



S.A.No.971 of 2002

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2023

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.971 of 2002

Sri Sivagraha Yogigal Adheenam,
Suriyanar Koil,
Rep. by its 27th Gurumaha Sannidhanam,
Sri-La-Sri Sankaralinga Paramacharya Swamigal,
Sooriyanarkoil, Thirumangalakudi Post,
Thiruvidaimarudur Taluk, Valangaiman Munsifi.

...Appellant

vs.

1.K.Radha

2.K.Shanmugam

3.K.Sundaram

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 07.03.2002 in A.S.No. 43 of 2001 on the file of the Additional Subordinate Judge, Kumbakonam reversing the Judgment and Decree dated 09.09.1999 in O.S.No.165 of 1998 on the file of the District Munsif, Valangaiman.

For Appellant : Mr.K.Govindarajan
for M/s.Sarvabhauman Associates

For Respondents : No appearance



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JUDGMENT

The appellant is the plaintiff in the suit in O.S.No.165 of 1998 on the file of the District Munsif, Valangaiman at Kumbakonam. The respondents are the defendants in the above suit.

2. The suit was filed by the appellant / plaintiff seeking for permanent injunction restraining the respondents / defendants and their men from interfering with the appellant / plaintiff's peaceful possession and enjoyment of the suit property.

3. The case of the plaintiff is that the suit property belongs to the plaintiff and they are in possession and enjoyment of the same. There is fencing to the north and west of the suit property and wall to the east of the suit property. Coconut trees are available in the suit property and they are enjoying the benefits of the same. Pits are being dug for the purpose of planting coconut saplings. A suit in O.S.No.417 of 1994 was filed by the plaintiff against the husband of the first defendant and father



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of the defendants 2 and 3, namely, Kaliyamoorthi and one Jegannadhan. Pending suit, Kaliyamoorthi passed away. Judgment and Decree was granted against Jegannadhan. The defendants have no right or title over the suit property. The second defendant, as a tenant, is cultivating some other lands that belong to the plaintiff. However, lease was not paid correctly. The defendants sought to take some portion of the suit property on lease. However, Adheenam did not consent to the same. Therefore, on 12.08.1998, the defendants tried to encroach the suit property. However, the plaintiff's men prevented them from doing so. The plaintiff feels that there would be interference by the defendants. Hence, the suit.

4. The case of the defendants is that the defendants 2 and 3 are the sons of the first defendant. It is true that the plaintiff is the absolute owner of the suit property. However, it is false that the entire suit property is under Pannai cultivation of the plaintiff. The husband of the first defendant, namely, Kaliyamoorthi, cultivated the 71 cents of land of the suit property on lease. After the demise of Kaliyamoorthi, the



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defendants and the other sons of Kaliyamoorthi, namely, Madhavan and Kannadasan were cultivating the said 71 cents of land. Madhavan and Kannadasan have not been added as parties to the suit. Hence, the suit is bad for non-joinder of parties. After the lease in favour of the first defendant's husband, the said 71 cents of land was never in possession of the plaintiff. The defendants did not claim any right apart from the above said 71 cents of land in the suit property. The description of the suit property is not correct. The suit in O.S.No.417 of 1994 already filed by the plaintiff was dismissed. Hence, the present suit is barred under *res judicata*. The plaintiff has not contributed any work in the above 71 cents of land in the suit property. The defendants have done all the works therein. Nothing as alleged in the plaint happened on 12.08.1998. Therefore, there is no cause of action for the suit. It is true that the second defendant is a tenant in respect of the nanja land belonging to the plaintiff. However, there is no arrears of rent. The defendants, as cultivating tenants, are in possession and enjoyment of the said 71 cents of land and therefore, there is no necessity for them to request the plaintiff to grant lease of the said land. The suit is affected under Tamil



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Nadu Act 57/61. The Court fee is not paid correctly. Hence, the defendants prayed that the suit be dismissed with costs.

5. Before the Trial Court, the plaintiff has examined PW1 to PW4 and marked 1 document as Ex.A1 in order to substantiate their case. The defendants examined two witnesses DW1 and DW2 including the third defendant (DW1) and marked 9 documents as Exs.B1 to B9 in order to substantiate their case.

6. After analyzing the oral and documentary evidence on record and after hearing the submissions on both sides, the Trial Court came to the conclusion that the suit property belongs to the plaintiff. The Trial Court disbelieved the Ex.B3 Lease Deed since the defendants failed to prove that Ex.B3 was executed as per Order XXI Rule 21(4) of the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961. The Trial Court has also observed that since Ex.B3 has not been proved, Ex.B4 receipt and Ex.B5 letter attain no significance and the same cannot be relied upon in the present case. Therefore, the Trial



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Court concluded that the plaintiff has been in possession and enjoyment of the suit property and granted Judgment and Decree as sought for by the plaintiff.

7. Aggrieved over the said Judgment and Decree, an appeal was filed by the defendants in A.S.No.43 of 2001 on the file of the Additional Subordinate Judge, Kumbakonam. After hearing both sides, the first Appellate Court came to the conclusion that after the demise of Kaliyamoorthi, the husband of the first defendant, the defendants are cultivating the 71 cents of land in the suit property and are in possession and enjoyment of the same. The first Appellate Court, therefore, set aside the Judgment and Decree granted by the Trial Court. Aggrieved over the same, the appellant / plaintiff filed the present Second Appeal.

8. This Court admitted this appeal on 26.06.2002, by framing the following substantial questions of law.

"1. When Ex.B3 is not in conformity with Section 21 of the Tamil Nadu Public Trust (Regulation of Administration) Act 57/61 read with Section 4 (B) (I) of the Tamil Nadu Act 25



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of 1955 and the benefit of exemption from stamp duty is not available, whether the lower Appellate Court is justified in law in relying upon Ex.B3 which is unstamped and unregistered? (vided 1984 TLNJ 260)

2. When Ex.B3 lease deed is a fabricated document, which is inadmissible and invalid for want of stamp duty and registration, whether the Lower Appellate Court is correct in law in deciding the rights of the parties on the basis of Ex.B3?

3. Whether the Lower Appellate Court is justified in law in discarding the evidence of PW2, the Revenue Official and the admission of DW1, which would categorically establish that the respondents are not in possession of 71 cents as claimed by them?

4. Whether the lower Appellate Court is correct in law in reversing the Judgment and Decree of the Trial Court without setting aside any of the findings rendered by the Trial Court in favour of the appellant?"

9. The learned counsel appearing for the appellant / plaintiff would submit that the appellant / plaintiff is the absolute owner of the suit property. The appellant / plaintiff had never signed the Ex.B3 Lease deed. It is a forged one. Further Ex.B3 cannot be considered to be a valid document, since it is an unregistered document. As far as Ex.B4 receipt and Ex.B5 letter are concerned, the learned counsel would submit



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that they are not only fabricated but are also not related to the suit property. The suit was filed in the year 1998. Exs.B6 and B7 receipts are of the year 1996 and 1997 i.e., the receipts are issued just prior to two years of filing of the suit. The receipts are also not signed by the appellant / plaintiff, which shows that the respondents / defendants have created those documents only for the purpose of this case. The learned counsel further relied upon the evidence of PW3 and PW4 and contended that PW3 has stated that the respondents / defendants have never enjoyed the suit property. PW3 and PW4 have further categorically stated that the appellant / plaintiff was doing all the repair works and has been in possession and enjoyment of the suit property. Facts being so, the first Appellate Court blindfoldedly accepted the Ex.B3 Lease Deed and reversed the Judgement and Decree passed by the Trial Court. Hence, the learned counsel submitted that it is necessary to interfere with the Judgement and Decree passed by the first Appellant Court and the same is liable to be set aside.



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10. Notice has been served to the respondents 1 and 2. After service of notice, the first respondent / first defendant passed away. Her Legal Representatives are the second and third respondents and they are already on record. The Second Appeal was already dismissed as against the third respondent vide order dated 09.07.2018. The name of the second respondent has been printed in the cause list. However, there is no appearance on behalf of him. The Appeal is of the year 2002, even then, there is no appearance for the second respondent, which shows that he has no interest to contest the case. Therefore, this Court, after hearing the learned counsel for the appellant and perusing the oral and documentary evidence on record, proceeded to pass orders.

11. According to the respondents / defendants, 71 cents of land of the suit property was leased out to the first respondent's husband, namely, Kaliyamoorthi, by way of Ex.B3 Lease Deed dated 11.01.1973. Subsequently, the husband of the first respondent has passed away and the respondents / defendants are being in possession and enjoyment of the said 71 cents of land. In support of their claim, they have filed Ex.B4



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receipt issued for payment of Rs.81/- by Kaliyamoorthi to the Temple towards Lease, Ex.B5 letter written by Srilasri Velappa Thesigar to Kaliyamoorthi and Exs.B6 and B7 receipts issued for payment of Lease Amount. However, according to the appellant / plaintiff, they have never executed Ex.B3 Lease Deed. It was not signed by them. It is a forged one. They have also not issued any receipts Exs.B4, B6 & B7 as alleged by the respondents / defendants.

12. Admittedly, the appellant / plaintiff is the owner of the suit property. Even assuming that the Ex.B3 Lease Deed was signed and executed by the appellant / plaintiff, it is an admitted fact that the same was not registered legally. Lease created by way of an unregistered document is valid for only one year. Furthermore, Lease Deed was executed only against the husband of the first respondent / first defendant. Now he is no more. All these aspects would prove that the Ex.B3 Lease Deed is not a valid document and the same cannot be relied upon in the present case. That apart, during the oral evidence, DW1 himself has deposed that the respondents / defendants have no house in



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the 71 cents of land and only third parties are residing therein. Mere reading of the evidence of PW1 and PW3 would prove that the respondents / defendants are not in possession and enjoyment of the suit property. After considering the oral and documentary evidence in toto, this Court is of the opinion that the first Appellant Court ought not have given much weight for the unregistered document Ex.B3 Lease Deed. It is contradictory to the provisions of law. Further, the receipts Exs.B6 & B7 marked on the side of the respondents / defendants are of the year 1996 and 1997, which are just one year and two year prior to the date of filing of the suit. No document, whatsoever, has been marked for the period from 1975 to 1995. Furthermore, Exs. B6 & B7 have not been signed by the appellant / plaintiff. The first Appellate Court failed to consider all the above facts and committed a fatal legal error. In view of the above observations, this Court is of the firm view that the respondents / defendants are not in possession and enjoyment of any portion of the suit property. Admittedly, there is no dispute with regard to the title of the suit property. Since, the respondents / defendants have failed to establish that they are in possession and enjoyment of the suit



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property, certainly, based on the title, the presumption available is that the appellant / plaintiff is in possession of the suit property. Therefore, the appellant / plaintiff is entitled for the relief sought for in the suit. Accordingly, the substantial questions of law framed by this Court are answered in favour of the appellant / plaintiff.

13. Therefore, for the reasons stated above, the Judgment and Decree dated 07.03.2002 in A.S.No.43 of 2001 on the file of the Additional Subordinate Judge, Kumbakonam is set aside. The Second Appeal is allowed. The Judgment and Decree dated 09.09.1999 in O.S.No.165 of 1998 on the file of the District Munsif, Valangaiman is hereby upheld. No costs.

08.09.2023

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To

- 1.The Additional Subordinate Judge, Kumbakonam
- 2.The District Munsif, Valangaiman
- 3.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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KRISHNAN RAMASAMY, J.

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