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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.468 of 2016  
and C.M.P.No.10322 of 2016

Asan Maitheen (Died)

1.A.Karusumbubeevi  
2.A.Seeninainar  
3.A.Jahir Hussain  
4.A.Nagoor Meeran  
5.A.Noorjahan  
6.A.Fathima Beevi

...Appellants

Vs.

The Executive Officer,  
A/m.Thiyarajaswamy Thirukoil,  
Tiruvavarur.

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 21.01.2016 passed by the learned Principal District and Sessions Judge, Thiruvavarur in A.S.No.1 of 2013 reversing the judgment and Decree passed by the learned Subordinate Judge, Thiruvavarur in O.S.No.36 of 2011 dated 24.01.2012.

For Appellants : Mr.Prakash Goklaney  
For Respondent : Mr.Srinath Sridevan

JUDGMENT

The plaintiff is the appellant in the present Second Appeal.

2.The case of the plaintiff is that the suit property was in possession and enjoyment of one S.Kaliyaperumal who constructed a thatched house and he sold the property in favour of one S.Gnanasekaran on 16.03.1981. The further case of the plaintiff is that he came in possession of the property that was given by S.Gnanasekaran and he also paid the paguthi to the defendant temple. The grievance of the plaintiff is that the



Hindu Religious and Charitable Endowment Department had sent a notice on 25.05.2011 as if he is an encroacher in the property and he did not pay any rent. Hence, apprehending that he will be evicted from the property, the present suit came to be filed.

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3.The Trial Court through Judgment and Decree dated 24.01.2012 decreed the suit and granted permanent injunction in favour of the plaintiff. Aggrieved by the same, the defendant filed an appeal before the Principal District Judge, Thiruvavur in A.S.No.1 of 2013. The lower Appellate Court on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence, came to a categorical conclusion that the plaintiff is a trespasser in the property belonging to the temple and hence, found that the plaintiff is not entitled for the relief sought for in the suit. Accordingly, the appeal was allowed by Judgment and Decree dated 21.01.2016 and the Judgment and Decree of the Trial Court was set aside. Aggrieved by the same, the plaintiff has filed the Second Appeal.

4.Heard the learned counsel for the appellants and the learned counsel appearing on behalf of the respondent.

5.This Court carefully went through the pleadings and also the findings rendered by both the Courts below based on the evidence available on record.

6.A careful reading of the judgment rendered by the lower Appellate Court reveals the fact that the suit property belongs to the defendant temple. The plaintiff seems to have entered into a Sale Agreement with one S.Gnanasekaran on 31.07.1987 marked as Ex. A2. Pursuant to this Sale Agreement, the plaintiff came into possession of the suit property. The lower Appellate Court also took into consideration the fact that the plaintiff had paid paguthi on behalf of Venkatachalam and the paguthi receipts were also marked as Ex.A3. The lower Appellate Court also took note of the fact that the plaintiff was called by the defendant temple on 25.05.2011 by issuing Ex.A7 notice to recognize him as a Paguthitharar. The plaintiff did not respond to this notice. Hence, the lower Appellate Court found that the plaintiff is neither a tenant nor a Paguthitharar and the plaintiff can only be characterized as a trespasser. The lower Appellate Court rightly rejected the relief sought for by the plaintiff, since the permanent injunction could not have been granted against the true owner of the property.



7.This Court does not find any perversity in the findings of the lower Appellate Court. No substantial questions of law are involved in the Second Appeal.

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8.In the result, the Second Appeal stands dismissed. Considering the facts and circumstances of the case, there will be no order as to costs. Consequently, connected civil miscellaneous petition is closed.

s/d-  
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

ssr

To

1.The Principal District and Sessions Judge, Thiruvarur.

2.The Subordinate Judge, Thiruvarur.

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PMK(CO)  
SP(24/03/2022)