



S.A.No.1814 of 2000

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.04.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.1814 of 2000

1.Ariya Konar(Died)
2.A.Arumugam

... Plaintiff/Appellant/
Appellant

(A2 is brought on record as LR of
the deceased sole appellant vide
order dated 23.06.2021)

-Vs-

1.The Hereditary Trustee of
Hari Giri Varadharaja Perumal
Devasthanam,
Marungapuri Post,
Manapparai Taluk,
Trichy District.

2.Rengaswami Chettiar
3.Palanichamy

... Defendants/Respondents
/Respondent



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 09.08.2000 passed in A.S.No. 211 of 1999 on the file of the learned Subordinate Judge, Sub-Court, Trichy, confirming the decree and judgment dated 11.08.1994 passed in O.S.No.74 of 1992 on the file of the District Munsif Court, Manapparai.

For Appellant : Mr.MP.Senthil

For R1 : Mr.D.Venkatesh

For R2 & R3 : No appearance

J U D G M E N T

The appellant herein is the plaintiff has filed a suit in O.S.No.74 of 1992 on the file of the District Munsif Court, Manapparai, for permanent injunction restraining the respondents from interfering with the peaceful possession and enjoyment of the suit property, against the respondents.

2.During the trial, on the side of the first appellant/plaintiff, two witnesses were examined as P.W.1 and P.W.2 and 15 documents were marked as Ex.P.1 and Ex.P.15. On the side of the respondent/defendants, 3



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witnesses were examined as D.W.1 to D.W.3 and 19 documents were marked as Ex.D.1 to Ex.D.19.

3.After the trial, considering the oral and documentary evidence, the trial Court dismissed the suit on the ground that the first appellant/plaintiff did not prove his possession on the date of filing the suit. Therefore, the suit was dismissed. Challenging the judgment and decree passed by the trial Court, the first appellant herein filed an appeal before the District Court, Trichirappalli in A.S.No.292 of 1994 and the same was made over to the Sub-Court, Trichi, and renumbered as A.S.No.211 of 1999. The lower Appellate Court, after hearing the arguments, dismissed the said appeal. Challenging the judgment and decree passed by the lower Appellate Court, the first appellant/plaintiff has filed the present second appeal raising the following substantial questions of law:

“a).Whether the Courts below are correct in law in holding that Ex.A5 order of Tenancy Thasildar will not bind the respondent?



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b).Whether the Court below are correct in law in accepting Ex.B5 order which was passed without cancelling the earlier order Ex.A.5?

c)Whether the Courts below are correct in law in holding that the suit is barred by the principle of Resjudicata when the respondent has failed to establish the same by filing the pleadings in the earlier proceedings?”

4.The case of the first appellant/plaintiff is that originally the suit property belonged to the first respondent Temple. The second respondent was a cultivating tenant of the suit property during the fasli year 1395 and later surrendered the suit property to the first respondent. Thereafter, the first appellant/plaintiff had taken the first respondent Temple property on lease and was cultivating the land. In order to record his name as a cultivating tenant, he applied a petition before the Tenancy Tahsildar and the same was allowed. Pursuant to which, he was in possession and enjoyment of the suit property. During that time, the third respondent tried to interfere with his possession. Therefore, the first appellant/plaintiff has filed a suit for



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permanent injunction against the third respondent. The trial Court failed to appreciate the oral and documentary evidence and particularly, the order passed by the competent authority viz., land Tahsildar, which was marked as Ex.A.5, which clearly shows that the first appellant/plaintiff has registered his name as a cultivating tenant, dismissed the suit erroneously. Further, the first appellant/plaintiff has paid the lease amount to the first respondent Temple for the fasli year 1396 and 1398. Therefore, the Courts below had failed to appreciate the documentary evidence and the order of the Tenancy Tahsildar Ex.A.5, is erroneous.

5.The case of the first respondent Temple is that the first respondent is the owner of the property. The second respondent is a cultivating tenant and the third respondent is a sub-lessee of the second respondent. From the date of filing the suit, the third respondent was in possession and enjoyment of the property. Even in the earlier occasion, the first appellant/plaintiff filed a suit in O.S.NO.123 of 1987 against the third respondent before the Subordinate Court, Trichy and the said suit was



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dismissed and he has also filed an appeal in A.S.No.227 of 1988 before the District Court, Trichirappalli and the same was also dismissed. There was no further appeal. During the pendency of the earlier suit, the first appellant/plaintiff has obtained an order from the Tenancy Tahildar even without impleading the third respondent. Since the first appellant/plaintiff lost the earlier suit, for the very same relief he filed another suit. Therefore, the present suit is barred by *resjudicata*. Hence, the trial Court has rightly appreciated the evidence that the first appellant/plaintiff did not prove his possession on the date of filing the suit and dismissed the suit.

6.Heard the learned counsel appearing for the appellants and the learned counsel appearing for the first respondent and perused the materials available on record.

7.The learned counsel appearing for the appellants would submit that in the order of the Tenancy Tahsildar Ex.A.5 dated 03.05.1988, the name of the first appellant/plaintiff was recorded as cultivating tenant,



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which clearly proved that the first appellant is in effective possession and enjoyment of the suit property. The third respondent has not preferred any appeal against the dismissal of the appeal. Therefore, the order of the Tenancy Tahsildar would not bind the first respondent, who is in possession and enjoyment of the property, which was also accepted by the first and the second respondents. The learned counsel further submitted that the first respondent has failed to prove that the second respondent surrendered his possession to the first respondent and even though the first respondent is the owner of the property, the first appellant/plaintiff has proved his possession, the conclusion of the Courts below as against the document of Ex.A5.

8.Further, the learned counsel for the appellants submitted that even as per temple records, the first appellant/plaintiff is in possession and enjoyment of the property and no records were periodically audited. Therefore, it will not bind the third respondent, since the owner of the property viz., the first respondent temple has failed to substantiate the case that the third respondent surrendered the suit property to the first respondent



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temple. The learned counsel drew the attention of this Court Ex.A.5/the order of the competent authority viz., tenancy Tahsildar that the civil Court has no power to declare the first appellant as a tenant and the tenancy Tahsildar, who is a competent authority to record the same. Even to evict the first appellant, the first respondent Temple have to approach the Tenancy Tahsildar and the Civil Court has no jurisdiction. There is no such proceedings initiated by the first respondent Temple. Therefore, the judgment and decree passed by the Courts below are liable to be set aside and the second appeal is to be allowed.

9.The learned counsel appearing for the first respondent Temple would submit that admittedly, the suit property belonged to the first respondent temple. Originally the first respondent Temple let out the suit property to the second respondent and the second respondent was in possession and enjoyment of the property and thereafter, he surrendered his possession to the first respondent Temple. Thereafter, the first appellant/plaintiff took the property on lease and was cultivating the same.



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During that time, the third respondent entered into the possession of the suit property, as a Sub-lessee and enjoying the property in earlier occasion. Therefore, the first appellant/plaintiff filed a suit against the third respondent for permanent injunction and the said suit was dismissed. Thereafter, he filed an appeal before the District Court, Trichy, in A.S.No. 227 of 1988 and the same was also dismissed and there was no further appeal.

10.Further, the learned counsel for the first respondent submitted that as per the decisions of both the Courts below, the first appellant/plaintiff was not in possession of the property on the date of filing the suit. Therefore, it is for the first appellant to prove it. Admittedly, Ex.A.5 came into existence only during the pendency of the earlier suit in O.S.No.123 of 1987. Therefore, when the suit was pending, Ex.A5 obtained by the first appellant/plaintiff is not valid and also not binding the parties. Though the first appellant/plaintiff has not impleaded the third respondent herein in Ex.A.5, and without serving notice to the third respondent and



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without impleading him as a party to the said proceedings, the first appellant/plaintiff obtained Ex.A5, this would not bind the third respondent. Except the subsequent payment receipts for the fasli years 1396 – 1398, there was no other document to show that he was in possession and enjoyment of the suit property on the date of filing the suit. Therefore, both the Courts below rightly held that the first appellant/plaintiff has failed to establish his possession on the date of filing the suit. Therefore, there is no merit in the second appeal and the same is liable to be dismissed.

11.This Court, while admitting the second appeal, has formulated the following substantial question of law:

“Whether the Courts below are correct in law in holding that the suit is barred by the principles of Res Judicata, in the light of the existence of Ex.A.5, dated 03.05.1998?”

12.It is the specific case of the appellants that admittedly, the first respondent temple is the owner of the suit property. As per the case of the



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first appellant/plaintiff, he was recorded himself as a cultivating tenant and enjoying the suit property. As per the case of the first respondent Temple, the first appellant/plaintiff never entered into a cultivating tenant and he was in a limited period and thereafter he surrendered his possession and now, the third respondent is in possession and enjoyment of the suit property. Since the suit filed by the first appellant/plaintiff is only for a permanent injunction restraining the third respondent from interfering with his peaceful possession and enjoyment of the suit property. It is for the first appellant/plaintiff to prove his possession. It is settled preposition of law that the plaintiff has to prove his possession in the manner known to law. Unless the first appellant/plaintiff is able to prove that on the date of filing of the suit, he was in possession, he shall not be entitled to get equitable remedy 'injunction'. It is the duty of the plaintiff to prove his case on his own strength and he cannot take advantage of the weakness of the defendants.



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13. According to the deceased appellant/plaintiff, he entered into as a cultivating tenant before the competent authority and obtained the order Ex.A.5, Admittedly, on the date of obtaining EX.A.5, a suit filed by the first appellant/plaintiff in O.S.No.123 of 1987 before the Subordinate Court, Trichirappalli, was pending and during the pendency of the suit, the first appellant/plaintiff even without sending notice to the third respondent, he obtained the order behind back of the third respondent. Therefore, any order obtained during the pendency of the proceedings, would not bind the third respondent. Therefore, the suit was dismissed on the ground that the first appellant has not proved his possession. If the first appellant is in possession of the suit property as per Ex.A.5 could have produced before the appellate Court and would not have lost his suit. However, he did not file any further appeal. Further, the earlier suit was dismissed in the year 1987 and the present suit was filed in the year 1992 for the very same relief, after a lapse of five years.



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14.The first respondent Temple has stated that the first appellant/plaintiff surrendered his possession and now, he was not in possession, Ex.A.1 and Ex.A.2 receipts reveal that the rent was paid by the first appellant/plaintiff to the first respondent Temple, for the fasli years of 1396 -1398, which show that the first appellant was in possession of the suit property only during that period. Except those documents, there was no record to show that the first appellant/plaintiff was in possession and enjoyment of the suit property. Since the earlier suit was dismissed on the ground of not proving the possession of the property, the first appellant/plaintiff has to establish his possession on the date of filing the suit. Once the first appellant/plaintiff filed the suit for permanent injunction, it is for the first appellant/plaintiff to prove his possession on the date of filing of the suit. It is the duty of the appellants to prove his case. He cannot take advantage of the loopholes left by the respondents. Once the first appellant/plaintiff filed the suit, it is his duty to prove his case. In this case, admittedly, the suit property belongs to the first respondent temple and all the documents show that the third respondent is in possession and



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enjoyment of the suit property. When that be the case, it is for the first appellant/plaintiff to prove that he is in possession of the suit property by oral and documentary evidence. The documents produced by the appellant are not sufficient to establish his possession and Ex.A.5 would not bind the third respondent, when the suit was pending, it was obtained. Since the first appellant has not proved his case, he is not entitled to get decree for permanent injunction.

15.As far as the substantial question of law is concerned, even though a copy of plaint was not produced, the judgment and decree clearly shows that the suit filed by the first appellant/plaintiff for permanent injunction, which was dismissed, pursuant to which, an appeal was filed and the same was also dismissed. Therefore, Ex.A.5 was also obtained only during the pendency of the earlier suit proceedings. Therefore, the trial Court rightly appreciated the evidence and found that the first appellant has not proved his possession of the suit property on the date of filing of the suit and rightly dismissed the suit. The First appellate Court also re-appreciated



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the evidence and found that the oral and documentary evidence produced by the first appellant are not sufficient to hold that he was in possession of the suit property on the date of filing of the suit and therefore, he is not entitled for injunction as against the respondents. Therefore, both the courts below have rightly appreciated the oral and documentary evidence and held that the first appellant has failed to prove his possession as on the date of filing of the suit. This Court finds no perversity in the judgment of the Courts below. Therefore, the substantial question of law raised by the first appellant is answered accordingly. Since it is the suit for permanent injunction and the possession of the suit property not been established by the first appellant/plaintiff. Therefore, there is no merit in the second appeal and the same is liable to be dismissed.

16.In the result, the Second Appeal stands dismissed. No costs.

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P.VELMURUGAN,J.

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To

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

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