



C.M.A(MD)No.1192 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.11.2022

Pronounced on : 25.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD) No.1192 of 2009

Rajesh

...Appellant/Respondent/Defendant

Vs

The Idols of Arulmighu Madhavaperumal and
Kasi Viswanathasamy,
Arulmighu Madhavaperumal and
Kasi Viswanathasamy Temple,
Madhavaperumal Koil, Rep., by its
Hereditary Trustee, Mr.Vijayaraja,
Thiruvanaai (Post),
Manachanallur Taluk,
Trichy District.

... Respondent/Appellant/Plaintiff

PRAYER :-

This Civil Miscellaneous Appeal is filed under Order 43 Rule 1(u) of the Code of Civil Procedure, to set aside the judgment and decree dated 15.12.2008 made in A.S.No.144 of 2008 on the file of the First Additional Sub Court, Tiruchirappalli reversing the judgment and decree dated 20.03.2008 made in O.S.No.32 of 2007 on the file of the District Munsif cum Judicial Magistrate, Lalgudi.



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For Appellant : Ms.J.Maria Roseline
For Respondent : Mr.A.Arumugam
for M/s.Ajmal Associates

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order A.S.No.144 of 2008 on the file of the First Additional Sub Court, Tiruchirappalli. The appellant is the defendant. Respondent is the plaintiff in the original suit in O.S.No.32 of 2007 on the file of the District Munsif cum Judicial Magistrate, Lalgudi.

2.Brief substance of the original suit in O.S.No.32 of 2007, is as follow:

The suit property is a wet land that belong to the plaintiff temple. Prior to 1991, one Kaathaperumal was cultivating the land as a tenant. After 1990, the adjoining lands were converted into house plots under the name of Cauvery Nagar. The irrigation channel was encroached and hence the lease holder could not continue cultivation and he hand over the possession of the land to the plaintiff. The defendant's father Muthuveeran Chettiyar proposed to purchase the land from the plaintiff. A cultivating tenant could get permission for sale from the HR& CE department easily and on his request,



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the land was transferred to the name of Muthuveeran chettiyar. A sale agreement was entered between the trustee of the temple and the said Muthuveeran Chettiyar. In the sale agreement it was specifically mentioned that if the permission was rejected by the HR & CE department, the father of the defendant will not claim any right as a tenant. Since there was a delay in getting permission from the HR & CE Department, Muthuveeran Chettiyar, received back the advance amount. In the year 2000, the HR & CE Department, rejected permission for sale of the property. During the year 2002, Muthuveeran Chettiar died. During the year 2004, the defendant approached the plaintiff stating that he will get permission from the HR&CE Department for purchase of the property and on that basis, again a lease document was created. But the property was in the possession of the plaintiff. In the meantime, the plaintiff entered into a 10(c) agreement with one Sundaresan for storing sand in the property. Now the property is in possession of the said Sundaresan. Since the defendant is disturbing the possession of Sundaresan, this suit is filed.

3. Brief substance of the written statement filed by the defendant in the suit is as follows:



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As per the proceedings of the Tahsildar, Mannachanallur dated 19.04.2002, the defendant was registered as a cultivating tenant and the defendant is enjoying the property as a cultivating tenant. The defendant is in possession of the property. The said Sundaresan was no way connected with the property. The suit was not maintainable.

4.After hearing both sides, the suit was dismissed by the trial Court. Against the dismissal of the suit, the plaintiff filed an appeal in A.S.No.144 of 2008 on the file of the first Additional Sub Court, Trichy. In the appeal, the plaintiff filed a petition in I.A.No.366 of 2008 for appointment of a Court Commissioner. The learned I Additional Subordinate Judge, Trichirapalli, allowed the first appeal by setting aside the judgment and decree of the trial Court, remanded the case back to the trial Court, with a direction to re-appoint the same Commissioner again to identify the property, to note down the physical features and after giving opportunity to both sides, to give a fresh findings. Against the order of remand, the appellant has preferred this appeal.

5.On the side of the appellant, it is stated that the first appellate Court failed to consider that the respondent herein has admitted that the appellant was the cultivating tenant. When there is no dispute regarding the identity of



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the suit property, there was no necessary for inspection of the suit property by the Advocate Commissioner and a re-inspection by the same advocate commissioner is not necessary. The first appellate Court failed to consider the materials available on record. The first appellate Court failed to consider that the respondent failed to prove the constructive possession of the suit property and hence the order of the learned I Additional Subordinate Judge, Trichirapalli, is to be set aside.

6.On the side of the appellant it is stated that the suit was filed only for bare injunction. The case of the plaintiff is that a wet land with an extent of 2.59 acres, was cultivated by one Kaathaperumal and the wet land was irrigated by a irrigation channel from Cauvery River. In the year 1991, the adjoining lands were converted into house sites and the channel was not useful and there was no possibility for cultivation. The respondent herein proposed to sell the property to the father of the appellant herein by name Muthuveeran Chettiyar and the name of the appellant's father was entered as a cultivating tenant in the Register of Cultivating tenant. Since without a permission from the HR&CE, a sale could not be obtained, the sale in favour of Muthuveeran Chettiyar could not be finalized.



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7. On the side of the appellant it is stated that the appellant's father and then the appellant were cultivating tenants and their names were in the Register of cultivating tenant and the respondent herein is not entitled to enter into another lease agreement without cancelling the earlier agreement. The alleged lease agreement in favour of one Sundaresan is a bogus one and the document was created only to overcome the right of the appellant. The lease deed dated 09.10.2006 was not registered and it was not duly stamped. The proceedings of the Tahsildar mentioning the name of the father of the appellant as a cultivating tenant was marked as Ex.B1. There was no objection on the part of the respondent herein to mark the document. The name of the earlier tenant Kaathaperumal was removed and the name of the appellant's father was entered in the register. On 19.04.2004, the name of the appellant was entered in the register as cultivating tenant. The first appellate Court remitted back the matter and directing the trial Court to appoint the same advocate commissioner to revisit the properties ascertaining the physical features and then to decide the case afresh. The first appellate Court failed to consider that for verification of possession, a Court Commissioner cannot be appointed. The appellant herein is a statutory tenant and hence the respondent



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temple cannot file a suit for injunction against him. Only an eviction proceedings ought to have been taken against the appellant herein.

8. On the side of the respondent it is stated that the plaintiff is a temple and that the suit is for injunction. One Muthuveeran Chettiar proposed to purchase the property and for purchase of the property, permission from the HR&CE Department is to be obtained. It will be easy if a tenant wants to purchase the property. Hence the name of the appellant's father was entered as a cultivating tenant. After the death of Muthuveeran Chettiar, the appellant herein has proposed to purchase the property. Though the name of the appellant was entered as a cultivating tenant, possession was not handed over to the appellant. The channel that was used for irrigation, dried up and the land cannot be cultivated. Even the appellant herein, has admitted that there is no cultivation, hence the respondent leased the property to one Sundaresan who is now storing sand in the property. Sundaresan is paying Rs.10,000/- as a tenant. To prove that there was no cultivation in the suit property, for a long period and to show that the property is kept shallow the respondent herein has filed a petition to appoint a Court Commissioner to visit the property and that petition was allowed by the first appellate Court. The first appellate Court



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made an observation that an oral representation was not sufficient. Property was not identified. Property to be measured and a fresh report is necessary. If the physical features are noted and the presence of sand is noted by the Commissioner, it will be easy for the respondent to prove that the appellant herein was not in possession. The appellant herein has never claimed that he is storing sand in the property, if the sand was available in the property, it will be clear that the appellant was not in enjoyment of the said property.

9. On the side of the respondent temple, it is stated that there is no necessity to register a lease agreement, if the lease is for agricultural purpose. Section 117 of Transfer of Property Act was not applicable for contracts for agricultural purpose. Most of the religious institutions got agricultural lands leased out to the tenants. No such lease is registered. Cultivating Act is a special enactment. The lease in favour of the father of the appellant and in the name of the appellant were not at all registered. They are only nominal documents. The appellant never paid any rent. The appellant was not a lessee. The lease agreement in favour of the appellant and his father was created for yet another purpose. When the appellant failed to cultivate the property, he loses the character of the tenant.



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10. On the side of the respondent temple it is stated that those documents are created for helping the appellant and his father to purchase the property after getting due permission from the HR&CE Board. The case of the respondent is that now the property was leased to one Sundaresan and the property was used for storing sand. The claim of the appellant is that revisit of a commissioner is not necessary and the commissioner cannot be appointed to decide possession. The case of the respondent is that the availability of sand will prove that the appellant was not in possession.

11. It is clear that there was no cultivation in the property at the present stage. If at all there is a cultivation, the same can be proved through Adangal and there is no necessity for a Court Commissioner to revisit the property to prove that there was no cultivation for a long time. A commissioner cannot be appointed for deciding possession. Whether the respondent temple is having a right to sell the property? and whether a lease executed for enabling the appellant to purchase the property, is valid? are to be decided. The first appellate Court itself can decide the issue. There is no necessity for a revisit of a Court Commissioner.



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12. Hence the revisit of a commissioner is not necessary the order of the first appellate Court is hereby modified. The order of the first appellate Court is hereby set aside and the matter is withdrawn from the file of the District Munsif cum Judicial Magistrate Court, Lalgudi and the same is remitted to the file of the First Appellate Court. Both the parties are permitted to adduce additional evidence and to mark additional documents and the first appellate Court is directed to dispose of the case on merits, after giving due opportunity to both sides.

13. With the above direction, this Civil Miscellaneous Appeal is allowed. No costs.

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Index: Yes / No

Internet : Yes / No

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To

- 1.The First Additional Sub Court, Tiruchirappalli.
- 2.The District Munsif cum Judicial Magistrate, Lalgudi.
- 3.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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Pre-delivery Judgment made in
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