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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD)Nos.133 of 2023 and 155 of 2024
and C.M.P.(MD)Nos. 2782 & 13587 of 2023

S.A.(MD)No.133 of 2023

A.Poothapandi

...Appellant

Vs

1.S.Poothapandian @ Poothapandi

2.Subbulakshmi

3.P.Sathiyaseelan

4.Lakshmi

...Respondents

PRAYER: Second appeal filed under section 100 of the civil procedure code, against the Judgement and Decree dated 19.04.2022 in A.S.No.67 of 2019 on the file of the Sub Court, Ambasamudram, confirming the Judgement and Decree dated 24.06.2019 made in O.S.No.291 of 2007 on the file of the Principal District Munsif Court, Ambasamudram.

S.A.(MD)No.155 of 2024

A.Poothapandi

...Appellant

Vs

1.S.Poothapandian @ Poothapandi

2.Subbulakshmi

3.P.Sathiyaseelan

4.Lakshmi

...Respondents



PRAYER: Second appeal filed under section 100 of the civil procedure code, against the Judgement and Decree dated 19.04.2022 in A.S.No.66 of 2019 on the file of the Sub Court, Ambasamudram, reversing the Judgement and Decree dated 24.06.2019 made in O.S.No.291 of 2007 on the file of the Principal District Munsif Court, Ambasamudram.

In both the appeals :

For Appellants : M/s.N.Vignesh
V.S.Rishikesh

For Respondents : M/s.T.S.R.Venkata Ramana,
Senior Counsel, for
Mr.M.Shema Daniel, for R-1 & R-2

R-3 & R-4 : No appearance

COMMON JUDGMENT

Both the second appeals arise out from the common judgment passed in the first appeals and hence both the second appeals are taken together and common judgment is passed.

2.(i) The Second Appeal in S.A.(MD)No.133 of 2023 is filed against the Judgement and Decree dated 19.04.2022 in A.S.No.67 of 2019 on the file of the Sub Court, Ambasamudram, confirming the Judgement and Decree dated 24.06.2019 made in O.S.No.291 of 2007 on the file of the Principal District Munsif Court, Ambasamudram.



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2.(ii) The Second Appeal in S.A.(MD)No.155 of 2024 is filed against the Judgement and Decree dated 19.04.2022 in A.S.No.66 of 2019 on the file of the Sub Court, Ambasamudram, confirming the Judgement and Decree dated 24.06.2019 made in O.S.No.291 of 2007 on the file of the Principal District Munsif Court, Ambasamudram.

3. The 1st plaintiff and the 3rd plaintiff are the 1st and 2nd respondents herein. The 2nd plaintiff died during the pendency of the suit and the 1st plaintiff and the 3rd plaintiff are the legal heirs of the 2nd plaintiff. The 1st defendant died during the pendency of the suit and the 2 to 4 defendants are the legal heirs. Only the 2nd defendant had filed this appeal and the 2nd defendant is the sole appellant herein. The 3rd and 4th defendants are the 3rd and 4th respondents. For the sake of convenience, the parties are referred as per the ranking in the suit.

4. The plaintiff had filed the suit to declare the property belongs to the plaintiff and consequently to recovery of possession of the suit property and for mesne profits. The brief facts as stated in the amended plaint is that the suit property originally belongs to daughters of Chellaperumal Thevar namely



Pooththammal, Bramatchiammal and Lakshmiammal. One Issakiammal had purchased the suit property from the said Pooththammal, Bramatchiammal, Lakshmiammal through sale deed dated 08.04.1950, 14.04.1950, 15.04.1950 and was in possession and enjoyment of the properties. The said Issakiammal had married to one Sankarapandian and they have a son namely Sattanathan. The said Sattanathan is the father of the 1st and 2nd plaintiffs and husband of the 3rd plaintiff. The said Isakkiammal had executed a Registered Will dated 11.12.1991, wherein the plaintiff's father Sattanathan was given life interest and after the demise of the said Sattanathan the 1st and 2nd plaintiffs would get the absolute ownership of the properties. The said Isakkiammal died on 07.11.1995 and the Will had come into effect thereafter. The plaintiff's father Sattanathan had executed a Settlement Deed dated 16.02.2007 in favour of the plaintiffs, wherein the life interest of the plaintiff's father was given up and the plaintiffs were given full rights over the suit property.

5. The plaintiff's father Sattanathan had borrowed a loan of Rs.60,000 from the defendant Pappammal and had executed an unregistered agreement dated 03.11.2001 marked as Ex.A14, wherein it was agreed that in lieu of interest to the borrowed amount the defendant was permitted to carry on cultivation of the land for the period of three years and take the produce. The



defendant was in possession of the original document. The said period of three years ended on 02.11.2004. Thereafter during March-April 2007 (Masi-Paguni of Tamil month 2007) the plaintiff's father Sattanathan had approached the defendant with Rs.60,000/- to repay the amount and in turn to return the land to him, but the defendant refused to return the land. Hence the plaintiffs had issued Lawyer Notice dated 13.03.2007 marked as Ex.A.12. The defendant had sent reply notice dated 27.03.2007 marked as Ex.A13 with incorrect facts. Wherein it was alleged in the reply notice that the plaintiff's grandfather namely Sankarapandian had received Rs.40,000/- from the defendant and executed sale agreement for Rs.1,11,250/-. When the plaintiff's grandfather has no right over the suit property, then he would not have executed the alleged sale agreement. Hence the said sale agreement is fraud, false and the same was not executed, further the signature was denied.

6. Further the plea of the defendant that as per the agreement dated 03.11.2001, whenever the defendant is intended to get back the money, then only the money would be received by the defendant and thereafter only the land would be returned is incorrect. Pending suit, the 2nd plaintiff died on 17.12.2010 and the 3rd plaintiff is the legal heir of the 2nd plaintiff. The defendant is cultivating two times a year and would produce "12 Kottai" paddy and the



value per Kottai would be Rs.1,000/-, hence the plaintiffs are entitled to interim mesne profits of Rs.12,000/- per season. Further the plaintiff would deposit the Rs.60,000/-, which the plaintiff's father had borrowed from the defendant. Hence the suit is filed.

7. The defendant had filed the written statement stating that the said Sankarapandian had purchased the property and he is the real owner and the said Isakkiammal had no means to purchase the property and hence she is a benami. The plea of execution of Will by Isakkiammal is false, the Will ought to be proved and the other contention regarding the Will is denied as false. Further the defendant does not know to read and write. Further the alleged execution of settlement deed dated 16.02.2007 by Sattanathan is denied as false and the said settlement had not come into effect. Without admitting even if it is true, the said Sattanathan has right to encumber the property until his life time. Further the said Sattanathan along with Sankarapandian had executed sale agreement to the suit property which is against the version of the plaintiffs. The defendant is a cultivating tenant for which the defendant had paid Rs.60,000/- to the plaintiff's family. If the version of the plaintiff is taken, then the said Sankarapandian and Sattanathan would not have signed the sale agreement and hence the plaintiffs are incorrect in stating that the land belongs to



Isakkiammal. The plea of “12 Kottai” produce is incorrect, the plaintiffs had not taken the expenses for the said agriculture produce. The plaintiffs had not paid the correct court fees. The defendant is cultivating the suit schedule property as a cultivating tenant and entitled for protection under Tamil Nadu Cultivating Tenants Protection Act,1955 and any dispute with regard to their possession and occupation of property must be decided only by the appropriate revenue court only and the Civil Court has no jurisdiction to decide the issue of cultivating tenant and it was specifically barred under “Section 16-A” of Tamil Nadu Agricultural Land Record of the Tenancy Rights,1969. Hence the suit ought to be dismissed.

8. After considering the pleadings, documentary evidence and depositions the Trial Court had partly allowed the suit in O.S.No.291 of 2007, wherein the Trial Court had declared that the property belongs to the plaintiffs and consequently directed the defendant to receive the Rs.60,000/- deposited in the bank and hand over possession of the land, failing which the plaintiff was granted to take necessary action to take possession through Court. However, the prayer for interim mesne profits was declined to the plaintiff. The plaintiffs had filed first appeal in A.S.No.66 of 2019 challenging that portion of the judgment where it had declined mesne profits and the said first appeal was allowed by



holding that the plaintiffs are entitled to interim mesne profits from the year 2007 until the property is handed over to the plaintiffs and the plaintiffs are directed to work out their remedy under Order 20 Rule 12 of CPC. The defendants had filed first appeal in A.S.No.67 of 2019 challenging that portion of the judgment where it had granted declaration and hand over possession and the said first appeal was dismissed. Aggrieved over the same, the defendants had preferred two second appeals in S.A.(MD)No.133 of 2023 and S.A.(MD)No.155 of 2024.

9. The second appeal in S.A.(MD)No.133 of 2023 and S.A.(MD)No. 155 of 2024 are admitted on the following substantial question of Law:

(a) Whether the Civil Court has got jurisdiction to decide the question of cultivating tenancy rights of the defendants when it is specifically barred under section 16-A of Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969?

(b) Whether the Courts below are right in giving a finding that the defendant is not a cultivating tenant, when it is settled law that the question as to whether a person is a cultivating tenant or not, is to be decided only by the authorities constituted under the Act and the Civil Court has no jurisdiction to deal with the matter?



C. Whether the Lower Appellate Court is right in giving a finding that the plaintiffs entitled for mesne profits?

10. The admitted fact is that the land belongs to the plaintiff's family. Within the plaintiff's family whether it belongs to Issakiammal or Sankarapandian, or to their son Sattanathan, or to the grandchildren (who are the plaintiffs herein) are outside the scope of the issues raised in this case. The next admitted fact is that the agreement dated 03.11.2001, the original is marked as Ex.A1 and photocopy is marked as Ex.A14. Based on this document the plaintiffs claim that the defendant was granted permissive possession for a period of three years in lieu of interest for the loan amount of Rs.60,000/-. And the defendant also admits this permissive possession for the period of three years in lieu of interest for the loan amount of Rs.60,000/-. Within the said period of three years the plaintiff may repay the amount and get back the property. This transaction is purely usufructuary mortgage. Under usufructuary mortgage the borrower transfers possession and usage rights of a property to the lender whereby right to enjoy the income or produce generated by the property during the mortgage period is given to the lender in lieu of interest to the loan, but the borrower would retain the ownership of the land. In such circumstances, this Court is of the considered opinion that the defendant is not



a cultivating tenant. And the relationship between the parties are mortgager and mortgagee.

11. The plea of the defendant that a further payment of Rs.40,000/- was made and the said Sankarapandian and Sattanathan had executed sale agreement was not proved by the defendant. Furthermore, the defendant had not filed any suit to executed the alleged sale agreement and the time to file suit for specific performance had lapsed. In such circumstances, the plea of alleged sale agreement ought to be rejected and accordingly the same is rejected.

12. Further the defendant claim “cultivating tenant” rights on the ground that the plaintiffs had not paid the money within a period of three years and three years period would be on or before 02.11.2004. Even according to the plaintiffs, the repayment offer was given only by March-April 2007, which is after the lapse of more than two years and hence after 02.11.2004, the defendant would become cultivating tenants. Such contention of the defendant cannot be accepted and the same is bizarre. Since there was no repayment the contract of usufructuary mortgage cannot be changed / will not be change. If the repayment is belated then the consequences would be on the payment of interest or payment of mesne profits. Therefore, this Court is of the considered



opinion that the defendant is not a cultivating tenant and the protection granted under section 16-A of Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 is not available to the defendant. Hence both the substantial questions of law are answered against the defendant / appellant and in favour of the plaintiff / respondent.

13. As far as *mesne profits* are concerned, it is seen that the plaintiff had not come forward to repay the same until March-April 2007. Therefore, until April 2007 the plaintiff is not entitled to mesne profits. Further it is seen the suit is filed on 04.10.2007 and the plaintiff had deposited the amount of Rs.60,000/- on 27.03.2008. Until 27.03.2008 the amount was in the hands of plaintiff and it is not with the defendant and the defendant had lost the interest or income from the said amount. And from the date of deposit till date the amount is lying as court deposit. Had the defendant received the amount in the year 2007 and returned the land the litigation would not have arisen. Hence by taking all these factors into consideration, this Court is of the considered opinion that the plaintiff is entitled to 60% of mesne profits. The plaintiff may file the petition under *Order 20 Rule 12* and claim mesne profits. After quantification of the amount, the plaintiff is entitled to 60% of the amount. The third substantial question of law is answered accordingly.



14. With the aforesaid observations, these Second Appeals are dismissed. The Judgement and Decree, dated 19.04.2022 in A.S.Nos.67 & 66 of 2019 on the file of the Sub Court, Ambasamudram, confirming the Judgement and Decree, dated 24.06.2019 made in O.S.No.291 of 2007 on the file of the Principal District Munsif Court, Ambasamudram, are hereby confirmed. No Costs. Consequently, Connected Civil Miscellaneous Petitions are closed.

14.03.2024

Index : Yes / No
NCC : Yes / No

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TO:

1. The Sub Court,
Ambasamudram.
2. The Principal District Munsif Court,
Ambasamudram.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Judgment made in
S.A.(MD)Nos.133 of 2023
and 155 of 2024

Dated:
14.03.2024