



S.A.(MD) No.4 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD) No.4 of 2011
and
M.P.(MD) Nos.1 and 2 of 2011

V.Pandipillai

... Appellant/1st Respondent/
Plaintiff

Vs

1.V.Shanmugam

... 1st Respondent/Appellant/
2nd Defendant

2.S.Manickam Pillai

... 2nd Respondent/
2nd Respondent/1st Defendant

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 05.02.2010 made in A.S.No.147 of 2009 on the file of the Principal Sub Court, Madurai, reversing the judgment and decree dated 29.04.2008 made in O.S.No.84 of 2000 on the file of the District Munsif's Court, Madurai Taluk, Madurai.

For Appellant : Mr.F.X.Eugene



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For R1 : Mr.J.Lawrance
for Mr.V.Venkatasamy

For R2 : No appearance

J U D G M E N T

1.1. The plaintiff in the suit is the appellant. He filed a suit for injunction against the respondents. The first respondent herein also filed a counter claim seeking injunction against the appellant. The trial Court granted a decree granting injunction in favour of the appellant as prayed for. The counter claim filed by the first respondent was dismissed. Aggrieved by the same, the first respondent filed an appeal in A.S.No.147 of 2009 on the file of the Principal Sub Court, Madurai. The first appellate Court reversed the findings of the trial Court and granted a decree for injunction in favour of the first respondent. In effect, the counter claim filed by the first respondent was decreed. The suit filed by the appellant was dismissed. Aggrieved by the same, the appellant is before this Court.



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1.2. According to the appellant, the suit property belonged to Thiruvaduthurai Aathinam, which is not a party to the suit. The suit property was let out to the appellant under lease deed dated 15.02.1963 and as per the lease deed, he had been cultivating the suit property and paying rent to the landlord. It was also stated by the appellant that he had recorded his name as a cultivating tenant under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 (hereinafter referred to as “the Act” for brevity). According to the appellant, the first respondent, his younger brother and the second respondent, his paternal uncle tried to interfere with his possession and hence, he was constrained to file a suit for bare injunction.

1.3. Originally, the suit was filed by the appellant and the first respondent as plaintiffs against the second respondent. Subsequently, the first respondent was transposed as the second defendant in the suit. The appellant herein as sole plaintiff continued the suit as against respondents 1 and 2.



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2. The second respondent filed a written statement denying the cultivating tenancy pleaded by the appellant and sought for dismissal of the suit. The first respondent herein filed a written statement stating that though the lease deed was obtained in the name of the appellant, all along the land had been cultivated by the father of the appellant and the first respondent viz., Veluchamy. Thereafter, in a family arrangement, the second respondent got the suit property and he has been cultivating the suit lands and paying rent to the mutt. It was specifically averred by the first respondent that from 1990 onwards, he had been in possession and enjoyment of the suit property by cultivating the same under the mutt. On these pleadings, he filed a counter claim seeking injunction restraining the appellant herein from interfering with his possession and enjoyment of the suit property.

3. The trial Court, on appreciation of oral and documentary evidences available on record, came to the conclusion that the appellant had been cultivating the suit property as a cultivating tenant under the mutt and



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consequently, he was entitled to decree for injunction as prayed for. As far as the counter claim filed by the first respondent is concerned, the trial Court found that the first respondent failed to prove his possession over the suit property and consequently, dismissed the counter claim.

4. Aggrieved by the same, the first respondent herein filed a first appeal in A.S.No.147 of 2009 on the file of Principal Sub Court, Madurai. Before the first appellate Court, the first respondent also filed an application for raising additional evidence for marking written statement filed by the landlord viz., Thiruvaduthurai Aathinam in O.S.No.86 of 2001, wherein it was admitted by the landlord that the first respondent herein along with his father Veluchamy had been cultivating the suit property. Based on the said admission, the first appellate Court came to the conclusion that the first respondent proved his possession over the suit property and consequently reversed the findings of the trial Court and allowed the appeal. In result, the suit filed by the appellant was dismissed and the counter claim filed by the first respondent was decreed. Aggrieved by the same, the appellant is before this Court.



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5. At the time of admission, this Court formulated the following substantial questions of law:

“1. Whether the lower appellate Court has committed an error in law in not holding that the 1st respondent/2nd defendant having signed the plaint as a co-plaintiff was estopped from contending against the pleadings found in the plaint?

2. Whether the lower appellate Court has committed an error in rejecting the claim of the appellant/first plaintiff to be the lessee in respect of the suit property, when his name alone is found recorded as a tenant under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969? and

3. Whether the lower appellate Court has not committed error in granting the relief of injunction sought for by the first respondent/second defendant, when no separate appeal or cross objection was filed by the first respondent/second defendant?”

6.1. It is not disputed that originally the suit property was let out by the landlord Thiruvaduthurai Aathinam in favour of the appellant herein and his name was also recorded as a cultivating tenant. However, the



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first respondent herein pleaded that there was a family arrangement in his family in the year 1990, wherein these lease hold lands were allotted to his share and from 1990 onwards, he had been in possession and enjoyment of the suit property. The first respondent herein also produced receipts issued by the landlord Thiruvaduthurai Aathinam in his favour as Ex.B.1 to Ex.B.3 in support of his contention. Before the first appellate Court, the first respondent herein filed two documents by way of additional evidence and the same were marked as Ex.B.7 and Ex.B.8. Ex.B.7 is a written statement filed by the landlord viz., Thiruvaduthurai Aathinam in O.S.No.86 of 2001, wherein the landlord had averred as follows:

“This defendant submits that one Veluchamy and V.Shanmugam are cultivating tenants in respect of the suit lands.”

6.2. Therefore, it is clear that the landlord himself in his pleadings in a collateral proceedings admitted that the first respondent herein and his father Veluchamy had been in possession and enjoyment of the suit property as cultivating tenants. The first appellate Court without going into the



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status of the parties, with regard to the cultivating tenancy rights, based on the admission made by the landlord under Ex.B.7, came to the conclusion that the possession of the first respondent over the suit property was proved. The first respondent also produced rental receipts in his favour for having paid rent to the landlord. Therefore, the first appellate Court has come to a factual conclusion that the possession of the first respondent over the suit property was proved by averment of the landlord himself in a collateral proceedings and the rental receipts produced by the first respondent. Consequently, the suit filed by the appellant was dismissed and the counter claim filed by the first respondent was decreed granting injunction against the appellant as prayed for. The finding rendered by the first appellate Court with regard to the possession of the parties is based on documentary evidence available on record and the same is not vitiated by any perversity in approach.

7. As far as the status of the parties with regard to the cultivating tenancy is concerned, the first appellate Court observed that the status of the parties as a cultivating tenants cannot be gone into by the civil Court and the



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present suit being a suit for bare injunction, the suit can be disposed of based on the findings with regard to the possession.

8.1. In ***Periathambi Goundan Vs. The District Revenue Officer, Coimbatore and others*** reported in ***1980-II-MLJ 89***, the Full Bench of this Court observed that in a suit for bare injunction, the civil Court without going into the question of status of a party with regard to cultivating tenancy, based on the mere possession, can decree or dismiss the suit depending on the facts of the case. The relevant observation of the Hon'ble Full Bench in this regard is as follows:

“40. The above second appeal dealt with one type of suit only. Instances can be multiplied. A landowner may file a suit for injunction putting forward the contention that the defendant, who was his tenant, had surrendered possession of the land, but subsequently was seeking to interfere with his Possession. If the suit is one for a simple injunction only, the question that has to be decided will be, whether the plaintiff landowner was in possession of the suit property on the date of the suit or not, and no other question will arise. All other questions as to the defendant having been previously a cultivating tenant and his surrendering possession of the



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property subsequently will be only incidental to the determination of the question as to whether the plaintiff has established that he was in possession of the suit property on the date of the suit or not. Once it is held that the plaintiff-landowner was not in possession of the suit property on the date of the suit, the suit will have to be dismissed irrespective of the question as to whether the defendant was previously a cultivating tenant or not.”

8.2. A perusal of the observation of the Hon'ble Full Bench in the above judgment would make it clear that the suit for injunction filed by the landlord or the cultivating tenant is maintainable before the civil Court and in such a case, based on the possession of the parties, the civil Court can grant appropriate relief without advertng to the status of the cultivating tenancy. In the case on hand, the first appellate Court without advertng to the status of the parties with regard to the cultivating tenancy rights, based on the admission made by the landlord in another proceedings in his pleadings about the possession of the first respondent and also rental receipts produced by him granted a decree for injunction in favour of the first respondent. The said finding is based on the materials available on



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record and this Court concurs with the factual findings made by the first appellate Court. Accordingly, the substantial questions of law framed at the time of admission are answered against the appellant. The Second Appeal is dismissed by confirming the judgment and decree passed by the first appellate Court.

9. In fine, (i) this Second Appeal is dismissed by confirming the judgment and decree dated 05.02.2010 made in A.S.No.147 of 2009 on the file of the Principal Sub Court, Madurai; (ii) in the facts and circumstances of the case, there will be no order as to costs; and (iii) connected miscellaneous petitions are closed.

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NCC: Yes

Index: Yes

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S.SOUNTHAR, J.

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To

- 1.The Principal Sub Court,
Madurai.
- 2.The District Munsif,
Madurai Taluk,
Madurai.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.

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