



S.A.No.322 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 06.02.2024	Judgment Pronounced on 01.03.2024
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THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.322 of 2017
and C.M.P.No.7708 of 2017

Chinnapillai

.. Appellant

Vs.

Nagarajan

..Respondent

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 10.01.2017 passed in A.S.No.24 of 2016 on the file of the Additional Sub Court, Mayiladuthurai, reversing the judgment and decree dated 01.06.2016 made in O.S.No.73 of 2011 on the file of the Principal District Munsif, Mayiladuthurai.

For Appellant : Mr.M.Nuzhath Khanam
for Mr.I.Kowser Nissar

For Respondents : Mr.P.Santhosh
for Mr.K.Goviganesan



S.A.No.322 of 2017

JUDGMENT

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This Second Appeal has been filed against the judgment and decree dated 10.01.2017 passed in A.S.No.24 of 2016 on the file of the Additional Sub Court, Mayiladuthurai, reversing the judgment and decree dated 01.06.2016 made in O.S.No.73 of 2011 on the file of the Principal District Munsif, Mayiladuthurai.

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

3.The defendant in a suit for recovery of possession is the appellant herein. The suit was initially dismissed by the Trial Court. However, the First Appellate Court allowed the appeal and granted relief in favour of the plaintiff.

4.The plaintiff claimed that the suit property is a vacant property classified as Punjai land and same belong to Mayiladuthurai Mayuranathaswamy Temple. According to the plaintiff, the lands were in possession of the plaintiff's father, Chokkalingam, who had executed a



S.A.No.322 of 2017

Karavolai in favour of the plaintiff and his brothers in 1976 and 50 Kuzhies were allotted to the plaintiff. The plaintiff has been paying Paguthi regularly to the Temple and his name has also been registered in the Tenant's Register with the Temple. According to the plaintiff, the western side of the property is also an extent of 50 Kuzhies and the defendant has built a house and is residing there. However, since the defendant attempted to encroach into the suit property and also raised 6 feet length compound wall on the northern side of the suit property, the plaintiff has been constrained to file a suit for recovery of possession, after his unsuccessful complaint before the Mayiladuthurai Police Station.

5.The defendant filed a written statement admitting that the land was belonging to the Mayiladuthurai Mayuranathaswamy Temple and the father of the plaintiff was in possession of the suit property. However, the allegations in the plaint that in the year 1976, the properties were divided through Karavolai is denied. It is the case of the defendant that even though the father divided his properties to his children and one portion was allotted to the plaintiff, subsequently, the property allotted to the plaintiff was also handed over to the defendant by the father himself and right from 1977, the plaintiff has not been in possession and it is only the defendant, who has been



S.A.No.322 of 2017

in possession of the suit property. The defendant therefore prayed for dismissal of the suit.

6.The Trial Court dismissed the suit, as against which, the plaintiff preferred First Appeal. The First Appellate Court allowed the appeal and thereby decreed the suit as prayed for. Aggrieved by the reversal finding rendered by the First Appellate Court, the defendant is on Second Appeal.

7.The above Second Appeal was admitted on 07.06.2017 on the following substantial question of law:

1) Whether the finding of the Lower Appellate Court is correct in law in holding that the plaintiff is having right, title and possession, overlooking the documentary evidence and testimony of P.W.3/the temple officials?

8.The learned counsel for the appellant would state that the plaintiff and the defendant are brothers. The learned counsel for the defendant would state that the Trial Court had rightly discussed the relevant circumstances, which would germane to decide the suit and he would also place reliance on the report of the Advocate Commissioner and Surveyor Plan, which clearly



S.A.No.322 of 2017

established that the possession was only with the defendant and not with the plaintiff. He would also refer to portions of the evidence, where the plaintiff admitted that he is not residing in the suit property, but elsewhere and the finding of the Trial Court that in the absence of the original owner, namely the temple, the plaintiff was not entitled to relief of recovery of possession from the defendant.

9.Per contra, the learned counsel for the respondent would submit that the First Appellate Court has rightly re-appreciated the evidence and came to the conclusion that it was only an *inter se* dispute between the brothers and it was not necessary for impleading the temple as a defendant in the suit. Though it is the specific case of the defendant, that the father had handed over possession of the property of the plaintiff to the defendant himself, the defendant has not been able to adduce any satisfactory, oral and documentary evidence to substantiate the said claim and merely because the Advocate Commissioner has found that the defendant in possession does not in any way advanced the defendant's case, because the suit itself has been filed by the plaintiff, admitting the defendant's possession and only seeking recovery of possession based on the plaintiff's entitlement.



S.A.No.322 of 2017

10.The defendant categorically admits that the father had given all the sons equal extents of 50 Kuzhies. However, the only defense raised by him is that the father had subsequently handed over the plaintiff's 50 Kuzhies of lands to the defendant, which remains unsubstantiated. Therefore, the First Appellate Court has rightly discussed these factors and also taken into account the oral evidence of the parties, in coming to a conclusion that the plaintiff was entitled to relief of recovery of possession.

11.The Trial Court has also lost sight of the fact that an accountant of the temple has been examined as P.W.3 and he has also stated that the plaintiff has been paying rents to the temple and Ex.X2, Ex.X4 and Ex.X5 have also been marked to substantiate the same. Even D.W.3, Ganesan, has admitted to the fact that the plaintiff has been cultivating the lands, which were originally cultivated by the plaintiff's father. Merely because the plaintiff has not been able to exactly state the physical features of the suit property, which is admittedly in the enjoyment of the defendant, it cannot be a ground to non-suit the plaintiff. Therefore, the findings of the Trial Court, dismissing the suit are unsustainable in the eye of law and has been rightly reversed by the First Appellate Court by decreeing the suit.



S.A.No.322 of 2017

12.In fine, I do not find any illegality or perversity in the findings arrived at by the First Appellate Court. The substantial question of law is answered against the appellant. Accordingly, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

01.03.2024

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

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To

1. The Additional Sub Court, Mayiladuthurai.
- 2.The Principal District Munsif, Mayiladuthurai.
- 3.The Sections Officer, VR Section, High Court Madras.

P.B.BALAJI., J.

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S.A.No.322 of 2017

Pre-delivery judgment made in

S.A.No.322 of 2017

01.03.2024