



S.A.No.639 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **13.03.2024**

CORAM

THE HONOURABLE Ms. JUSTICE **P.T.ASHA**

S.A.No.639 of 2021

Durai @ C.S.Natarajan (died)

1. Saraswathi
2. Kamalakannan

... Appellants

-Vs-

K.Rathinamala

... Respondent

PRAYER: Second Appeal filed under the Section 100 of Code of Civil Procedure Code, 1908, to set aside the judgement and decree dated 29.03.2019 made in A.S.No.26 of 2017 on the file of the Court of the learned I Additional Subordinate Judge, Coimbatore, by confirming the judgement and decree dated 31.03.2016 made in O.S.No.2550 of 2006 on the file of the Court of the learned III Additional District Munsif, Coimbatore.

For appellants : Mr.S.Karthikei Balan

For respondent : Mr.J.Arokhiaaraj

JUDGMENT

The appellants have filed this second appeal challenging the



S.A.No.639 of 2021

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judgment and decree passed by the learned I Additional Subordinate Judge, Coimbatore, in A.S.No.26 of 2017, in and by which, the learned Judge had confirmed the dismissal of the suit filed by the sole plaintiff in O.S.No.2550 of 2006 before the learned III Additional District Munsif, Coimbatore.

2. The short facts required for deciding this second appeal are set out hereinbelow and the parties are referred to in the same ranking as before the Trial Court and the appellants herein are referred as appellants.

FACTS OF THE CASE:

2.1. The plaintiff has filed the above referred suit for permanent injunction restraining the defendant, her men and agents, from interfering with his peaceful possession and enjoyment of the suit property. It is his case that the suit property is an agricultural property, in which, he is a tenant. The property belongs to his



S.A.No.639 of 2021

WEB COPY

mother Mayilathal. The plaintiff would submit that he was inducted as a tenant on 07.05.1992 and an advance of Rs.50,000/- was paid. The annual rent was fixed at a sum of Rs.9,000/-. The plaintiff would submit that he is in possession and enjoyment of the property from 07.05.1992 as a cultivating tenant. The tenancy was also reduced into writing under a lease agreement dated 09.05.1992. It is the further case of the plaintiff that he was residing in a farm house in the suit property. He is entitled to the benefits conferred under the Tamil Nadu Cultivating Tenants Protection Act, 1955.

2.2. The defendant had purchased the suit property from his mother Mayilathal. However, the defendant is residing in Kothagiri in the Nilgiris District. The plaintiff is paying the rent regularly and since the defendant was in cordial terms with the plaintiff, no receipt was issued for payment of rent. The plaintiff and his family members were contributing their own physical labour for cultivating the suit property.



S.A.No.639 of 2021

WEB COPY

2.3. While so, the defendant's husband pressurized the plaintiff to vacate the suit property and attempts were made to demolish the property and throw the plaintiff away. When the plaintiff approached the police, they had washed their hands off by stating that it is civil dispute. The plaintiff died on 23.02.2002 pending the suit and his wife and son were brought on record as his legal representatives who are the appellants herein. The suit had been filed for the reliefs stated *supra*.

2.4. The defendant had filed a written statement *inter alia* denying the possession of the property by the plaintiff. It is the case of the defendant that she had purchased the property from Mayilathal under the registered sale deed dated 08.09.1995 and was put in possession and enjoyment of the suit property immediately. The defendant would further submit that after the purchase of the property and the filing of the suit, the plaintiff has filed an application before the Revenue authorities to register him as a



S.A.No.639 of 2021

cultivating tenant. Therefore, it is the contention of the defendant that the lease deed cannot be received in evidence as it is not a registered one and on the date of purchase ie., on 08.09.1995, there was no lease in force and the plaintiff was not in possession of the property.

2.5. An additional written statement was also filed by the defendant, after the legal representatives of the plaintiff were brought on record. The plaintiff has come forward with the contention that he is paying the rent to the defendant, despite which, the defendant is attempting to vacate the plaintiff and his family from the suit property. Therefore, the plaintiff has filed a suit for permanent injunction. The defendant, on the other hand, had stated that she had purchased the property and was in possession of the same and the plaintiff was not in possession of the same. Further, the plaintiff has filed an application to register himself as a cultivating tenant after the filing of the suit. Therefore, the suit



S.A.No.639 of 2021

deserves to be dismissed.

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TRIAL COURT:

3. The Trial Court had framed issues and after considering the pleadings and evidence on record, had recast the issues as follows:-

“1)Whether the plaintiff is in possession and enjoyment over the suit property?

2)Whether the plaintiff is entitled permanent injunction as prayed for?

3)To what other relief is entitled to?”

4. On the side of the plaintiff, two witnesses were examined and Exs.A1 to A16 were marked. D.W.1 was examined on the side of the defendant and Exs.B1 to B6 were marked.

5. The learned Judge, on perusing the exhibits filed by the plaintiff as P.W.1, held that Mayilathal, the mother of the plaintiff and the person who is said to have inducted him as tenant in the



S.A.No.639 of 2021

premises, was not examined on the side of the plaintiff. On the contrary, the plaintiff had examined one Najappan as P.W.2 who claims to be attesting witness of Ex.A1 – lease deed. However, the learned Judge had observed that the evidence of P.W.1 and P.W.2 were contradictory.

6. The learned Judge observed that though the property in question is situate in Coimbatore, the stamp paper is purchased in Srivilliputhur on 05.05.1992 and the documents were written at Coimbatore on 09.05.1992. P.W.1 deposed that he had purchased the stamp paper when he had gone to the temple at Srivilliputhur. Further, the recitals in Ex.A1 would indicate that an oral agreement to lease out the property had been negotiated on 07.05.1992 and an advance amount of Rs.50,000/- had been paid on that day. The learned Judge, therefore, found that the lease of the property through oral agreement two days prior to the execution of the document appears to be created for the purpose of this case. The plaintiff has



S.A.No.639 of 2021

not produced any evidence to prove the payment of advance or rents.

The best evidence of Mayilathal has not been made available to the Court. Though the plaintiff has pleaded that he is as a cultivating tenant, there is no evidence to show that he is a cultivating tenant from the year 1992.

7. The learned Judge also observed that Ex.B6 – Well in the suit property has not been in working condition for the last four years and the documents filed on the side of the plaintiff to prove the possession do not correlate with the suit property. Therefore, the Court had held that the plaintiff had not come forward with the true facts. The learned Judge has also taken note of the fact that the address given in this document refers to another property. Consequently, the Court had come to the conclusion that the plaintiff has not proved his right to the entire property, but, only to an extent of 0.31 cents for the purpose of Panchapayan temple and pathway. The suit was partly decreed granting injunction restraining



S.A.No.639 of 2021

the defendants in respect of the suit property measuring 0.31 cents comprised in S.No.377 and with reference to the remaining extent of the suit property, the suit was dismissed.

LOWER APPELLATE COURT:

8. Challenging that portion of the decree that went against the plaintiff, the plaintiff had filed an appeal in A.S.No.26 of 2017 on the file of the Additional Subordinate Court, Coimbatore.

9. The learned Judge observed that if the contentions of the plaintiff that he is a cultivating tenant in the suit property is true, then, this fact would have been mentioned in Ex.B6 – sale deed. However, the averment in Ex.B6 does not refer to the lease deed dated 09.05.1992 Ex.A1. That apart, the learned Judge had also drawn adverse inference for the non-examination of Mayilathal.

10. As regards possession, it was also held that the plaintiff



S.A.No.639 of 2021

who had come forward with the contention that from the year 1992, they have been enjoying the property as cultivating tenant has failed to prove the same. Consequently, the appeal was dismissed.

11. Challenging the same, the appellants are before this Court.

12. The matter was being adjourned on the last four occasions and was not taken up for admission. Today, the matter which has been listed was taken up for final argument.

13. The learned counsel appearing on behalf of the appellants once again reiterates the fact that the plaintiff is a cultivating tenant and has taken out an application. Therefore, his possession has to be protected. He would submit that the documents filed by him have been totally overlooked by the Courts below. He would also submit that the plaintiff has already moved an



S.A.No.639 of 2021

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application before the Revenue Officer under the Tamil Nadu Cultivating Tenants Protection Act, to declare him as a cultivating tenant and therefore, till such time, his possession has to be protected.

14. Heard the learned counsel on either side and perused the materials available on record.

DISCUSSION:

15. The Trial Court, after extensively considering the evidence let in by the plaintiff and the defendant, has dismissed the suit except with reference to 0.31 cents. The Courts below had held that the plaintiff had not proved that he is a cultivating tenant and no document whatsoever was produced to show that he is cultivating on it. Even the documents filed by him to prove his possession did not relate to the suit property. The plaintiff has not examined his mother, Mayilathal, as a witness on his side since it is his case that he has



S.A.No.639 of 2021

been inducted by her as a tenant. Therefore, the plaintiff has kept away the best evidence and adverse inference has to be drawn.

16. The plaintiff had also taken a stand that he has been paying the lease rent to the defendant as well. Even that statement has not been proved. The patta pass book which has been produced by the plaintiff does not relate to the suit schedule property and the defendant had filed documents to show that patta has been mutated in her name. The suit is one for possession and for injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property, for which purpose, it is imperative that the plaintiff proves the possession.

17. The Trial Court, on considering the evidence, has come to the conclusion that the plaintiff has proved possession only with reference to 0.31 cents and has granted injunction with reference to the same. The Lower Appellate Court had exclusively considered



S.A.No.639 of 2021

the alleged lease agreement -Ex.A1 and has found several reasons to disbelieve the said document.

18. Since the Courts below, being the Court of facts have concurrently held against the plaintiff on perusing the documents, this Court, sitting in the second appeal under Section 100 of the C.P.C. need not once again revisit the evidence.

Accordingly, this second appeal stands dismissed since the appellants have not made out any substantial question of law. No costs.

13.03.2024

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
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To

1.The I Additional Sub Judge, Coimbatore.

2.The III Additional District Munsif, Coimbatore.



S.A.No.639 of 2021

WEB COPY

3.The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

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S.A.No.639 of 2021

13.03.2024