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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.NO.106 OF 2017

AND

C.M.P.NO.2067 OF 2017

Suguna

... Appellant/3rd Defendant

.Vs.

1. P.Krishnan
2. Sakkubai
3. Vimala
4. Vedhachalam
5. Gayathri

... Respondents/Plaintiffs,
Defendants 1, 4 to 6

PRAYER:-

Second Appeal filed under Section 100 of Civil Procedure Code, 1908, against the decree and judgment of dismissal dated 30.09.2013 made in A.S.No.16 of 2011 on the file of Sub-ordinate Judge, Gudiyatham, Vellore District confirming the judgment and decree dated 03.12.2010 made in O.S.No.441 of 1989 on the file of Court of District Munsif, Gudiyatham, Vellore District.

For Appellant : Mr.T.P.Prabakaran

For Respondents : Mr.T.Dhanyakumar

JUDGMENT

The third defendant in suit in O.S.No.441 of 1989 before the District Munsif Court, Guidyattam, Vellore District, is the appellant in the above second appeal. The first respondent in this appeal, as plaintiff, filed the suit in O.S.No.441 of 1989 on the file of the District Munsif Court, Gudiyattam for permanent injunction restraining the defendants from in any manner committing trespass or causing any disturbance to the plaintiff's peaceful possession and enjoyment of the suit property until evicted under due process of law.



Despite notice to the respondents 2 to 5, the other defendants in the suit filed by the first respondent/plaintiff and their name being shown in the cause list, none have appeared before this Court.

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2. It is the case of the first respondent in the plaint that the suit property originally belonged to one Chinnapa Mudaliar who was in possession and enjoyment of the property as an absolute owner. It is admitted that after his death, his wife Muniyammal and son Pichandi became the owners of the suit property. It is also admitted that defendants 1 and 2 are daughters of Chinnapa Mudaliar and the third defendant/appellant is the wife of one Pichandi. The fourth defendant is the daughter of the third defendant.

3. It is the case of plaintiff that during the lifetime of Muniyammal, the suit property was leased out to the plaintiff as per the lease deed dated 15.09.1987. It is also pleaded that the plaintiff was given possession of the property with an obligation to pay Kuthagai (Lease amount) at the rate of 15 bags of paddy every year. It is also stated that the said Muniyammal died on 18.04.1988 leaving behind the defendants as legal heirs. Stating that the defendants are threatening to commit trespass and trying to sell away the property, the plaintiff states that she was constrained to file a suit for permanent injunction.

4. In the written statement filed by the appellant it is disputed that the plaintiff is in possession of the property as a tenant. It is further stated that the plaintiff was employed as Conductor in Pattukottai Alagiri Transport Corporation, for a long time and that he cannot claim the right as a cultivating tenant. It is also stated that the said Muniyammal has no absolute right to deal with the property and that therefore, she has no power to lease out the property. It is stated that the appellant is in possession and enjoyment of suit property as Manager. It is also stated by the appellant that the defendant had not received any rent as alleged by the first respondent in the plaint. From the statement of the appellant, this Court is able to see that the only defense raised by the defendant was that the plaintiff is not a tenant under the defendants and that he was not in occupation of the suit property.

5. It is admitted before the trial Court that the plaintiff has also approached the Record Officer under Act 10 of 1969 (Tamil Nadu Agricultural Lands Record of Tenancy Act, 1969) and got himself registered as a cultivating tenant. It is also admitted that the appellant or any other defendants have not filed any appeal or revision challenging the order. It is admitted that a suit in O.S.No.526 of 2005 was also filed by the appellant for removing the name of plaintiff/first respondent



from the record of tenancy rights and for permanent injunction restraining the first respondent herein from interfering with his peaceful possession and enjoyment of the suit property.

6. The suit filed by the first respondent as well as the appellant were tried together. In O.S.No.441 of 1989, the trial Court found that the first respondent has proved his possession as a cultivating tenant. In the other suit filed by the appellant, all the issues were decided as against the appellant. The trial Court found that the relief prayed for by the appellant is specifically barred under Section 6 of Tamil Nadu Cultivating Tenants Protection Act, 1955. As a matter of fact, it would be appropriate to refer to Section 16 A of Act 10 of 1969 which excludes the Civil Court's jurisdiction to decide any question which falls under the exclusive jurisdiction of Record Officer or the Revisional Authority under Act 10 of 1969. Therefore the suit filed by the first respondent was decreed and the suit filed by the appellant was dismissed. Aggrieved by the judgment and decree in O.S.No.441 of 1989, the appellant preferred an appeal in A.S.No.14 of 2011. The lower appellate Court also found that the first respondent/plaintiff is in enjoyment of the suit property as a cultivating tenant on the basis of evidence and records. Aggrieved by the concurrent judgment and decree of the Courts below, the above Second Appeal is preferred.

7. In the memorandum of grounds, the appellant has raised the following substantial questions of law:

1. Whether both the Courts below are correct in law to uphold the claim of the plaintiff as cultivating tenant even though it is admitted that the plaintiff was working in Tamil Nadu State Transport Corporation ?
2. Whether both the Courts below are correct in law to rely upon the certificate issued by the Tahsildar, Gudiyatham declaring the plaintiff as cultivating tenant by neglecting all the contra evidences available ?
3. Whether both the Courts below are correct in law in giving a finding that the plaintiff is in possession and enjoyment of the suit property even though admittedly he has not paid any lease amount so far?
4. Whether both the Courts below are correct in law in holding the lease deed dated 15.09.1987 as valid even though the said lease deed was



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executed by one Muniyammal while her husband and her son are alive ?

5. Whether both the Courts below are correct in law to reject the evidence of P.W.4 without any valid reason ?”

8. It is to be noted that the appellant has filed a suit challenging the proceedings of the Record Officer recording the name of first respondent plaintiff as a cultivating tenant. The said suit was dismissed. This Court has earlier observed that the suit itself is barred by virtue of Section 16 A of Tamil Nadu Agricultural Lands Record of Tenancy Act, 1969 (Act 10 of 1969). Despite the position that Act 10 of 1969 specifically provides for a remedy, the appellant has not challenged the order of Record Officer as admitted before this Court. Without challenging the orders which have become final, the appellant cannot raise an issue regarding the status of first respondent before the Civil Court in view of the specific bar provided under Section 16 A of the Tamil Nadu Agricultural Lands Record of Tenancy Act, 1969.

9. The second question of law also is unsustainable as the appellant cannot challenge the findings of Record Officer in a collateral proceedings after allowing the order to become final. The possession of first respondent tenant is established and the suit filed by appellant against the first respondent/plaintiff for injunction was also dismissed. It is not stated whether an appeal is preferred by the appellant himself as against the judgment and decree filed in O.S.No.526 of 2005. Even assuming that the appeal filed by the appellant is pending, the appellant cannot challenge the finding of the Courts below that the plaintiff/first respondent is in possession on the ground that the first respondent has not paid any lease amount. The payment of lease amount is an obligation of every tenant. The Tamil Nadu Cultivating Tenants protection Act, specifically provides for remedy for every landlord to recover arrears of rent as well as to evict the cultivating tenant from the lands for committing wilful default in payment of rent. Even a separate enactment is available for fixing fair rent for the land which are leased out to a cultivating tenant. In the course of proceedings, it is admitted that the tenant has not paid rent for quite some period under the pretext that there is dispute among the owners of premises of the property with regard to their right (share). Therefore, it is open to the appellant or any other co-owners to file appropriate proceedings before the Revenue Court either for arrears of rent or for ejectment in the manner known to law. The suit for permanent injunction is limited and it is always open to the landlords to seek eviction in the manner provided under law. Therefore the submission that



the plaintiff is not entitled to relief because he has not paid any rent cannot be sustained.

10. The fourth question of law is also misconceived in view of the admitted facts. In view of the specific findings rendered by Courts below, this Court is unable to appreciate any other question of law found in the memorandum of grounds.

11. For the reasons stated above, this Court is unable to find any irregularity or illegality in the findings of the Courts below. The findings are also supported by evidence and documents apart from statutory records. Since this Court has already held that there is no substance in any of the substantial questions of law, the Second Appeal is devoid of any merits and hence dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

bkn

To

1. The Sub-ordinate Judge,
Gudiyatham,
Vellore District.
2. The District Munsif,
Gudiyatham,
Vellore District.

Copy To:-

The Section Officer,
V.R. Section,
High Court,
Madras - 104.

+1cc to Mr.T.P.Prabakaran, Advocate, S.R.No.8909
+1cc to Mr.T.Dhanyakumar, Advocate, S.R.No.9317

S.A.NO.106 OF 2017

KK(CO)
PBS/13/04/2022