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S.A.No.1628 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A.No.1628 of 2003

1.Palaniyandi
2.Mayandi
3.Murugan

... Appellants/Appellants/Defendants 2 to 4

Vs.

1.S.Raju

... 1st Respondent/1st Respondent/Plaintiff

2.Veeramalai

... 2nd Respondent/2nd Respondent/1st Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 21.11.2002 passed in A.S.No.154 of 1998, on the file of the Sub Court, Kulithalai, confirming the judgment and decree dated 26.10.1998 passed in O.S.No.520 of 1993 on the file of the District Munsif Court, Kulithalai.

For Appellants : Mr.S.Anand Chandrasekar

For R – 1 : No appearance



JUDGMENT

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The Judgments and decrees passed in O.S.No.520 of 1993 on the file of the District Munsif Court, Kulithalai and in A.S.No.154 of 1998, on the file of the Sub Court, Kulithalai, are being challenged in the present Second Appeal.

2.The first respondent herein as plaintiff instituted a suit in O.S.No.520 of 1993 on the file of the trial Court against the second respondent and the appellants for compensation for a sum of Rs. 12,600/- to the plaintiff.

3.For the sake of convenience, the parties are referred to as, as described before the trial Court.

4.According to the plaintiff, the suit property in Ayan Nanjai in S.F.No.773/B-3 in the Village of Maruthur absolutely belongs to the plaintiff and he was in actual physical and exclusive possession, enjoyment and personal cultivation. The plaintiff purchased the same



S.A.No.1628 of 20

for an adequate and valuable consideration for a sum of Rs.30,000/-
from one Subbramani, under a registered sale deed dated 31.05.1991.

Since the defendants 1 to 3 and the father of the fourth defendant, caused disturbance to the plaintiff in the suit property, the plaintiff filed a suit in O.S.No.144 of 1992 on the file of the District Munsif Court, Kulithalai, as against them for the relief of permanent injunction and the same has been decreed in favour of the plaintiff. Already, the title and possession of the plaintiff and his vendor have been upheld in A.S.No.138 of 1978 on the file of the Sub Court, Karur and also in O.S.No.144 of 1992 on the file of the District Munsif Court, Kulithalai. The defendants 1 to 3 and the father of the fourth defendant are parties to the suit and as such, it is binding on them and they are barred and estopped from questioning the same. In the suit property, the plaintiff had planted the plantain crops. While so, pending the suit in O.S.No.144 of 1992, the defendants trespassed into the suit property of the plaintiff on 09.08.1992 with deadly weapons and indiscriminately destroyed the plantain crops, cut them into pieces and threw them down in the trenches and ran away. One Krishnan, who was a tenant in the neighbouring land, was an eye-witness. The defendants have destroyed the plantain crops. Hence, the plaintiff had given a complaint before the Kulithalai Police Station and the same has



S.A.No.1628 of 20

been charge-sheeted in C.C.No.681 of 1992 on the file of the Judicial Magistrate Court No.II, Kulithalai. In the said O.S.No.144 of 1992, an Advocate Commissioner was appointed and he had visited the suit property and filed a report. The defendants had caused damages to 315 plantain crops and the cost of the one plantain crop was Rs.40/- and totally caused damages for a sum of Rs.12,600/-. Hence, the plaintiff filed the said suit for a grant of compensation of Rs.12,600/-.

5.The fourth defendant filed a written statement and also on behalf of the defendants 2 and 3 and denied the averments made by the plaintiff that he acquired the suit property from one Subbaraman. In respect of the suit property, decree has been granted in favour of the defendants and in appeal, decree has been granted in favour of the plaintiff's predecessors. Hence, the fourth defendant's father filed a Second Appeal, in which decree has been granted in favour of the defendants' predecessors. Pending the Second Appeal, the fourth defendant's father died and an application has been filed to implead the legal representatives of the deceased fourth defendant's father and the same was also pending. Since the appeal filed by the defendants was pending, the suit property cannot be decided. The defendants are enjoying the suit properties, the plaintiff had no right



S.A.No.1628 of 20

over the suit property and they have not destroyed the plantain crops and in the complaint given by the plaintiff, the defendants were acquitted. Hence, the plaintiff cannot claim compensation from the defendants and prayed for dismissal of the suit.

6.Before the trial Court, on the side of the plaintiff, he himself was examined as P.W.1 and one R.Raju, Advocate was examined as P.W.2 and Exs.A1 to A5 were marked. On the side of the defendants, Palaniyandi/the second defendant was examined as D.W.1 and Exs.B.1 & B.2 were marked.

7.On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has dismissed the suit.

8.Aggrieved by the Judgment and decree passed by the trial Court, the plaintiff herein as appellant, had filed an Appeal Suit in A.S.No.520 of 1993 on the file of the first Appellate Court.



9.The first Appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court.

10.Challenging the said Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the defendants 2 to 4 as appellants.

11.At the time of admitting the present second appeal, this Court had framed the following substantial questions of law for consideration:

'1) In a suit for damages whether the plaintiff can succeed without proving that the defendants are responsible for causing damage to the property of the plaintiff?

2) Are not the judgment of the Courts below vitiated in law on account of the fact that a decree in favour of the plaintiff has been granted without any evidence and only on conjectures and surmises?



S.A.No.1628 of 20

WEB COPY

3) Whether the Courts below are correct in law in not taking into consideration that the judgment of the criminal Court which totally falsifies the case put forth by the plaintiff?'

12.The learned counsel appearing for the appellants/defendants would submit that the plaintiff failed to establish by oral and documentary evidence that the plantain trees were destroyed by the defendants and based on the independent witness Krishnan for the alleged act and having failed to examine, the Courts below ought not to have drawn an adverse interference; the Courts below ought to have granted a decree on mere conjectures and assumptions without any concrete evidence and the Commissioner's report also does not disclose who had cut the plantain trees and the Courts below ought to have rejected the same. The Courts below erred in coming to the conclusion that the criminal court judgment would not bind the civil Court and there was a lot of material evidence which will establish that the defendants did not act in the manner alleged by the plaintiff and caused damage to the plantain crops and prayed for allowing the appeal.



S.A.No.1628 of 20

13.No representation for the first respondent.

14.Heard the learned counsel appearing for the appellant and also perused the records carefully.

15.According to the plaintiff, the suit property in Ayan Nanjai in S.F.No.773/B-3 in the Village of Maruthur absolutely belongs to the plaintiff and he was in possession and enjoyment of the suit property and personal cultivation. The plaintiff purchased the same for an adequate and valuable consideration for a sum of Rs.30,000/- from one Subbramani, under a registered sale deed dated 31.05.1991. Since the defendants 1 to 3 and the father of the fourth defendant, caused disturbance to the plaintiff in the suit property, the plaintiff filed a suit in O.S.No.144 of 1992 on the file of the District Munsif Court, Kulithalai, as against them for the relief of permanent injunction and the same has been decreed in favour of the plaintiff. Already, the title and possession of the plaintiff and his vendor have been upheld in A.S.No.138 of 1978 on the file of the Sub Court, Karur and also in O.S.No.144 of 1992 on the file of the District Munsif Court, Kulithalai. The defendants 1 to 3 and the father of the fourth defendant are



parties to the suit and as such, it is binding on them and they are barred and estopped from questioning the same. In the suit property, the plaintiff had planted the plantain crops. While so, pending the suit in O.S.No.144 of 1992, the defendants trespassed into the suit property of the plaintiff on 09.08.1992 with deadly weapons and indiscriminately destroyed the plantain crops, cut them into pieces and threw them down in the trenches and ran away. One Krishnan, who was a tenant in the neighbouring land, was an eye-witness. The defendants have destroyed the plantain crops. Hence, the plaintiff had given a complaint before the Kulithalai Police Station and the same has been charge-sheeted in C.C.No.681 of 1992 on the file of the Judicial Magistrate Court No.II, Kulithalai. In the said O.S.No.144 of 1992, an Advocate Commissioner was appointed and he had visited the suit property and filed a report. The defendants had caused damages to 315 plantain crops and the cost of the one plantain crop was Rs.40/- and caused damages for a sum of Rs.12,600/-.

16. According to the defendants, they denied the averments made by the plaintiff that he acquired the suit property from one Subbaraman. In respect of the suit property, decree has been granted in favour of the defendants and in appeal, decree has been granted in



favour of the plaintiff's predecessors. Hence, the fourth defendant's father filed a Second Appeal, in which decree has been granted in favour of the defendants' predecessors. Pending the Second Appeal, the fourth defendant's father died and an application has been filed to implead the legal representatives of the deceased fourth defendant's father and the same was also pending. Since the appeal filed by the defendants was pending, the suit property cannot be decided. The defendants are enjoying the suit properties, the plaintiff had no right over the suit property and they have not destroyed the plantain crops and in the complaint given by the plaintiff, the defendants were acquitted. Hence, the plaintiff cannot claim compensation from the defendants and prayed for dismissal of the suit.

17. On a perusal of the materials available on record, it is seen that 315 plantain crops were cut down by the defendants on 09.08.1992 in Survey No.773/B-3 at Maruthur Village and the same was proved by the plaintiff, who has submitted that the defendants had done the said act and one Krishnan was also witness to the said fact. When the defendant was examined as D.W.1, who had stated that the said disputed property was in possession and enjoyment of the plaintiff for the past 3 years. It could be seen from the evidence that the



plaintiff was in possession and enjoyment of the suit property. In O.S.No.144 of 1992, an Advocate Commissioner was appointed, in which he had been examined as P.W.2 and he stated that the plantain crops were cut at various heights and they had not fully grown trees and that were not ripe for cutting down the trees. Hence, it is seen that 275 plantain crops have been cut down and the plantain crops were cut down by the defendants. The plaintiff's admission and evidence were considered by the trial Court and decided in favour of the plaintiff. It is to be seen that only 275 plantain crops have been cut down and accordingly, a sum of Rs.11,000/- was ordered to be paid by the defendants. It is also seen that the criminal court proceedings are not considered by the civil Court and based on the admissions and the evidence available, the same has been decreed in favour of the plaintiff by the trial Court.

18.Further, it is seen that according to the defendants, they have stated that they had filed an appeal before the High Court and the dispute was pending between the predecessor of the owners of the said lands for more than 20 years and it is also seen that they have not produced any evidence to show what was the status of the pending Second Appeal before the Courts below and in the High Court as there



was a finding regarding 60 cents, which was a separate property and the same could not be a part of the disputed property in the suit and hence, this property was a separate property was not accepted and they have not produced any documents to show that the said property belonged to the defendants and they had not cut down the plantain crops. It is seen that with regard to the suit property, already a suit was filed in O.S.No.144 of 1992, in which an Advocate Commissioner was appointed to ascertain the position of the cut-down plantain crops and the same has been proved. From the evidence, it is seen that the defendants have cut down the plantain crops and this Court is of the view that the plaintiff is entitled for the amount of Rs.11,000/- as damages.

19.Hence, based on the documentary evidence, this Court is of the view that for the suit for damages, the plaintiff can succeed without proving that the defendants are responsible for causing damages to the property of the plaintiff and as per the Advocate Commissioner's report filed in the earlier suit, it is seen that there was a dispute between the parties for more than 20 years and the case has already been pending before the Execution Court and this Court is of the view that only for the loss sustained, the plaintiff has claimed



S.A.No.1628 of 20

compensation and the Courts below have fixed a sum of Rs.11,000/- and the defendants or no other person, who is an agriculturist will try to destroy the live crops and it is to be seen that the plaintiff has proved the case that the defendants are the persons, who are responsible for causing damages. Only circumstantial evidence has to be seen in this type of case when no other person in the vicinity has any enmity between these persons for doing such an act and this Court is of the view that the decree has been granted in favour of the plaintiff and only based on the circumstantial evidence and also on the evidence of P.W.1 as well as Advocate Commissioner's report in O.S.No. 144 of 1992 on the file of the District Munsif Court, Kulithalai. The criminal Court judgment need not be considered by the civil Court wherein the criminal court is only based on the crime committed and here is a case for damages, wherein factual aspect has been gone into and accordingly, this Court is of the view that it is being taken that the court can also consider the circumstantial evidence and can decide the issue.

20.From the above, this Court is of the view that the Judgments and Decrees of the Courts below are accompanied with sufficient reasons, in which, this Court does not want to make any



S.A.No.1628 of 20

interference. Accordingly, the substantial questions of law framed are ordered as against the defendants and in favour of the plaintiff.

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21.In the result, the Second Appeal stands dismissed. No costs.

30.08.2024

Index : Yes/No
Internet : Yes/No
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S.A.No.1628 of 20

To

WEB COPY

1.The Sub Court,
Kulithalai.

2.The District Munsif Court,
Kulithalai.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.No.1628 of 20

V.BHAVANI SUBBAROYAN, J.

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Judgment made in
S.A.No.1628 of 2003

30.08.2024