



S.A.No.661 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.661 of 2003

1.Vaidhyalingam (died)

2.V.Sagunthala

3.V.Senthil Kumar

4.V.Vinoth Kumar

5.V.Vidhya

...Appellants

(Appellants 2 to 5 are brought on record as LR's of deceased sole appellant vide Court order dated 11.01.2008 in MP.Nos.1 and 2 of 2007)

VS.

1.Ko.Ve.Pannerselvam

2.Anandaraj

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree in A.S.No.4 of 2001 dated 24.09.2002 on the file of the Additional Sub Court, Kumbakonam confirming the Judgment and Decree in O.S.No.264 of 1995 dated 29.06.2000 on the file of the District Munsif cum Judicial Magistrate, Papanasam.



S.A.No.661 of 2003

For Appellants : Mr.R.Subramanian
For Respondents : Mr.K.Govindarajan
for M/s.Saravabhauman Associates

ORDER

The appellant is the plaintiff. The respondents are the defendants. The appellant died and hence his legal heirs are brought on records as appellants 2 to 5.

2. The deceased appellant / plaintiff had filed a suit against the respondents / defendants in O.S.No.264 of 1995 on the file of the District Munsif cum Judicial Magistrate, Papanasam for injunction, restraining the respondents / defendants from interfering with his peaceful possession and enjoyment of the suit property and the suit was dismissed by the Trial Court after trial. Challenging the Judgment and dismissal Decree passed by the Trial Court, the deceased appellant / plaintiff had filed an appeal before the Additional Subordinate Court, Kumbakonam in A.S.No.4 of 2001. The learned Additional Subordinate Judge after hearing the appeal and re-appreciating the facts, dismissed the appeal.



S.A.No.661 of 2003

Challenging the dismissal of the appeal, the deceased appellant / plaintiff has filed the present Second Appeal before this Court on raising the following substantial questions of law.

"1.Whether the lower Appellate Court was right in holding that Exs.A1 and A2 are not binding on the Civil Court, more so when the dispute between two rival claimants claiming as tenants?

2.Whether the lower Appellate Court was right in not independently advertng to the oral evidence of PW2 and PW3 before agreeing the conclusions reached by the Trial Court?

3.Whether the lower Appellate Court Judgment is vitiated due to non-compliance of mandatory requirements of Order 41 Rule 1 of CPC."

3. The learned counsel appearing for the appellants would submit that the suit property originally belonged to Rajagiri Kasimiya Trust



S.A.No.661 of 2003

(herein after referred as 'the Trust) and one Marimuthu Nadar took the suit property on lease and was in possession and enjoyment of the suit property as a lessee. Subsequently, he had sublet the suit property to the deceased appellant / plaintiff. On and from the date 16.12.1992, the deceased appellant / plaintiff was in possession and enjoyment of the suit property. The respondents / defendants though did not have any right over the suit property, attempted to trespass into the suit property. They came along with the henchmen and disturbed the possession and enjoyment of the deceased appellant / plaintiff, for which a Police complaint was lodged by the deceased appellant / plaintiff. Since the respondents / defendants are having man power, muscle power and money power, they would not abide by the law and therefore, the deceased appellant / plaintiff filed the suit for permanent injunction against them. Further, the learned counsel would submit that on the side of the deceased appellant / plaintiff, the Village Administrative Officer was examined as PW2 and he has deposed that the deceased appellant / plaintiff was in possession and enjoyment of the suit property. One Marimuthu, predecessor, in interest of the deceased appellant / plaintiff



S.A.No.661 of 2003

WEB COPY

was examined as PW3 and he has also deposed about the possession and enjoyment of the suit property by the deceased appellant / plaintiff. Though the respondents / defendants claim that they had taken sublease from the wife of Marimuth Nadar, there is no evidence to show that the Trust let out the property to Dheivakanniyammal and from Dheivakanniyammal, the respondents / defendants have taken the property on sublease. The order of the Special Deputy Collector and Tamil Nadu Agricultural Lands Record of Tenancy Rights Appellate Authority, Thanjavur Revenue Court in Ku.Oo.Pa.Me.Mu.No.28/97 marked as Ex.A1 clearly shows that the name of the deceased appellant / plaintiff was registered as cultivator and also as lessee and a Certified copy of the Record of Tenancy Rights in S.No.191/1 of 14 Maruthuvakudi Village, Papanasam Taluk marked as Ex.A2 proves the same. The evidence of PW1 to PW3 prove that the deceased appellant / plaintiff was in possession and enjoyment of the property. However, both the courts below failed to appreciate the oral and documentary evidence and dismissed the suit. Therefore, the appellants are before this Court.



S.A.No.661 of 2003

WEB COPY

4. The learned counsel appearing for the respondents / defendants would submit that the deceased appellant / plaintiff was never in possession of the suit property and the documents Exs.A1 and A2 are the documents obtained subsequent to the filing of the suit. Further, those documents have not attained finality, since the Trust had filed a revision petition against Ex.A1 before the District Revenue Officer and it is pending disposal. Therefore, those documents are not valid documents and they would not bind the respondents / defendants. He would submit that the suit property belongs to the Trust and one Dheivakanniyammal had taken the suit property on lease on 01.07.1992 and the said Dheivakanniyammal sublet the suit property to the respondents / defendants on 27.01.1993. Thereafter, on payment of Rs.26,410/- to Dheivakanniyammal and by giving the proceeds from the cultivating land to the Trust, on and from the date 27.01.1993, the respondents / defendants are in possession of the suit property. Therefore, the sublease of the respondents / defendants was recognized by the Trust. The appellants have not produced any document to prove that the Trust let out the suit property to Marimuthu Nadar and the said Marimuthu Nadar let



S.A.No.661 of 2003

out the suit property to the deceased appellant / plaintiff. In the absence of evidence to show that on the date of filing of the suit, the deceased appellant / plaintiff was not in possession of the suit property as sublessee, both the Courts have rightly appreciated the facts and dismissed the cases.

5. Heard both the learned counsels and perused the materials available on record.

6. While admitting the Second Appeal, this Court has formulated the following substantial questions of law.

"1. Whether the lower Appellate Court was right in holding that Exs.A1 and A2 are not binding on the Civil Court, more so when the dispute between two rival claimants claiming as tenants?"

2. Whether the lower Appellate Court Judgment is vitiated due to non-compliance of mandatory requirements of Order 41 Rule 1 of CPC."



S.A.No.661 of 2003

WEB COPY

7. The case of the deceased appellant / plaintiff is that the suit property belongs to the Trust and they have let out the same to one Marimuthu Nadar and Marimuthu Nadar was in possession and enjoyment of the suit property as lessee. The said Marimuthu Nadar sublet the property on 16.12.1992 and on and from the date, the deceased appellant / plaintiff was in possession and enjoyment of the suit property as a sublessee. The respondents / defendants have no right or title to disturb or dispossess the deceased appellant / plaintiff by trespassing into the suit property. Therefore, the deceased appellant / plaintiff had filed the suit.

8. The case of the respondents / defendants is that, admittedly, the property belongs to the Trust and they have leased out the same to one Dheivakanniyammal on 01.07.1992 and Dheivakanniyammal sublet the property to the respondents / defendants on 27.01.1993 on payment of consideration of Rs.26,410/-. The respondents / defendants have also paid the proceeds obtained from the cultivating land to the Trust.



S.A.No.661 of 2003

WEB COPY

9. The appellant is the plaintiff, who specifically claims right over the suit property stating that he was in possession as a sublessee. Though in the appellant side evidence, it is claimed that a Police complaint was given to safeguard the possession, such mention has not been made in the plaint and even otherwise, a copy of the complaint was not produced. The documents Exs.A1 and A2 are in the year 1998 and the suit was filed in the year 1995. Therefore, Exs.A1 and A2 are documents subsequent to the filing of the suit. The predecessor Marimuthu who was examined on the side of the deceased appellant / plaintiff as PW3 has deposed that he had sublet the property to the deceased appellant / plaintiff in the year 1992 by receiving Rs.22,410/-, for which, a document was also executed by him. However, the document was not marked before the Trial Court.

10. Though the respondents / defendants have stated that they admit the ownership of the property i.e., the property belongs to the Trust, they had denied that the Trust leased out the property to Marimuthu Nadar and from Marimuthu Nadar, the deceased appellant / plaintiff took possession as a sublessee. As stated by the respondents /



S.A.No.661 of 2003

defendants, the appellants have not produced any document to show that Marimuthu Nadar took the suit property on lease. That way, though the deceased appellant / plaintiff has stated that he had taken the suit property on sublease from Marimuthu Nadar, there is no evidence to prove the same. The respondents / defendants have stated that they have taken the sublease from Dheivakanniyammal. However, they have also not produced any document to show that Dheivakanniyammal had taken the suit property from the Trust on lease and from her, they took the property on sublease. Therefore, both the parties have not produced any direct evidence to prove that either Marimuthu Nadar or Dheivakanniyammal had taken the suit property on lease from the Trust and from them either the deceased appellant / plaintiff or the respondents / defendants have taken the suit property on sublease.

11. It is pertinent to note that the deceased appellant / plaintiff had filed the suit for bare injunction. It is settled proposition of law that the plaintiff has to prove his possession in the manner known to law. Unless the plaintiff is able to prove that on the date of filing of the suit, he was



S.A.No.661 of 2003

in possession, he shall not be entitled to get equitable relief 'injunction'.

In the instant case, though the respondents / defendants have not proved their possession by proper means, it is the duty of the appellants to prove their case. They cannot take advantage of the weakness of the defendant's case. Once the plaintiff had come to Court, it is his duty to prove his case. Therefore, the Trial Court rightly appreciated the evidence and found that the deceased appellant / plaintiff 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 had also re-appreciated the evidence and found that the oral and documentary evidence produced by the deceased appellant / plaintiff are not sufficient to hold that he was in possession of the suit property on the date of filing of the suit as a sublessee and therefore, he is not entitled for injunction as against the respondents / defendants. Therefore both the Courts below have rightly appreciated and re-appreciated the entire evidence and held that the deceased appellant / plaintiff has failed to prove his possession as on the date of filing of the suit. This Court finds no perversity or infirmity on the Judgments passed by the Courts below. Accordingly the



S.A.No.661 of 2003

substantial questions of law framed by this Court are answered against the appellants and in favour of the respondents / defendants.

12. In the result, the Second Appeal is dismissed. The Judgment and Decree in A.S.No.4 of 2001 dated 24.09.2002 on the file of the Additional Sub Court, Kumbakonam confirming the Judgment and Decree in O.S.No.264 of 1995 dated 29.06.2000 on the file of the District Munsif cum Judicial Magistrate, Papanasam is hereby upheld. No costs.

13.04.2023

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

mbi



S.A.No.661 of 2003

WEB COPY

To

- 1.The Additional Sub Court,
Kumbakonam.
- 2.The District Munsif cum Judicial Magistrate,
Papanasam.



WEB COPY



S.A.No.661 of 2003

P.VELMURUGAN, J.

mbi

S.A.No.661 of 2003

13.04.2023