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SA NO. 483 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-04-2025

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA NO. 483 of 2007

1.Raja
2.Ramu
3.Ravi
4.Ragavan
5.Ramesh
6.Sudha
7.Geetha
8.Sumathi
9.Sakkubai

...Appellants

Vs

1.Murali
2.Babu
3.Balaji
4.Kamalammal

... Respondents

Prayer: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 03.08.2006 made in A.S.No.19 of 2001 on the file of Subordinate Court, Arni, confirming the decree and judgement dated 05.03.2001 made in O.S.No.7 of 1993 on the file of the Principal District Munsiff, Arni.

For Appellant(s) : Mr.M.Venkatakrisnan
for Mr.P.Seshadri

For R1 to R3 : Mr.Venkataswamy Babu
For R4 : Not ready. Notice send



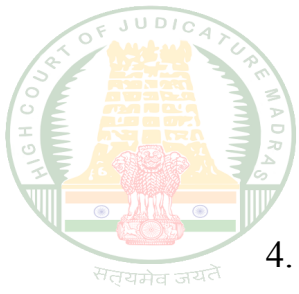
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JUDGMENT

The appellant has filed this appeal to set aside the Judgment and decree dated 03.08.2006 made in A.S.No.19 of 2001 on the file of Subordinate Court, Arni, confirming the decree and judgement dated 05.03.2001 made in O.S.No.7 of 1993 on the file of the Principal District Munsiff, Arni.

2. For a sake of convenience, the parties herein are referred to as they were ranked in the suit.

3. Challenging the concurrent findings of the Courts below, Defendants 2 to 9, who are the legal heirs of the first defendant, Narasimmalu Naidu, have preferred this appeal against Respondents/Plaintiffs 1 to 3 and D10.



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4. Before the Trial Court, the Plaintiffs/Respondents 1 to 3 filed a suit against nine defendants, praying for a permanent injunction restraining them from disturbing their possession and enjoyment of the suit property, until they are lawfully evicted by due process of law. They contended that they were in possession and enjoyment of the suit property as tenants and had paid rent to one Venkatachalam, the mortgagee of the suit property, as per the instructions of the original landlord/mortgagor/first defendant. While so, the first defendant, being the landlord and mortgagor, filed a suit in O.S. No. 540 of 1986 for redemption of hypothecation against the legal heirs of the mortgagee, Venkatachalam. The said suit was decreed. To execute the decree, he filed E.P. No. 355 of 1992 for delivery of the property, suppressing the tenancy rights of the plaintiffs. The plaintiffs contended that, based on the redemption decree, the defendants were not entitled to evict them and that their tenancy rights were protected under the Tamil Nadu Lease and Rent Control Act. Therefore, they filed the present suit for permanent injunction, praying that they should not be evicted except under due process of law.

5. The said suit was contested by the first defendant, the original



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owner of the suit property. He stated that, as the absolute owner, he had leased out the property to one Veerasamy Naidu until 1968. In that year, he executed a usufructuary mortgage in favour of Venkatachalam for a sum of Rs. 7,000/- and put the mortgagee in possession of the property. Consequently, the earlier tenancy of Veerasamy came to an end. The first defendant denied the allegations that the plaintiffs or their predecessors paid rent to Venkatachalam. He further contended that Venkatachalam Naidu, the mortgagee, was in fact the maternal grandfather of the plaintiffs, who continued in possession of the property as a mortgagee. Venkatachalam died, leaving behind his wife Kamalam (D10) and his daughter Sarojammal, who continued in possession. Besides, the plaintiffs herein are the sons of Sarojammal.

6. On 21.11.1984, the first defendant issued notice to Kamalam and Sarojammal, the legal heirs of Venkatachalam, requiring them to receive the mortgage amount and deliver possession of the property. As no reply was received, he initiated proceedings and filed a redemption suit in O.S. No. 540 of 1986. A preliminary decree was passed on 18.11.1988, granting six



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months' time to vacate the premises. Based on the decree, he deposited Rs. 7,000/- in Court towards the mortgage amount. Apart from this, he paid Rs. 2,000/- to Kamalam for repairs of the building. As they failed to vacate within the time granted, a final decree petition was filed. On contest, a final decree was passed on 29.04.1992. Thereafter, the first defendant filed E.P. No. 355 of 1992 for delivery of possession. When delivery was ordered, the plaintiffs, suppressing the real facts, filed the present vexatious suit.

7. The first defendant contended that the alleged tenancy right claimed by the plaintiffs was non-existent. Neither Kamalam, wife of the mortgagee, nor her daughter, Sarojammal (mother of the plaintiffs), had ever pleaded tenancy in the earlier suit O.S. No. 540 of 1986. Even the first plaintiff, who had participated in the earlier proceedings on behalf of his mother and grandmother, had not claimed tenancy. He therefore submitted that the alleged claim was false and concocted. The earlier tenancy of Veerasamy came to an end on the date of the mortgage, when possession was handed over to Venkatachalam. Hence, to evade delivery proceedings, the plaintiffs had filed a vexatious suit without cause of action. The first defendant



therefore prayed for dismissal of the suit with exemplary costs under Section 35(A) CPC.

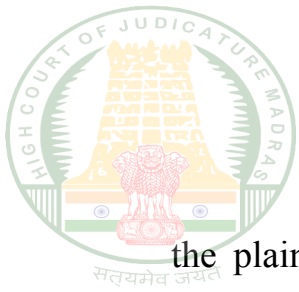
8. Before the Trial Court, on behalf of the plaintiffs, the first plaintiff was examined as PW-1, and Exs. A1 to A58 were marked. On behalf of the defendants, the second defendant was examined as DW-1, and Exs. B1 to B10 were marked.

9. On considering the oral and documentary evidence, the learned Trial Judge framed two main issues:

(i) Whether the suit is barred by the decree in O.S. No. 540 of 1986, on the file of the District Munsif Court, Arni?

(ii) Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?

10. The learned Trial Judge, relying on the documents produced by



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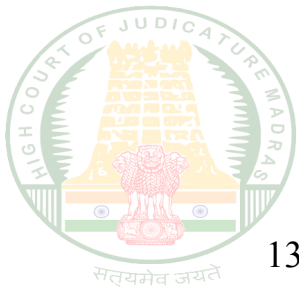
the plaintiffs, observed that the plaintiffs had paid rent to the mortgagee Venkatachalam until his death, and thereafter to his wife, Kamalam (D10), even after execution of the mortgage deed (Ex.B10). The Court also observed that the plaintiffs had paid property tax and electricity charges for the suit property, which showed that the suit property was originally in possession of Kannaiya Naidu, a tenant under the first defendant, and after his demise, the plaintiffs continued in possession as tenants. The first defendant also admitted the same through Ex.A16 (a letter). Hence, the plaintiffs had proved their tenancy.

11. As regards the defence, the Trial Court held that although the legal heirs of mortgagee Venkatachalam (his wife and daughter) were bound to give symbolic delivery of possession under the redemption decree in O.S. No. 540 of 1986, there was no mention of the plaintiffs' tenancy rights in that earlier suit. Therefore, the defendants were not entitled to evict the plaintiffs on that basis. The Court further held that the decree in O.S. No. 540 of 1986 would not bind the plaintiffs, even though the first plaintiff had assisted his mother and grandmother in that suit, since he had not



participated as a tenant. Accordingly, the Trial Court held that the plaintiffs were entitled to the relief of permanent injunction, and decreed the suit.

12. Challenging the said decree, during the pendency of the suit, the first defendant, original owner Narasimmalu Naidu, died, leaving behind his legal heirs (D-2 to D-9). They preferred A.S. No. 19 of 2001 before the Subordinate Court, Arni. The learned First Appellate Judge framed separate points for consideration and, after analyzing the evidence on record, concluded that even after the mortgage, the plaintiffs' grandfather, and subsequently their father, continued in tenancy. After the demise of their father, Kannaiya Naidu, the plaintiffs were in possession and enjoyment of the property as tenants. In the earlier suit, O.S. No. 540 of 1986, there was no finding regarding the tenancy rights of the plaintiffs, therefore, the said decree would not bind them. Accordingly, the findings of the Trial Court were confirmed, and the appeal was dismissed. Challenging the said findings, the present Second Appeal has been preferred by the defendants/appellants.



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13. The learned counsel for the appellants argued that the Courts below failed to appreciate the fact that Respondents 1 to 3/plaintiffs are the sons of Sarojammal, who was one of the defendants in the earlier suit, O.S. No. 540 of 1986, filed for redemption of mortgage by the original defendant, Narasimmalu Naidu. Suppressing their close relationship with the defendants in the earlier proceedings, the plaintiffs have come forward with the present suit only to evade the delivery proceedings initiated under the final decree passed in the redemption suit. Even assuming that they were tenants and paid rent, the alleged payment was not made nearly 30 years after said redemption suit. Without proper proof, the Courts below erroneously held that the plaintiffs were lawful tenants of the suit property, which finding is perverse, illegal, and liable to be set aside.

14. Further, the learned counsel submitted that the tenancy of Veerasamy Naidu, the plaintiffs' grandfather, came to an end when the original owner, Narasimmalu Naidu (first defendant), mortgaged the property to Venkatachalam, the maternal grandfather of the plaintiffs. The plaintiffs have falsely claimed that they paid rent to Venkatachalam, but no proof was produced. Despite this, the Courts below failed to consider and in



the absence of evidence and erroneously held that the mortgage decree passed in O.S. No. 540 of 1986 would not bind the plaintiffs. Such a finding, according to the appellants, is illegal, perverse, and unsustainable in law.

15. It was further pointed out that Narasimmalu obtaining the lawful decree in O.S. No. 540 of 1986, wherein both the mother of the plaintiffs, Sarojammal, and their grandmother, Kamalammal, made a joint endorsement. The plaintiffs themselves also participated in the execution proceedings arising out of O.S. No. 540 of 1986 in which they filed a claim petition, which was dismissed. Thereafter, they made a joint endorsement in C.M.A. No. 14 of 1993 before the Subordinate Court, Arni. In these circumstances, the appellants prayed that the findings of the Courts below to be set aside.

16. The Second Appeal was admitted on the following substantial question of law:

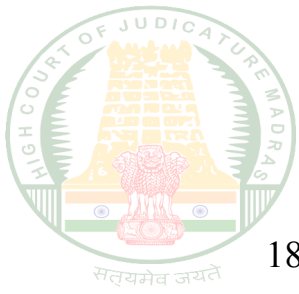
“(A) Whether the reasoning and conclusion of the Courts below as regards existence of the tenancy, even after its expiry, is erroneous and



consequently liable to be set aside?”

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17. On the other hand, the learned counsel appearing for Respondents 1 to 3/plaintiffs argued that the plaintiffs' grandfather, Veerasamy Naidu, was originally a tenant under the original owner, Narasimmalu Naidu, from the year 1958 onwards. Thereafter, the tenancy rights were divided among his sons. Accordingly, his son, Kannaiya Naidu, held the tenancy rights over the suit property. After his demise, the plaintiffs, being his sons, continued to be in possession and enjoyment of the suit property as tenants. Neither Veerasamy Naidu nor Kannaiya Naidu was ever instructed by the original owner/first defendant to pay rent to the mortgagee, Venkatachalam. Nevertheless, they paid rent to Venkatachalam, and after his demise, the rent was received by his wife, Kamalammal (D-10). Hence, the plaintiffs can be evicted only under due process of law. However, the defendants attempted to evict them by relying on the decree in O.S. No. 540 of 1986, which was a redemption of mortgage decree and had no connection with the plaintiffs' tenancy rights. Therefore, the Courts below rightly granted relief in favour of the plaintiffs, and the same requires no interference.



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18. On considering the submissions of both sides, it is an undisputed fact that the suit premises absolutely belonged to Narasimmalu Naidu, the first defendant/landlord. According to the plaintiffs, their grandfather, Veeraswamy Naidu, entered into tenancy with the said Narasimmalu Naidu, and after his demise, under a family partition, the tenancy right was allotted entirely to one of his sons, Kannaiya Naidu, the father of the plaintiffs, in the year 1983.

19. In the meantime, the suit property had been mortgaged in favour of one Venkatachalam under a usufructuary mortgage. Kannaiya Naidu continued to pay rent to Venkatachalam until his demise. Thereafter, the plaintiffs, as the legal heirs of Kannaiya Naidu, succeeded to the tenancy, carried on a flour mill in the premises, and paid rent to Venkatachalam until 1985, and thereafter to his wife, Kamalammal (D10/R4). According to the plaintiffs, there were no arrears and the tenancy was still in force.

20. The alleged tenancy pleaded by the plaintiffs was, however, totally denied by the first defendant/landlord. He contended that on 19.12.1968, he, along with his legal heirs, executed a usufructuary mortgage



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deed in favour of Venkatachalam, who was the maternal grandfather of the plaintiffs, and possession of the property was handed over to him. From that date, the tenancy of Veeraswamy came to an end. To redeem the mortgage, he issued notice to the legal heirs of Venkatachalam after his death, but as they failed to comply, he filed O.S. No. 540 of 1986 for redemption of mortgage. In that suit, the legal heirs of Venkatachalam, namely, Kamalammal and Saroja Ammal, made a joint endorsement, and a preliminary decree was passed on 18.11.1988. The mortgage amount was duly deposited. Thereafter, a final decree was also passed in 1992. To execute the same, E.P. No. 355 of 1992 was filed by the first defendant. At the time of delivery, the present suit came to be filed, claiming tenancy rights.

21. Since the plaintiffs claimed tenancy and the same was denied by the defendants, the burden was on the plaintiffs to prove that they were in possession of the suit property as tenants and that they had paid rent regularly to the legal heirs of Venkatachalam. In the earlier suit, O.S. No. 540 of 1986, no plea was raised regarding the tenancy of Veeraswamy, the



plaintiffs' grandfather.

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22. The Courts below held that the decree passed in O.S. No. 540 of 1986 would not bind the plaintiffs. However, considering the entire facts, it is the plaintiffs' case that they derived tenancy rights from their grandfather, Veeraswamy Naidu, and thereafter from their father, Kannaiya Naidu, and are now in possession as tenants. They admit that the property was mortgaged to Venkatachalam, and they claim to have paid rent to him, and thereafter to his wife, Kamalammal (D10). But there is not a single document to prove payment of rent to Kamalammal till the filing of the suit in 1993, not thereafter until 2025.

23. It is significant to note that Kamalammal, wife of Venkatachalam, who was impleaded as the 10th defendant, never entered the witness box to support the plaintiffs' case. The plaintiffs also failed to take any steps to examine her to prove their alleged payment of rent. Moreover, though the plaintiffs admitted that their father paid rent to Kamalammal, the plaint is silent about this fact. The plaintiffs also suppressed the real relationship by



describing Venkatachalam as a third party, instead of admitting him as their maternal grandfather. This conduct itself shows that they did not approach the Court with true facts.

24. Furthermore, in the earlier redemption suit, the first plaintiff herein was examined as DW-1 on behalf of his mother, Saroja, and grandmother, Kamalammal, who were defendants therein. Even in that suit, he never deposed about tenancy. Now, they contend that there was no need to raise tenancy in the earlier suit. Even if such a contention is assumed to be acceptable, since the first plaintiff had deposed in that suit, he ought to have stated about their alleged tenancy if indeed rent had been paid. Therefore, the present plea of tenancy cannot be accepted.

25. The plaintiffs were bound to prove their tenancy by producing proper evidence. Instead, they relied only on house tax receipts and electricity bills, which merely show possession and not tenancy. These documents, standing in the names of Kamalammal and Saroja Ammal, who were in possession as legal heirs of the mortgagee, cannot be used to

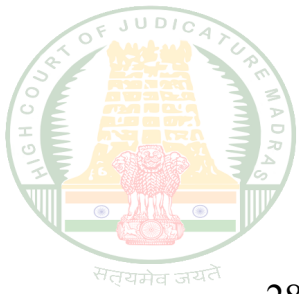


establish tenancy rights in favour of the plaintiffs.

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26. The defendants' case is that when delivery was ordered in the execution proceedings, the plaintiffs, in collusion with their mother, Saroja, and grandmother, Kamalammal, filed the present suit only to obstruct the execution. The property tax and electricity receipts, therefore, are not sufficient to prove tenancy. The Courts below failed to properly appreciate the facts and evidence, and their findings amount to perversity. Hence, this Court is entitled to interfere.

27. The plaintiffs themselves admit that they paid rent to Venkatachalam, who was only a mortgagee. The mortgage was later redeemed by decree, and the mortgage amount was deposited. Consequently, neither the wife nor the daughter nor the grandsons of Venkatachalam (the plaintiffs) have any right to continue in possession. The alleged tenancy set up by the plaintiffs is false and fraudulent. The present suit has been filed only to evade the execution proceedings in E.P. No. 355 of 1992 arising out of O.S. No. 540 of 1986. It is a clear case of abuse of process of law. Accordingly, the question of law is answered.



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28. Even during arguments, the learned counsel for the appellants pointed out that in the execution proceedings in E.P. No. 355 of 1992, these plaintiffs filed a claim petition in E.A. No. 265 of 1993, which was dismissed. Against that order, they preferred C.M.A. No. 14 of 1993, where, on 09.03.1995, they made a joint endorsement before the Subordinate Court, Arni. Thus, the decree passed in O.S. No. 540 of 1986 was to be executed subject to the decree in O.S. No. 7 of 1993, i.e., the present suit. By filing this vexatious suit, the plaintiffs have successfully dragged on proceedings from 1993 onwards as illegal occupiers.

29. Even prior to that, they failed to prove that any rent was paid to the mortgagee, Venkatachalam. They suppressed their true relationship with him and approached the Court with false claims. Therefore, the present suit is nothing but an abuse of process of law. The plaintiffs are liable to pay exemplary costs of Rs. 5,00,000/-.

30. Although the final decree was passed in 1992, nearly 40 years have passed, and the original owners have not been able to take delivery of



the property due to the vexatious litigation filed by the plaintiffs in 1993.

Hence, exemplary costs must be imposed.

31. Accordingly, the findings of the Courts below are set aside. The suit is dismissed. The appellants/defendants are entitled to delivery of possession of the suit property. The plaintiffs and Kamalammal (D10) are directed to vacate and hand over possession of the property within eight weeks. They are also directed to pay exemplary costs of Rs.5,00,000/- within twelve weeks from the date of receipt of a copy of this order to the defendants.

32. Accordingly, the appeal is allowed with exemplary costs.

08.04.2025

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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To

1. The Principal District Munsiff, Arni.
2. The Subordinate Judge, Arni.

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3.The Section Officer, VR Section, High Court of Madras.

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T.V.THAMILSELVI, J.

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SA NO.483 of 2007

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