



S.A.No.770 of 2004

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 28.08.2023

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THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.770 of 2004
and
C.M.P(MD)No.6003 of 2004

1.Raja Manickam Pillai

2.Rajamani Ammal

... Appellants/Appellants/
Defendants 1&2

-vs-

1.Ramamoorthy

2.Dhakashinamoorthy

3.Nagarajan

..Respondents/Respondents
Plaintiffs 2-3 & 3rd Defendant

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the judgment and decree dated 20.10.2003, passed in A.S.No.79 of 2002 by the II Additional Subordinate Judge, Trichirapalli, in confirming the judgment and decree dated 11.04.2002 passed in O.S.No.2091 of 1994 by the II Additional District Munsif, Trichirapalli.

For Appellants

... Mr.V.Raghavachary,
for Mr.S.Ramesh

For Respondents

... No appearance



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out to one Ponnambalam, who is the husband of one Rajamaniammal. In the suit properties, most of the coconut trees were planted by the said Ponnambalam. In these circumstances, the said Ponnambalam passed away and after his death, the defendants 1 and 2 are in possession and enjoyment of the suit property. Hence, the suit is not maintainable.

4.Before the trial Court, on the side of the plaintiffs, P.W.1 was examined and Exs.P1 to P11 were marked and on the side of the defendants, D.W.1 was examined and no document was marked.

5.The trial Court, after framing the issues and after considering the submissions made by both sides, came to the conclusion that the defendants are not the cultivating tenants and the plaintiffs are in possession and enjoyment of the property and decreed the suit. Aggrieved over the said decree and judgment passed by the trial Court, the defendants/ the appellants herein preferred an appeal before the first appellate Court and the first Appellate Court, after considering the submission made by the parties, confirmed the judgment and decree passed by the trial Court. Against which, the defendants have preferred this appeal.



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6. When the matter came up for hearing on 31.08.2012, this Court admitted the Second Appeal, on the following substantial questions of law:

1. When the plaintiffs had admitted that the defendant's father was in occupation of the property and was maintaining the Coconut Thope, should not the Courts below applied the provisions of the Cultivating Tenants Protection Act and dismissed the suit as not maintainable?

2. Whether the Courts below have not ignored the admission of P.W.1 and misconstrued the document under Ex.A10?

7. Today, when the matter is taken up for hearing, the learned counsel for the appellants is present and none appeared for the respondents. Since the matter is pending for more than 19 years, this Court is not inclined to keep the matter pending further and hence, the appeal is taken up for disposal.

8. According to the appellants/defendants 1 and 2, they are the cultivating tenants and they have inherited the cultivating tenants right immediately after the demise of the first appellant's father and thereafter,



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the subject land was sub-leased to one Nagarajan, who is the third respondent herein. The learned counsel appearing for the appellants would submit that the respondents have admitted before the Courts below that the first appellant's father was in occupation of the suit properties and they are nothing to do in the subject properties. Further, he would submit that the document produced before the Court below is not sufficient to prove the possession of the suit properties. He relied upon Exs.A8/copy of written statement in O.S.No.1103 of 1990 and A10/a reply notice of Rajamaniammal and submitted that in Ex.A10, they have given a reply for the stand that they have taken the possession of the suit scheduled properties due to the order of injunction granted in some other suit. The learned counsel would further submit that P.W.1 in his cross-examination deposed that he has not at all carried out anything, when the possession was recovered and taken over by the defendants. Therefore, the appellants are entitled to take possession under Tamil Nadu Occupants of Kudiyruppu (Protection from Eviction) Act, 1961 and hence, he prays for allowing the second appeal.

9.Heard the learned counsel appearing for the appellants and perused the materials available on record.



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10.It is made clear that the suit properties belonged to the respondents 1 and 2/plaintiffs and Ex.A1 is the sale deed and Ex.A2 is the patta issued in favour of the plaintiffs. Exs.A3 to A6 are the kist receipts paid for the years 1986, 1988, 1991 and 1992 respectively and all the documents have been marked through P.W.1. However, the appellants have strongly objected all those documents and contended that they are the owners of the properties and they are in possession and enjoyment of the same. But, no documentary evidence has been filed to substantiate the possession of the properties by the defendants. In Ex.A10, the appellants/defendants provided reply for the submission made in the legal notice of the respondents 1 and 2/plaintiffs, wherein they have expressed that they have taken the possession of the suit scheduled properties due to the injunction granted by this Court in a separate suit. However, in which suit injunction was granted and the particulars of injunction and the suit papers were not produced by the appellants. He relied upon the submission of P.W.1 where he had not stated anything when and how the possession was recovered. When the non-availability of the suit papers, what type of injunction was granted and since the difficulties faced subsequent to the possession of the



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appellants, the plaintiffs have filed the present suit stating that the defendants have made an attempt to disturb the possession of the plaintiffs.

11.A perusal of exhibits made it clear that the respondents 1 and 2/the plaintiffs are the owners of the suit properties. In the suit properties coconut trees were grown up. The contention of the plaintiffs was that only for the purpose of harvesting the coconut, the suit properties were temporarily leased out, but not cultivating under the Cultivating Tenants Act, to the father of the first appellant Ponnambalam and for that also, no documentary evidence has been produced. In the present case, though the said submission was made by the learned counsel for the appellants, no documentary evidence have been produced to substantiate their contention that they are the cultivating tenants. Even the appellants made a claim that they have inherited the cultivating tenants right, which has been transferred to the third respondent, for which, no document was filed. After considering all these aspects and the oral and documentary evidence, the Courts below passed the judgment and decree in favour of the plaintiffs.



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12.In these circumstances, this Court is of the considered view that the judgment and decree passed by the Courts below need not be interfered with, when this Court does not find any infirmity in the findings of the Courts below. Hence, the substantial questions of law are answered against the appellants and the Second Appeal is liable to be dismissed. Accordingly, the Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.08.2023

NCC : Yes/No

Index : Yes/No

Internet: Yes

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To

- 1.The Sub Judge,
Sivagangai.
- 2.The District Munsif,
Paramakudi.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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KRISHNAN RAMASAMY,J.

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S.A.No.770 of 2002

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