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S.A.No.1287 of 20...

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.11.2024

Coram:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.1287 of 2013

Executive Officer,
Virudhagreeswarar Devasthanam Temple,
Virudhachalam.

...Appellant

Versus

Vanatheen

...Respondent

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 06.02.2013 passed by the learned Principal Sub Judge, Virudhachalam in A.S.No.21 of 2012, reversing the judgment and decree dated 27.01.2012 passed by the learned II Additional District Munsif, Virudhachalam in O.S.No.195 of 2009.

For Appellant : Mr.T.S.Baskaran

For Respondent : Mrs.B.N.Sivagamasundari



JUDGMENT

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The appellant is the 1st defendant in the suit. The plaintiff had filed the suit in O.S.No.195 of 2009 for the relief of permanent injunction restraining the defendants, their men and agents from evicting her from the suit property except by due process of law. The trial Court had decreed the suit as against the defendants 2 and 3 and dismissed the suit as against the 1st defendant. Thereafter, the plaintiff preferred a First Appeal in A.S.No.21 of 2012. The First Appellate Court has allowed the First Appeal by granting the relief of injunction against the 1st defendant and decreed the suit in entirety. Aggrieved over the same, the 1st defendant has filed the present Second Appeal before this Court.

2. The short facts pleaded in the plaint are as under:

The suit property belongs to the 1st defendant temple. The plaintiff has put up a thatched house in the suit property and she has been in enjoyment of the same for more than 12 years by paying rent to the 1st defendant temple. She also got electricity connection and water connection and she has been paying the charges for the same. The suit property was



originally in the name of one Mr.V.G.Shanmugam. On 04.01.1997, the plaintiff approached the 1st defendant and stated that the suit property is in a dilapidated condition and the same is in possession of no one and moreover, the said Shanmugam also died. Thereafter, the 1st defendant temple permitted the plaintiff to construct a house in the suit property and the plaintiff's name is mutated in the rent records of the 1st defendant's temple. From 04.01.1997 onwards, the plaintiff has been in possession and enjoyment of the suit property. The defendants have got no right over the suit property, but, on 25.04.2009, the defendants 1 & 2 came to the suit property with their henchmen and quarrelled with the plaintiff. Hence, the plaintiff had filed the suit for permanent injunction restraining the defendants, their men and agents from evicting her from the suit property except by due process of law.

3. The brief averments in the written statement of the 1st defendant are as under:

It is right to state that the suit property belonged to the 1st defendant temple. Rest of the facts about tenancy in favour of the plaintiff are false. On 01.07.1973, one Mr.Appadurai S/o. Ekambaram had taken the suit



property on lease from 1st defendant on ground rent. On 07.02.1977, with the permission of said Appadurai, one Mr. Shanmugam had taken possession of the suit property and he was paying the rent to the 1st defendant temple. The rent records are still standing in the name of said Shanmugam and it is not correct to state that the plaintiff has been inducted as a tenant in the place of said Shanmugam. The alleged cause of action is false. The 1st defendant temple deserves right to evict the encroacher from the temple lands in accordance with Section 78 & 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The defendants 2 & 3 are also encroachers of the temple lands. Hence, the suit is liable to be dismissed.

4. On the basis of the above pleadings, the trial Court has framed the following issues:

- "1. வாதிக்கு தாவாவில் கோரியவாறு நிலைக்கால உறுத்துக்கட்டண பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?
2. வாதிக்கு கிடைக்கக்கூடிய இதர பரிகாரம் என்ன?"

5. During the course of trial, on the side of plaintiff, two witnesses



were examined viz., P.W.1 and P.W.2 and 13 documents were marked viz., Exhibits A1 to A13 and on the side of the defendants, 3 witnesses were examined viz., D.W.1 to D.W.3 and 9 documents were marked viz., Exhibits B1 to B9.

6. At the conclusion of the trial and considering the evidence available on record, the trial Court has decreed the suit as against defendants 2 and 3 and dismissed the suit as against the 1st defendant. However, the First Appellate Court has allowed the plaintiff's First Appeal by granting the relief of injunction against the 1st defendant and decreed the suit in entirety. Hence, the 1st defendant has filed the present Second Appeal by raising the following substantial questions of law:

“1. When the plaintiff had failed to prove by way of any oral or documentary evidence that he is in lawful possession of the property and that, he is the tenant of the 1st defendant, whether the learned District Judge was right in granting permanent injunction in favour of the plaintiff?

2. When the plaintiff himself had pleaded in the plaint that only the 2nd and 3rd defendant was disturbing her peaceful possession and enjoyment of the suit property, whether the learned District Judge was right in granting injunction as against the 1st defendant temple?”



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7. The fact that the suit property belongs to the 1st defendant temple is not in dispute. The contention of the plaintiff is that she has been in possession and enjoyment of the suit property on ground rent by putting up a superstructure over the same. However, the 1st defendant temple did not produce any document to show that the plaintiff was the tenant recognized by their temple. Even according to the plaintiff, the suit property was standing in the name of one Mr.V.G.Shanmugam who died subsequently. As the site was vacant, the plaintiff constructed a house therein and she is paying the ground rent and she is in enjoyment of the suit property. Though the plaintiff was not able to produce any tenancy agreement in her name, she could produce the rent receipts, electricity receipts and water charges paid by her, in respect of the suit property. In fact, the plaintiff could produce those receipts as well. However, those receipts are found to be standing in the name of deceased Shanmugam. But the fact that the rent has been paid by the plaintiff was not denied by the 1st defendant temple. Though the 1st defendant temple does not accept that the plaintiff is the lawful tenant over the suit property, the fact remains that the plaintiff has been in enjoyment of the suit property by paying the rent which was not denied.



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8. The learned counsel for the appellant submitted that when the disturbance to the plaintiff's possession over the suit property was alleged to have been caused by the defendants 2 & 3, the plaintiff ought not to have impleaded the 1st defendant temple. Even according to the plaintiff, she did not have any grievance in respect of the 1st defendant temple. D.W.1 who was examined on the side of the 1st defendant has admitted the signature in Exhibit A2 (Rent Receipt) produced by the plaintiff. So, the plaintiff's possession over the suit property is not denied by the 1st defendant temple. In such case, the 1st defendant temple should prove the possession of the plaintiff by accepting the tenancy agreement with her or to evict her from suit property by following due process.

9. Though the 1st defendant did not cause any direct disturbance to the possession of the plaintiff in view of her unsettled possession in respect of the suit property, the plaintiff has been disturbed by the defendants 2 & 3. The fact remains that the defendants 2 & 3 do not have any right of enjoyment over the suit property because the original owner of the suit property i.e., the 1st defendant temple is accepting the rent from the plaintiff



only. The trial Court has rightly appreciated the matter on the basis of the materials produced before it and arrived at a finding that the plaintiff is entitled to decree for injunction only against the defendants 2 & 3 and not against the 1st defendant.

10. As the owner of the suit property, the 1st defendant temple is always at liberty to evict its tenants, however, by following the due process of law. The First Appellate Court without appreciating the neutral stand of the 1st defendant, has chosen to grant the relief of injunction against the 1st defendant as well. Even the First Appellate Court had made an observation that the 1st defendant is at liberty to evict the plaintiff from the suit property.

11. Under the aforesaid circumstances, it is upto the plaintiff to file an appropriate application before the 1st defendant temple, to get an order of tenancy in her favour. As the 1st defendant has not caused any disturbance to the plaintiff's possession over the suit property, there cannot be any cause of action as against the 1st defendant. The plaintiff has proved her better possession over the suit property as against the defendants 2 & 3, though it may not be lawful as against the 1st defendant. Thus, the substantial



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questions of law 1 & 2 are answered.

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12. In view of the above discussions, this Second Appeal is partly allowed and the judgment and decree dated 06.02.2013 passed in A.S.No.21 of 2012 by the learned Principal Sub Judge, Virudhachalam is set aside and the judgment and decree dated 27.01.2012 passed in O.S.No.195 of 2009 by the learned II Additional District Munsif, Virudhachalam is restored. However, there shall be no order as to costs.

15.11.2024

jrs/mrr

Index : Yes/No

Neutral Citation: Yes/No

Speaking Order (or) Non-Speaking Order

To

1.The Principal Sub Judge,
Virudhachalam.

2.II Additional District Munsif,
Virudhachalam.

R.N.MANJULA, J.

jrs/mrr



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