



S.A.No.822 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2023

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THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

S.A.No.822 of 2004

1.Baskaran

2.Chandra

...Appellants

vs.

Harikrishna Nadar

... Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 24.07.2003 in A.S.No.13 of 2002 on the file of the Subordinate Court, Thoothukudi reversing the Judgment and Decree dated 27.03.2002 in O.S.No.187 of 1999 on the file of the Principal District Munsif - cum - Judicial Magistrate Court, Tiruchendur.

For Appellants : Mr.D.Rajkumar
for M/s.Jeyapaul Associates

For Respondent : No appearance

JUDGMENT

Aggrieved by the Judgment and Decree passed in A.S.No.13 of 2002 on the file of the Sub Court, Thoothukudi, the defendants have preferred this Second Appeal.



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2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Trial Court.

3. According to the plaintiff, the suit property belongs to Noorjahan and Maarjan of Kayalpattinam. Originally, his father Pichamuthu Nadar was cultivating the suit property under lease. His father died sixty years before and thereafter, he has been cultivating the suit property. He is entitled to be benefited under the Tamil Nadu Cultivating Tenants Protection Act. In the Adangal which was granted by the Rajapathy Village Administrative Officer, his name is mentioned as a cultivating tenant. In the manure card issued by the Government in the year 1974, his name is mentioned as a cultivating tenant. He is making payments to the Rajapathy Village Agricultural Development Society and the receipts have also been filed. The plaintiff gives 5 Kottahs of paddy for each 'bogam' regularly to the owners. The defendants who did not have any right or title over the suit property interfered with his peaceful possession and enjoyment of the suit property on



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24.11.1999, which is illegal. Hence, the suit for permanent injunction.

4. Whereas, the defendants, by counteracting the plaint details would claim that originally the suit property belong to Mariya Ummal by a sale deed dated 05.02.1973 and she has leased out the property to the father of the first defendant Sadaiyan. After the life time of Sadaiyan, oral partition took place between the children of Sadaiyan and the leasehold right was assigned to the first defendant. Pursuant to the same, first defendant has been in possession and enjoyment of the suit property as a lessee. The second defendant is the first defendant's wife, who is unnecessary party to the suit.

5. Based on the rival pleadings, the Trial Court framed relevant issues.

6. On the plaintiff's side, the plaintiff and one Manuvel were examined as PW1 and PW2. Exs.A1 to A3 were marked. On the



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defendants' side, the first defendant has examined himself as DW1. Mariya Ummal, who is said to be the owner of suit property was examined as DW2. No documentary evidence was marked on the side of the defendants.

7. The Trial Court has very elaborately discussed the oral and documentary evidence and observed that the manure card was issued on 08.11.1974: as per the evidence of PW1, his father died only before ten years: the said card was issued with incorrect address and therefore, the manure card was rejected in toto. The Trial Court has also observed that the so called receipts issued by Rajapathy Village Agricultural Development Society for want of Survey Numbers and extent were also not believed and that PW1, in his evidence, has neither asserted nor spelt out from whom lease is taken clearly and chosen to dismiss the suit.

8. Against which, the plaintiff preferred an appeal before the Sub Court, Thoothukudi in A.S.No.13 of 2002. Apart from three documents marked on the plaintiff's side, yet another document,



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namely, Chitta extract was marked as Ex.A4. The first Appellate Court relied upon Ex.A4 Chitta and observed that the suit property belong to Noorjahan and Maarjan and concluded that Exs.A1 to A3 pertain to suit property and allowed the appeal, thereby, the original suit was decreed.

9. Aggrieved, the defendants have preferred this Second Appeal.

10. The learned counsel appearing for the appellants / defendants would vehemently contend that the documents marked before the Trial Court namely Exs.A1 to A3 and Chitta marked before the first Appellate Court namely Ex.A4 will not cloth with the plaintiff any right to possession and the Trial Court has rightly dismissed the suit. It is his further argument that the plaintiff has utterly failed to prove his case to the effect that he is in possession and enjoyment of the suit property as a cultivating tenant.



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11. Despite the receipt of notice, neither the respondent / plaintiff appeared nor he was represented through counsel.

12. The following substantial question of law arise for consideration.

"Whether the first Appellate Court is right in interpreting Ex.A4 for deciding the issue of ownership of the suit land and the status of the plaintiff as a cultivating tenant?"

13. The plaintiff Harikrishna Nadar filed a suit for grant of permanent injunction not to interfere with his peaceful possession and enjoyment of the suit property (extent of 34.5 ares in S.No.40 of Rajapathy Village of Kurumbur, SRO of Thoothukudi) against one Baskaran and his wife Chandra. All the three documents marked by the plaintiff Exs.A1 to A3 were thoroughly discussed by the Trial Court and it was held that the plaintiff has not proved his case and the documents marked by the plaintiff are not believable. As a result, the suit came to be dismissed.



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14. Law is well settled that a person who is in lawful possession alone can maintain a suit for permanent injunction. When a person seeks for an order of Court, he has to give the correct details while filing the suit.

15. Ex.A4 is the Chitta extract which stands in the name of one Noorjahan and Maarjan. It is not known whether the owners had knowledge about the filing of the suit by the plaintiff. The plaintiff has not stated as to how the property is owned by the so called owners. Ex.A1 is the manure card standing in the name of the plaintiff and Exs.A2 and A3 are the receipts issued by the Rajapathi Village Agricultural Development Society. The manure card will not reflect the fact that the plaintiff is in possession of the suit property. It is pertinent to note that the defendants have claimed that the suit property originally belongs to one Mariyam Ummal as per the sale deed dated 05.02.1973. When the title is disputed by the defendants' side, it is for the owner of the suit property to file a suit for declaration of title and for other relevant reliefs. The documents marked by the plaintiff does not show that



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he is the lessee of the true owners. Therefore, as per law, the plaintiff has to be non-suited. In view of the aforesaid discussions, the substantial question of law is answered against the plaintiff.

16. In fine, the Second Appeal stands allowed. The Judgment and Decree dated 24.07.2003 passed by the Sub Court, Thoothukudi in A.S.No.13 of 2002 is set aside. The Judgment and Decree dated 27.03.2002 passed by the Principal District Munsif cum Judicial Magistrate Court, Tiruchendur in O.S.No.187 of 1999 is confirmed. There is no order as to costs.

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

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To

- 1.The Subordinate Court, Thoothukudi
- 2.The Principal District Munsif cum Judicial Magistrate Court,
Tiruchendur
- 3.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI, J.

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