



S.A.No.895 of 2004

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2023

CORAM:

THE HONOURABLE MRS.JUSTICE KALAIMATHI

S.A.No.895 of 2004
and
C.M.P.(MD).No.6653 of 2004

Sri.V.Natarajan

... Appellant

-Vs-

1.Smt.A.Jayalakshmi

2.Radhakrishnan

3.Dhanapalan

... Respondents

PRAYER: The Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.125 of 1997, dated 28.11.2002 on the file of the Subordinate Judge, Kulithalai, against the reversing judgment and decree made in O.S.No.192 of 1994, dated 25.07.1997 on the file of the District Munsif Court, Kulithalai.

For Appellant : Mrs.J.Maria Roseline

For Respondents : Mrs.S.Vijayashanthi

for Mr.M.Ravi



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J U D G M E N T

Being aggrieved by the judgment and decree passed by the first appellate Court viz., Sub Court, Kulithalai in A.S.No.125 of 1997, dated 28.11.2002, the sole plaintiff herein has preferred this second appeal.

2. Parties are indicated as per their litigative status before the Trial Court.

3. The sole plaintiff V.Natarajan filed a suit in O.S.No.192 of 1994 before the District Munsif Court, Kulithalai against D.Chellayee, paternal grandmother and his sister A.Jayalakshmi Ammal for permanent injunction not to interfere with the possession and enjoyment of the suit property.

4. According to the plaintiff, the suit property belongs to the first defendant. The second defendant is the granddaughter of the first defendant. The first defendant has bequeathed her property in favour of the second defendant and her sons. The plaintiff is the brother of the



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second defendant. The plaintiff is a cultivating tenant under the first defendant on oral arrangement. This was admitted in the notice issued by the defendants on 23.08.1989. He is entitled to be benefited under the Tamil Nadu Act 25 of 1955. He has further claimed that at the time of filing of the suit, he had cultivated sesame. At the instigation of the enemies of the plaintiff, the defendants are threatening him that they may interfere with the peaceful possession. Hence, the suit.

5. Contending contra, the defendants have claimed that the plaintiff is not a cultivating tenant. The plaintiff filed a petition before the Trichy Revenue Court to record him as cultivating tenant and the said petition was dismissed.

6. Based on the aforesaid pleadings, the following issues were framed by the trial Court:

- (i) Whether the plaintiff was in possession of the suit property on the date of filing of the suit?
- (ii) Whether the plaintiff is entitled to the relief of permanent



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injunction?

(iii) What are the reliefs the plaintiff is entitled to?

7. At trial, the plaintiff has examined himself as P.W.1 and Exs.A1 to A5 were marked. The legal notice issued on behalf the defendants to the plaintiff is Ex.A1. The notice issued to the first defendant by Tiruchirapalli Revenue Court in R.A.No.863 of 1990 is Ex.R1.

8. The trial Court concluded that in Ex.A1, Notice, it is mentioned that the plaintiff has paid the rent for the year 1986 - 87. Therefore, the trial Court has come to the conclusion that the plaintiff is a cultivating tenant under the first defendant and chosen to decree the suit. Against the said judgment, an appeal was preferred before the Sub Court, Kulithalai by the second defendant. Upon consideration, the first appellate Court has concluded that the property belongs to Chellayee Ammal and the contention of the plaintiff that he attained tenancy under Jayalakshmi Ammal cannot be accepted. It was further held that Jayalakshmi Ammal does not have right to let out the property for rent, when Chellayee Ammal



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was alive. By observing that the conclusion of the trial Court that as per Ex.A1, the plaintiff is the tenant is incorrect and chosen to dismiss the appeal. This judgment was sought to be challenged by the sole plaintiff in the second appeal.

9. The learned counsel appearing for the appellant/plaintiff would strenuously argue that as per Ex.A1, Notice, it was very clear that he is in possession of the suit property as a cultivating tenant. Based on the said notice, the trial Court decreed the suit. It is his further argument that the first appellate Court has observed that the plaintiff attained tenancy only from the second defendant and misconceived the entire facts and thereby the appeal was allowed. It is also his further argument that as the plaintiff is a cultivating tenant and he is in possession of the suit property, he is entitled for an order of permanent injunction as prayed for.

10. Whereas the learned counsel appearing for the respondents/defendants would vehemently contend that if the plaintiff was a cultivating tenant, he should have proved his possession as he has laid



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the suit for the relief of possession. It is his further argument that if really the plaintiff had paid the rent, he should have filed the receipts. No document was filed by the plaintiff to show that he is a cultivating tenant. The petition filed before the Revenue Court to record his name as cultivating tenant was dismissed and the said fact was also not disclosed in the plaint would go to show that he is not a cultivating tenant. She would further argue that Ex.P1, Notice, indicates that he does not state the date of attornment of tenancy, will give a clear picture that he is not a cultivating tenant at present and prayed to allow the appeal.

11. Heard the rival submissions of Mrs.J.Maria Roseline, learned counsel appearing for the appellant/plaintiff and Mrs.S.Vijayashanthi, learned counsel appearing for the respondents/defendants.

12. The following substantial question of law arises for consideration:

Whether the first appellate Court is correct in holding that the plaintiff / appellant has not proved possession overlooking the admission



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of receipt of annual lease for the year 1986 - 87 and demanding the arrears for the period 1987 - 88, 1988 - 89 under Ex.A1, legal notice?

13. The brother of the second defendant viz., V.Natarajan filed the suit against his paternal grandmother Chellayee and his sister for the relief of permanent injunction not to interfere with the peaceful possession and enjoyment of the suit property claiming that he attorned tenancy under the first defendant, his grandmother.

14. That apart, these contentions have been totally counteracted by the defendants stating that he is not a cultivating tenant and he is not entitled for any benefits under Tamil Nadu Act 25 of 1955 and the fact that the petition filed before the Revenue Court which was dismissed was hidden and the suit was filed and hence, the suit is liable to be dismissed.

15. The plaint reads that on oral tenancy, he has been cultivating the suit property as tenant under the first defendant and it was denied by the defendants stating that he has attorned tenancy under the first



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defendant. Ex.A1 is the notice issued on behalf of the defendants to the plaintiff stating that for the year 1986 – 87, he has paid the rent to the first defendant and thereafter, for the years 1987 - 88 and 1988 – 89, he failed to pay the rents. Therefore, it is vividly made clear that as per the evidence of P.W.1 and Ex.A1, the plaintiff attorned tenancy under the first defendant and he has paid the rent only for the year 1986 - 87. The suit was filed in the year 1994. For the purpose of deciding the lis, the relevant portion of the cross-examination of P.W.1 is extracted hereunder:

“... 6 வருடம் முன்பு குத்தகைக்கு ஒப்புக்கொண்டேன்.

ரெவன்யூ கோர்ட்டில் குத்தகையை பதிவு செய்யுமாறு மனு கொடுத்தேன்...”

16. From the evidence of P.W.1 and other material records available, it appears that the plaintiff had attorned tenancy and paid the rent for the year 1986 - 87 alone. Therefore, at least for the subsequent years, he should have paid the rents. It is the case of the plaintiff that for the year 1987 – 88, he had paid the rents. To show that he is in possession and enjoyment of the suit property, no adangal extract is marked. The petition filed before the Revenue Court was dismissed and



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what is the fate of the appeal pending before the Revenue Court in R.A.No.863 of 1990 is not divulged by the plaintiff. When the plaintiff does not choose to pay the rent from 1987 onwards, can he be permitted to claim that he is in legal possession of the suit property. During the cross - examination, P.W.1 has also deposed that for the past five or six years, he is not cultivating the land. Therefore, when the person prays for the relief of permanent injunction, he is under obligation to show that his possession is legal. The plaintiff claims that he attorned tenancy under the first defendant, but no document is filed by him to prove that he has paid the rents. It is the defendants, who have admitted in their legal notice viz., Ex.A1 that he paid the rent for the year 1986 - 87. Except this legal notice, no other document is filed to prove the fact that he is in possession as a cultivating tenant and he has paid the rents and he has no arrears.

17. In the facts and circumstances, the first appellate Court has chosen to dismiss the appeal, which cannot be found fault with.



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18. Based on the aforesaid discussions, the substantial question of law is answered in favour of the defendants.

19. In the result, the suit in O.S.No.192 of 1994 stands dismissed, confirming the judgment and decree of the first appellate Court in A.S.No.125 of 1997. The Second Appeal stands dismissed. Considering the relationship between the parties, there is no order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

17.10.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No

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To

- 1.The Subordinate Judge,
Kulithalai.
- 2.The District Munsif Court,
Kulithalai.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI,J.

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