



S.A.No.59 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 07.03.2024	Judgment Pronounced on 15.03.2024
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THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.59 of 2018
and C.M.P.No.1321 of 2018

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.. Appellant

Vs.

1.Padmavathy

2.Durai Murugan

3.Kovendan (Died)

..Respondents

[R3 died, recorded vide Court order dated 23.02.2024 made in S.A.No.59 of 2018 and C.M.P.No.1321 of 2018]

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 20.10.2016 passed in A.S.No.48 of 2014 on the file of the Subordinate Judge, Nagapattinam, reversing the judgment and decree dated 23.09.2014 made in O.S.No.81 of 2009 on the file of the District Munsif cum Judicial Magistrate, Vedaranyam.



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For Appellant : Mr.S.Senthil

For Respondents

For RR1 & 2 : Mr.K.Govi Ganesan

For R2 : Died

JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 20.10.2016 passed in A.S.No.48 of 2014 on the file of the Subordinate Judge, Nagapattinam, reversing the judgment and decree dated 23.09.2014 made in O.S.No.81 of 2009 on the file of the District Munsif cum Judicial Magistrate, Vedaranyam.

2.The defendant in a suit for recovery of possession, mandatory injunction and mesne profits is the appellant herein.

3.The parties are described as per their litigating status before the Trial Court.

4.The case of the plaintiffs is that the suit property, namely 0.03 cents out of 0.55 cents owned by the Temple Idumbavanam Arulmighu



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Sadhgurunathaswamy Devasthanam and the plaintiffs were lessees under the Temple and that the defendant was permitted to reside in the said property, as a licensee, in the year 2001 and according to the defendant, he has constructed a hut in the said property. The plaintiffs caused notice of termination of the said permissive occupation to the defendant and sought for recovery of possession. Since the defendant did not come forward to vacate and hand over vacant possession, the plaintiffs filed the suit.

5.The defendant filed a written statement stating that her husband is a lessee under the Temple and the defendant denied the claim of the plaintiffs and sought for dismissal of the suit.

6.The Trial Court dismissed the suit, aggrieved by the said dismissal of the suit, the 3rd plaintiff preferred a First Appeal in A.S.No.48 of 2014. The First Appellate Court reversed the findings of the Trial Court and directed the defendant to vacate and hand over the vacant possession. Aggrieved by the reversal findings rendered by the First Appellate Court, the defendant has come up with the present Second Appeal.



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7.The above Second Appeal was admitted by this Court on 07.12.2023, on the following substantial question of law:

Whether the findings of the First Appellate Court that the plaintiffs/respondents proved their lease hold right over the suit property is vitiated by misreading of evidence and non-consideration of material evidence available on record?

8.I have heard Mr.S.Senthil, learned counsel for the appellant and Mr.K.Govi Ganesan, learned counsel for the respondents 1 and 2 and perused the materials placed before me.

9.Mr.S.Senthil, learned counsel for the appellant would state that the Trial Court had judiciously assessed the oral and documentary evidence and dismissed the suit. However, the First Appellate Court, without even considering the material evidence produced by the defendant and on a total non application of mind and non consideration of vital documentary evidence, reversed the well considered findings of the Trial Court. He would also contend that as per the provisions under Section 77 of Hindu Religious and Charitable Endowments Act, there is a bar of suit and therefore, the suit was liable to be dismissed.



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10.Mr.K.Govi Ganesan, learned counsel for the respondents 1 and 2 would submit that admittedly, the defendant was a lessee/permissive occupant under the plaintiffs and he was obliged to vacate the possession as and when required by the plaintiffs, the ownership of the land being with the Temple was no avail to the defendant since the contract is only between the plaintiffs and the defendant. The learned counsel for the respondents would also state that the First Appellate Court has rightly reversed the findings of the Trial Court and moreover, the bar under Section 77 of Hindu Religious and Charitable Endowments Act would not operate, since the Temple is not even a party to the suit and admittedly, it is a dispute *inter se* private individuals.

11.I have considered the rival submissions put forth by the learned counsels on either side.

12.Though it is a case of the plaintiffs that the defendant, who was a lessee, has been inducted into the suit property, however, the case of the defendant is that the defendant's husband was a lessee and who had put up a



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but in the suit property directly under the Temple and therefore, the suit claim was resisted.

13.The plaintiffs relied on Ex.A2 to A7 for establishing their claim. Ex.A2 to Ex.A6 are Kist receipts from 1967 to 1980 and Ex.A7 is the certificate issued by the Executive Officer, Sathgunatha Swami Thirukoil, Idumbavanam. However, the said document is subsequent to the filing of the suit and therefore, it cannot be taken into consideration. On the side of the defendant, the defendant had exhibited Ex.B1 to Ex.B8. Ex.B7 is a vital document which has been filed on the side of the defendant, which is the reply received from by an application under Right to Information Act, seeking answers to specific questions pertaining to the suit property. The response to the RTI reveals the following information:

- (i) The plaintiffs are not lessees under the Temple.
- (ii) The plaintiffs have not paid any lease rents and
- (iii) The Executive Officer does not have any authority to certify or issue Possession Certificate to persons who are not lessees.



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14.The Trial Court, based on the said Ex.B7, found that the plaintiffs had not established that the defendant was only a permissive occupant and proceeded to dismiss the suit. However, I find that the First Appellate Court has totally ignored Ex.B7, which has provided vital information regarding the entitlement of the plaintiffs to any right in the suit property and also shifting the burden on the defendant to allow the appeal. In a suit of this nature, where the plaintiffs right, title and interest to the suit property to seek for recovery of possession, mandatory injunction and also for mesne profits, the burden is only on the plaintiffs to establish that the plaintiffs were entitled to the suit property and consequently maintain the suit.

15.The Trial Court has elaborately discussed the right and entitlement of the plaintiffs and has also considered the oral and documentary evidence adduced by the parties. However, the First Appellate Court, without even considering Ex.B7, and on the contrary, considering Ex.A7, held that the plaintiffs had better right than the defendant, and therefore, the plaintiffs were entitled to decree. When the First Appellate Court being the final Court of facts, has failed to consider the effect of Ex.B7, which has been disputed and challenged by the plaintiffs, the decision arrived at by the First Appellate



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Court is clearly perverse and illegal and liable to be interfered with under Section 100 of Code of Civil Procedure. In fine, the substantial question of law is answered in favour of the appellant.

16.In the result, the Second Appeal is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

15.03.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
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To

1. The Subordinate Judge, Nagapattinam.
- 2.The District Munsif cum Judicial Magistrate, Vedaranyam.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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P.B.BALAJI, J.

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Pre-delivery judgment made in

S.A.No.59 of 2018

& C.M.P.No.1321 of 2018

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