

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.03.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)Nos.598 and 599 of 2022
and
C.M.P.(MD)Nos.8253 and 8254 of 2022

A.Muthuraj

... Appellant in both appeals

/Vs./

Narayanan @ Ramesh

...Respondent in both appeals

COMMON PRAYER: Second Appeals filed under Section 100 of the Civil Procedure Code to set aside the Judgment and Decree passed by the Subordinate Judge, Sivagangai, in A.S.No.77 and 78 of 2014 dated 10.03.2022 confirming the Judgment and Decree passed by the District Munsif Court, Sivagangai in O.S.No.172 of 2011, dated 22.08.2014 and allow these Second Appeals.

For Appellant : Mr.N.Tamilmani (in both appeals)

COMMON JUDGMENT

These Second Appeals have been filed challenging the concurrent findings of the Courts below. The plaintiff in the suit is the appellant herein. The parties are described as per the litigative status in the suit. The suit was filed by the plaintiff seeking for permanent injunction to restrain the defendant from evicting him from the suit schedule property except by following the due process of law.

2. The defendant filed a counter claim in the suit seeking for recovery of possession from the plaintiff in respect of the very same suit schedule property. The plaintiff claimed that he was a tenant under the defendant's father, while he was alive. He also claimed that he had entered into an agreement of sale with the defendant's father, while he was alive and he had paid a substantial sum as advance.

3. Based on the alleged claim of tenancy, the suit was filed for permanent injunction to restrain the defendant from vacating the plaintiff except by due process of law. However, the defendant, who is admittedly

the owner of the suit schedule property has categorically disputed that there was a landlord tenant relationship between the plaintiff and the defendant's father. According to the defendant, the plaintiff is a trespasser and he is not entitled for any legal protection with regard to his possession.

4. Before the trial Court, the plaintiff filed 14 documents, which were marked as Ex.A1 to A14 and 4 witnesses were examined on his side, namely, P.W.1 to P.W.4. On the side of the defendant, one document was filed namely, power of attorney dated 09.09.2011, (Ex.B1), by which the defendant appointed a power agent, Thiagarajan to depose evidence on his behalf. The said Thiagarajan was examined as D.W.1 before the trial Court.

5. The trial Court framed issues and after giving due consideration to the oral and documentary evidence let in by both the parties dismissed the suit filed by the plaintiff on the ground that he is a trespasser. None of the documents filed by the plaintiff, which were marked as exhibits, by which the plaintiff claims that he was a tenant, was admitted by the

defendant in the suit, who is admittedly the owner of the suit schedule property. The documents filed by the plaintiff pertain to alleged transactions involving the defendant's father, who is not alive now. The defendant has also in his pleadings as well as in the oral evidence of D.W.1 has denied that there was a landlord tenant relationship between the plaintiff and the defendant's father, while the defendant's father was alive.

6. Based on the oral and documentary evidence available on record, the trial Court has held that the plaintiff is the trespasser over the suit schedule property. The trial Court has also rightly held that the plaintiff is a trespasser, as the property was rented out by the defendant's father only to Annai Therasa Welfare Association and not to the plaintiff in his individual capacity. Therefore, the plaintiff has misused the said tenancy by taking possession of the suit schedule property and enjoying the same for his self benefit and not for the benefit of Annai Terasa Welfare Association and therefore, the plaintiff is a trespasser, which this Court is of the considered view is a correct view taken by the trial Court.

7. This Court is also of the considered view that the trial Court has rightly appreciated Ex.A13, namely, petition filed by the defendant before this Court in CrI.O.P.(MD)No.11831 of 2012 by holding that the plaintiff is a trespasser. The plaintiff has also not sought legal recourse to enforce the alleged agreement of sale (Ex.A4) entered into with the defendant's father. The trial Court has rightly given a finding that the said agreement of sale (Ex.A4) is a fabricated document. No documentary evidence has also been produced by the plaintiff before the trial Court to establish that there was a landlord tenant relationship between the plaintiff and the defendant, who is admittedly the owner of the suit schedule property. The oral evidence of P.W.1 to P.W.4 is also not supported by any documentary evidence to establish that the plaintiff was a tenant under the defendant and is entitled for legal protection.

8. Only based on the oral and documentary evidence available on record, the trial Court has rightly dismissed the suit and has decreed the counter claim filed by the defendant for recovery of possession from the plaintiff in respect of the suit schedule property and has also rightly awarded damages for unlawful use and occupation of the suit schedule

property by the plaintiff at Rs.4,000/- per month. The suit schedule property is located in Sivagangai and the damages fixed at Rs.4,000/- per month cannot be considered to be unreasonable and therefore, the said assessment made by the trial Court is a correct assessment, which does not call for any interference by this Court.

9. The lower appellate Court, namely, the Sub Court, Sivagangai, has also rightly confirmed the findings of the trial Court by dismissing the appeals in A.S.Nos.77 and 78 of 2014 filed by the plaintiff. The lower appellate Court has also rightly dismissed the application filed by the plaintiff under Order 41 Rule 27 of C.P.C., in I.A.No.4 of 2016, wherein the plaintiff had sought to file a statement recorded during the police enquiry, in which the plaintiff claims that the defendant admitted the plaintiff's status, as the plaintiff has not given sufficient reasons as to why the said document was not filed before the trial Court.

10. It is clear that the application in I.A.No.4 of 2016 was filed before the lower appellate Court only to protract the proceedings and for no other reason. Infact, as seen from the Judgment and Decree of the

lower appellate Court dated 10.03.2022 passed in A.S.Nos.77 and 78 of 2014, the plaintiff was also directed to pay costs of Rs.1,000/- to the District Legal Services Authority, Sivagangai, for his delaying tactics.

11. This Court does not find any infirmity in the Judgments of the Courts below, as there is no perversity in the said Judgments. The substantial questions of law raised by the plaintiff in the grounds of these second appeals are issues, which have already been rightly considered by the Courts below against the plaintiff. There are no substantial questions of law involved in these second appeals. Accordingly, these Second Appeals are dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

24.03.2023

Index : Yes / No
NCC : Yes / No
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S.A.(MD)No.598 and 599 of 2022

ABDUL QUDDHOSE, J.

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TO:

- 1.The Subordinate Judge, Sivagangai.
- 2.The District Munsif Court, Sivagangai.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Common Judgment made in
S.A.(MD)No.598 and 599 of 2022

Dated:
24.03.2023