suit in favour of plaintiffs, which needs no interference. Thus, the question of laws are answered. Accordingly, this Second Appeal is dismissed as no merits. No costs.

15.09.2022

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To
I Addl. Sub-Judge,
Coimbatore.

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S.A. No. 654 of 2013

T.V.THAMILSELVI, J.

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Pre-delivery judgment in
S.A. No. 654 of 2013

15.09.2022