



S.A.No.851 of 2008

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.(MD)No.851 of 2008 and
M.P(MD)No.1 of 2008

Karayan @ Periasamy

...Appellant/Respondent/Defendant

-Vs-

Vannimuthu

... Respondent/Appellant/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 17.09.2007, in A.S.No.82 of 2007, on the file of Sub Court, Trichy, in reversing the judgment and decree dated 02.11.2006, in O.S.No.190 of 2005, on the file of the District Munsif Court, Musiri.

For Appellant : Mr.K.Prabhakar

For Respondent : Mr.S.Ramesh



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JUDGMENT

This Second Appeal is filed against the judgment and decree dated 17.09.2007, in A.S.No.82 of 2007, on the file of Sub Court, Trichy, in reversing the judgment and decree dated 02.11.2006, in O.S.No.190 of 2005, on the file of the District Munsif Court, Musiri.

2.The respondent/plaintiff filed a suit for bare injunction and the same was dismissed by the Trial Court. Hence, he filed an appeal and the same was allowed by the First Appellate Court. Aggrieved by the same, the appellant/defendant is before this Court.

3.According to the respondent/plaintiff, the suit property, which are the cultivation land belongs to the village temple. He was doing cultivation under the tenancy arrangement with the temple from the year 1962. It was further averred by the respondent/plaintiff that the appellant requested him to continue the cultivation in the suit property and the same was refused by him. Aggrieved by the same, the appellant/defendant tried to interfere with his possession and therefore, he was constrained to file a suit for bare injunction.



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4.The appellant herein filed written statement and denied the tenancy arrangement pleaded by the respondent and also his possession over the suit property. The appellant had averred that he got the property from the temple under the tenancy arrangement 10 years back. He also claimed that he had been possession and enjoyment of the suit property by cultivating the same. On these pleadings, the parties went to the Trial Court.

5.Before the Trial Court, the respondent/plaintiff was examined as P.W.1 and 8 documents were marked on his side as Ex.A1 to Ex.A8 and the appellant was examined as D.W.1 and 9 other witnesses i.e., D.W.2 to D.W.10 were examined and 1 document Ex.B.1 was marked on the side of the appellant.

6.On appreciation of oral and documentary evidences available on record, the Trial Court came to the conclusion that the respondent has failed to prove his possession on the date of presentation of the suit and whereas the appellant proved his possession over the suit property by oral evidence and consequently, dismissed the suit. Aggrieved by the same, the respondent filed an appeal in A.S.No.82 of 2007 on the file of the Sub Court, Trichirappalli. The First



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Appellate Court reversed the finding of the Trial Court and held that the respondent had proved his possession on the suit property on the date of the suit. Aggrieved by the same, the appellant/defendant is before this Court.

7.The learned counsel for the appellant contended that though the respondent filed kist receipts Ex.A2 to Ex.A4 to prove his possession, the last date of the kist receipt filed by the respondent was dated 03.02.2004 and whereas, the suit was presented on June 2005. Therefore, in the absence of any kist receipt for the year 2005, the possession of the respondent over the suit property on the date of the presentation of the plaint cannot be accepted.

8.The learned counsel further submitted that the respondent, even as per the averment found in his plaint, is not residing in the suit village and he is residing elsewhere. Whereas the appellant is residing in the suit village. Therefore, the Trial Court judgment based on the oral testimony of 9 witnesses examined by the appellant come to the conclusion that the appellant had proved his possession. The said finding should have been accepted by the First Appellate Court.



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9. On the side of the respondent, in order to prove his possession he filed patta issued in the name of the temple Ex.A.1. Wherein, his name also mentioned. Apart from that he produced Ex.A2 to Ex.A4 kist receipts to show his immediate possession. He also produced the Certificate issued by the Village Administrative Officer to prove his possession. Apart from that, the First Appellate Court relied on the admission made by the appellant's own witness namely, D.W.6, who admitted that the respondent was in possession of the suit property 10 years back. Therefore, the past possession of the respondent/plaintiff was admitted by the appellant's own witness. In order to prove immediate possession of the respondent, he produced the kist receipts namely, Ex.A2 to Ex.A4. The appellant, who was examined as D.W.1, during his cross-examination admitted that he did not know the extent of the suit property. Further, though he pleaded tenancy arrangement, he failed to prove the same by leading any evidence. He also failed to file any revenue documents like kist receipts to prove his possession over the suit property. In these circumstances, the First Appellate Court has arrived at the factual findings that the respondent/plaintiff has proved his possession and dismissed the suit. The said factual finding is based on evidence available on record. No perversity is pointed out in the approach of First Appellate Court in



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arriving at factual finding. I don't find any substantial question of law in this
Second Appeal.

10.In view of the above, the Second Appeal deserves to be dismissed
and accordingly, dismissed. Consequently, the connected miscellaneous petition is
closed. No costs.

30.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
dss

To

- 1.The Sub Court,
Trichy.
- 2.The District Munsif Court,
Musiri.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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