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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.1345 of 2013

S.P.S.Harikrishnan

... Appellant

Vs.

Arulmigu Vanmikanatha Swamy Thirukoil,
rep. by its Executive Officer,
Thirunaiyapar,
Mankudi Post,
Thiruvarur Taluk,
Thiruvarur District.

.. respondent

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 31.01.2013 in A.S.No.16 of 2012 on the file of the learned Subordinate Judge at Tiruvarur by reversing the judgment and decree dated 10.12.2011 passed in O.S.No.97 of 2010 on the file of the learned District Munsif at Tiruvarur.

For Appellant

: Ms.T.Sreelekha for Mr.D.Rajagopal

For Respondent

: Ms.V.Suguna for Mr.C.Munuswamy

JUDGMENT

This Second Appeal has been preferred against the Judgment and decree dated 31.01.2013 in A.S.No.16 of 2012 on the file of the learned



Subordinate Judge at Tiruvarur by reversing the judgment and decree dated 10.12.2011 passed in O.S.No.97 of 2010 on the file of the learned District Munsif at Tiruvarur.

2. For the sake of convenience, the parties will be hereinafter referred to their ranks in the suit.

3.The plaintiff is the Arulmigu Vanmeeganathar Swamy Temple, Thiruneiper, Thiruvarur District. The plaintiff is the owner of the property situated in S.Nos.250/1, 250/2 and 250/3 Thiruneiper village, Thiruvarur District. The defendant is the lessee of the property. Insofar as the relationship of the parties are concerned, there is no dispute.

4.The plaintiff temple presented a suit in O.S.No.96 of 2010 before the trial Court, on the ground that it had given the aforesaid lands on lease to the defendant with a condition that the defendant shall use the lands only for raising punja crops and to pay the benefits arising therefrom. In and over the suit properties, there are Bamboo trees, Kattu



Karuvai trees and other trees, over which the defendant has no right. It is the specific case of the plaintiff that at the time of granting of lease for fasli in the year 1419 on 18.03.2010, a specific condition was imposed that the defendant must not cut the trees existing in and around the leased property, but should enjoy the benefits derived by cultivation.

5. On 24.07.2010, since the defendant was cutting and removing the trees, the Accountant of the Temple resisted the same. However, the defendant being a powerful person, he did not heed, but continued his acts. Hence the suit.

6. The plaintiff sought for two reliefs, viz., permanent injunction restraining the defendant from cutting the trees and also for permanent injunction not to put up any construction over the suit property.

7. This suit was resisted by the defendant, by way of Written Statement, *inter alia*, stating that he had planted the trees and therefore, he is entitled to cut and remove the same and there was no condition put



up restricting the defendant from cutting down the trees. Apart from this, the defendant has also stated that he was not going to put up any construction in and over the suit property and that there was no cause of action to file the suit. Hence, he sought for dismissal of the suit.

8. During the course of trial, on the side of the plaintiff, PWs.1 to 4 were examined and Exs.A1 to A8 were marked. On the side of the defendant, DWs.1 to 3 were examined and Exs.B1 to B3 were marked.

9. On the basis of oral and documentary evidence, the learned District Munsif at Tiruvarur, dismissed the suit on the grounds, viz.,

(i) The original of Ex.A4 (pagudhi receipt said to have been issued to the defendant with a condition that the defendant should not cut down the trees in the suit property) had not been produced by the plaintiff;

(ii) Since the defendant has stated that he was not putting up any construction, there was no cause of action for the suit.



10. On appeal, the said judgment and decree was reversed and hence the present Second Appeal.

11. This Second Appeal was presented before this Court on 17.12.2013 and was admitted on the following substantial questions of law:

(i) Whether the lower Appellate Court is right in holding that non production of original Ex.A4 is fatal to the respondent/plaintiff case?

(ii) Whether has not the lower Appellate Court which is trial Court of facts committed a grave error in not advertng to the vital oral and documentary evidence adduced by the plaintiff?

(iii) Whether the lower Appellate Court was right in applying the concept burden of proof in deciding the appeal suit?

12. Heard Ms.Sreelekha, for Mr.D.Rajagopal, learned counsel for the appellant and Ms.V.Suguna for Mr.C.Munusamy, learned counsel for the respondent.



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13.I have carefully gone through the records and considered the arguments on either side.

14. I would first deal with the issue raised by Ms.Sreelekha, that the original of Ex.A4, which had imposed the condition had not been produced by the plaintiff. It is not in dispute that the defendant/appellant is the lessee and the plaintiff/respondent is the lessor. The lessor has issued a receipt Ex.A4 dated 18.03.2010, imposing certain conditions. The defendant, who had received the lease had failed to produce the original of the receipt. When the landlord issued a receipt, the original will be certainly available with the lessee and it will not be available with the landlord. This is because, he has already parted with the same. It is the duty of the lessee to produce the original of the Miscellaneous receipt Ex.A4 dated 18.03.2010 before the Court in order to substantiate that no condition had been imposed by the lessor at the time of granting lessee for the fasli year 1419. However, the defendant had unfortunately failed to produce the same when the original is available with him. When the



same has not been produced before the Court, it will have to presume that if the original be produced, it would have gone against the defendant and hence, in order to avoid scrutiny of the Court, the defendant has purposefully not produced the same before the Court.

15. Insofar as production of the photocopy is concerned, Ms.Sreelekha is right. Secondary evidence in the absence of the original, cannot be relied upon. As stated above, the original is available with the defendant and the plaintiff cannot be expected to perform the impossible by producing the original from the records available with the other side. Therefore, the plaintiff has produced a photostat copy of Ex.A4. If the said document does not contain any condition imposed on the defendant in regard to cutting of trees in the leased property, the defendant could have very well produced the original and defeated the cause. Unfortunately, the defendant did not do so. Therefore, the lower Appellate Court had rightly placed the burden on the defendant to produce the original and I do not find any error or flaw on this aspect.



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16.Ms.Sreelekha, would submit that the Village Administrative Officer under Ex.B2 had surveyed the lands and had concluded that the crops raised therein belongs to Mr.Hari Krishnanan, the defendant herein. The law of this country does not enable the Village Administrative Officer to issue certificates which decide the ownership of properties. They have been employed by the Government only for the purpose of revenue collections and certain other duties in compliance with both the Standing Orders and relevant Revenue Manuals. The Village Administrative Officer does not have jurisdiction to survey and find out as to whom the trees belonged to. Therefore, I am not able to place reliance upon Ex.B2 in order to come to a conclusion that the trees were grown by the defendant.

17.Having come to such conclusion that the defendant has failed to prove that he had planted the trees, subsequent to the lease, the conclusion that I have to arrive at is whether the lessee is entitled to cut and remove the trees when he has no such specific authorisation by the lessor. As per Section 108 of the Transfer of Property Act, if the lessee



(defendant) had proved that he had planted the trees, he would be entitled to cut and remove the same. Unfortunately, in the present case, he had failed to do so. Therefore, what has been grown on the land, should be belong to the owner of property, i.e. the plaintiff in the present case.

18. In the light of the above discussion, all the substantial questions of law which have been framed, are answered against the appellant/defendant and in favour of the plaintiff/respondent. Consequently, the Judgment and decree dated 31.01.2013 in A.S.No.16 of 2012 on the file of the learned Subordinate Judge at Tiruvarur in reversing the judgment and decree dated 10.12.2011 passed in O.S.No.97 of 2010 on the file of the learned District Munsif at Tiruvarur are hereby confirmed.

19. Accordingly, the Second Appeal fails and it is dismissed. Consequently, connected miscellaneous petition is closed. Costs throughout.



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03.01.2024

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V.LAKSHMINARAYANAN.J,

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To

- 1.The Principal Subordinate Judge at Tiruvannamalai
- 2.The Additional District Munsif, Tiruvannamalai

SA.No.1345 of 2013

22.01.2024