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S.A.No.615 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 19 / 10 / 2024

JUDGMENT PRONOUNCED ON : 20 / 01 / 2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.615 OF 2017

AND

CMP NO.15230 OF 2017 IN S.A.NO.615 OF 2017

Rajaraman

... Appellant / Appellant /
Plaintiff

Vs.

1.Ravi

2.Sekar

... Respondents / Respondents /
Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated February 17, 2016 made in A.S.No.8 of 2014 by the Subordinate Court, Thiruvarur confirming the Judgment and Decree dated March 24, 2014 made in O.S.No.51 of 2005 by the District Munsif cum Judicial Magistrate Court, Nannilam.

For Appellant : Mr.A.Arun Babu

For Respondents : Mr.A.Muthukumar



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JUDGMENT

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The Second Appeal is filed by the unsuccessful plaintiff against the Judgment and Decree dated February 17, 2016 passed in A.S.No.8 of 2018 by the 'Subordinate Court, Thiruvarur' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated March 24, 2014 passed in O.S.No.51 of 2005 by the 'District Munsif cum Judicial Magistrate Court, Nannilam' ['Trial Court' for brevity] was confirmed.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The Suit Property is a Nanja land that belonged to one Jayalakshmi. According to the plaintiff, he was in possession and enjoyment of the entire Suit Property for a long time. The plaintiff constructed a house and a shop on the western side of the Suit Property and rented out the same. When the government planned to construct a bridge over *Vadakal Mudikondan* River, the plaintiff agreed to the dedicate 10 *Kuzhies* of the Suit Property for the same. Pursuantly, the government demolished the plaintiff's house constructed therein. Now the



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plaintiff is in possession and enjoyment of the Suit Property excluding the said 10 *Kuzhies*.

3.1. While so, the defendants tried to interfere with the plaintiff's peaceful possession and enjoyment of the Suit Property excluding the said 10 *Kuzhies*. Hence, the plaintiff issued legal notice dated March 15, 2005, which the defendants refuted with false allegations. Then on March 30, 2005, the plaintiff caused legal notice dated March 17, 2005 to the Sub-Registrar calling upon him not to register any document alienating the Suit Property. On May 30, 2005, the defendants unlawfully entered the Suit Property and attempted to construct a building. Hence, the Suit for permanent injunction.

DEFENDANTS' CASE

4. The defendants filed written statement denying the allegations made by the plaintiff. According to the defendants, the plaintiff was never in possession and enjoyment of the Suit Property. On the western side of the Suit Property, there is a North - South Road on poromboke land, which the plaintiff had previously encroached. Upon protests by locals, he cleared the encroachment after agreeing to do so in



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writing during a peace meeting conducted on December 26, 2003. The first defendant purchased 10 Cents in Survey No.117/1 and 5 Cents in Survey No.117/4 vide Sale Deed dated May 31, 2005 from the previous owner – Nagarathinam. The second defendant also purchased an extent of 6 ²/₃ Cents of adjoining land from the said Nagarathinam through even dated Sale Deed. Their ownership has been duly recorded in the revenue records. The plaintiff has no right over or possession of the Suit Property. Thus, the defendants sought to dismiss the Suit with costs.

TRIAL COURT

5. At trial, plaintiff – Rajaraman examined himself as P.W.1 and four other witnesses were examined as P.W.2 to P.W.5, and Ex-A.1 to Ex-A.18 were marked on the side of the plaintiff. On the side of the defendants, Ravindran was examined as D.W.1 and Sethuraman was examined as D.W.2 and Ex.B.1 to Ex-B.11 were marked. Advocate-Commissioner's Report and Plan were marked as Ex-C.1 and Ex-C.2. Letter of the Circle Inspector, Kudavasal was marked as Ex-C.3, and 'Field Measurement Book' ['FMB'] & Chitta Register were marked as Ex-C.4.



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6. Upon hearing both sides and considering the evidence available on record, the Trial Court concluded that Suit Property and some more properties were originally owned by Jayalakshmiammal and leased out to one Nadesa Vanniyar, father of plaintiff. During Nadesa Vanniyar's lifetime, he orally partitioned the properties among his three sons, whereby the said leasehold properties were allotted to his sons – Nagarathinam and Navarathinam, and they got into its possession and enjoyment as cultivating tenants paying rent to the original owner – Jayalakshmi. Navarathinam died leaving behind his wife – Valarmathi. Then, Nagarathinam purchased a portion of the leasehold properties *i.e.*, 26 Cents in Survey No.117/1, 44 Cents in Survey No.117/3 and 20 Cents in 117/4 vide the Sale Deed dated September 29, 2004. Thereafter, he sold 10 Cents in Survey No.117/1 and 5 Cents in Survey No.117/4 to the first defendant vide Sale Deed May 31, 2005. On the same date, the second defendant purchased 6 $\frac{2}{3}$ Cents in Survey No.117/4. Thus, the plaintiff failed to prove that he is in possession and enjoyment of the Suit Property. Accordingly, the Trial Court dismissed the Suit.



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FIRST APPELLATE COURT

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7. Feeling aggrieved, the plaintiff filed an appeal in A.S.No.8 of 2014 before the First Appellate Court, which after hearing both sides and perusing the documents available on record, concurred with the Trial Court and dismissed the appeal by confirming the Judgment and Decree passed by the Trial Court.

8. Feeling aggrieved, the plaintiff has preferred this Second Appeal.

ARGUMENTS:

9. Mr.A.Arun Babu, learned Counsel for the appellant / plaintiff would argue that the Suit Property was in possession and enjoyment by Nadesa Vanniyar as a cultivating tenant under original owner – Jayalakshmi. After Nadesa Vanniyar's demise in 1992, the plaintiff is in exclusive possession and enjoyment of the Suit Property by contributing his physical labour and cultivating it. There is no partition between plaintiff and his brothers. Hence, the plaintiff's brother – Nagarathinam has no exclusive right / title over the Suit Property and hence, he cannot sell the same to the defendants. The plaintiff as a



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cultivating tenant is entitled to protect his possession by seeking injunction. The Trial Court as well as the First Appellate Court failed to consider the said aspects and the evidence in the right perspective and erred in dismissing the Suit. The question to be decided in this Second Appeal is whether the sale of property by owner will affect the protection available to the tenant under the Tamil Nadu Cultivating Tenants Protection Act, 1955. Accordingly, he would pray to allow the Second Appeal, set aside the Judgment and Decree of First Appellate Court and the Trial Court, decree the Suit.

10. Mr.A.Muthukumar, learned Counsel for the respondents / defendants would argue that the plaintiff was never in possession and enjoyment of the Suit Property as a cultivating tenant. During the lifetime of Nadesa Vanniyar, his properties were orally divided among his three sons, whereby the Suit Property and other properties in Survey No. 117 were allotted to his sons – Nagarathinam and Navarathinam. Thereafter, Navarathinam passed away and hence, his wife along with his brother – Nagarathinam was enjoying the said properties as a cultivating tenant. Later, they purchased the said properties from the original owner –



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Jayalakshmi vide Sale Deeds dated September 29, 2004 and November

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16, 2004. Thereafter, the first defendant purchased a portion of Suit Property and second defendant purchased a portion of some other property. Second defendant is not related to the Suit Property. Accordingly, the first defendant and his vendor – Nagarathinam are in possession and enjoyment of the their respective portions. The plaintiff has no right or title over the Suit Property. The Trial Court as well as the First Appellate Court rightly appreciated the evidence and dismissed the Suit. There is no need to interfere with the same. There is no Substantial Question of Law in this Second Appeal. Accordingly, he would pray to dismiss the Second Appeal, and confirm the Judgment and Decree of First Appellate Court as well as the Trial Court

DISCUSSION:

11. This Court has heard on either side and perused the materials available on record.

12. Ex-A.1 – Chitta does not suggest that the plaintiff is a cultivating tenant in the Suit Property. There is no evidence available on



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record to show that there was a construction in the Suit Property. The plaintiff sent Ex-A.6 – Notice dated March 15, 2005 to the defendants, wherein the Suit Survey number has not been stated. Further, it has been stated therein that the plaintiff owns a building and tiled house along the roadside. Ex-A.6 does not show that the said building was situate in the Suit Survey No.117. Further, the plaintiffs sent Ex-A.9 – Notice dated March 17, 2005 which was received by the Sub-Registrar on April 1, 2005 and it does not state anything about the alleged building and the house. But it has been stated therein that the plaintiff, his brother – Nagarathinam, his another brother's wife – Valarmathi were jointly enjoying the Suit Property as cultivating tenant, and accordingly, raised objection for registering any document in respect of leasehold properties in Survey No.117/1, 117/3 to 117/5.

13. Further, the plaintiff filed Ex-A.2 to Ex-A.5 – House Tax Receipts and Electricity Service Connection. They were issued for the years between 1988 and 1995. The plaint was presented on July 1, 2005. There is no document to show that the plaintiff was in possession and enjoyment of the Suit Property between the years 1995 and 2005. Further, Ex-A.12 is a statement dated December 26, 2003 given by plaintiff before



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the Tahsildhar in a peace meeting. The said meeting was conducted for the purpose of removal of encroachment made in Survey No.116 -1 A of Seethakamangalam Village. From Ex-A.12, it can be discerned that there is no construction in Survey No.117 of Suit Village. From a comprehensive understanding of evidence available on record and the pleadings, it can only be said that the plaintiff had constructed buildings in Survey No.116 -1 A and not in the Suit Survey No.117, and Ex-A.2 to Ex-A.5 could only be relating to Survey No.116 -1 A. The plaintiff in his plaint did not state that he was a tenant under the original owner – Jayalakshmi. He has only pleaded that he has been in long possession and enjoyment of the Suit Property. There is nothing available on record to show that the plaintiff was a cultivating tenant.

14. On the other hand, the original owner – Jayalakshmi had executed Sale Deed in favour of Navarathinam [defendants' vendor] and Valarmathi in respect of Survey No.117 including Suit Property. Thereafter, Navarathinam sold 10 Cents in Survey No.117/1 and 5 Cents in Survey No.117/4 to the first defendant vide Sale Deed May 31, 2005. On the same date, the second defendant purchased 6 ²/₃ Cents in Survey No.117/4. Revenue records namely Patta and Chitta are also duly mutated



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in the name of the defendants in respect of their respective properties.

Hence, the plaintiff has miserably failed to prove his case. Moreover, the plaintiff filed another Suit in O.S.No.28 of 2008 impleading his brother, brother's wife and original owner - Jayalakshmi seeking partition *inter alia* in respect of the Suit Property herein. The Suit was dismissed by the Trial Court holding that the leasehold properties in Survey No.117 were allotted to the plaintiff's brothers – Nagarathiram and Navarathiram. Aggrieved by the same, the plaintiff preferred A.S.No.7 of 2014 before the First Appellate Court and the same was dismissed. Challenging the concurrent dismissal, the plaintiff approached this Court vide S.A.No.636 of 2017 which is dismissed today by this Court. To be noted, both the Second Appeals were heard jointly and separate Judgements are pronounced today.

15. As stated *supra*, the plaintiff failed to prove that he was a cultivating tenant in the Suit Property and hence, he cannot claim protection under the Tamil Nadu Cultivating Tenants Protection Act, 1955. Hence the question of law projected by the learned Counsel for the appellant / plaintiff does not arise at all in this case. Both, the First Appellate Court and the Trial Court concurrently held that the plaintiff is



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not entitled to the relief sought for. There is no reason to interfere with the same. This Second Appeal lacks Substantial Questions of Law. Therefore, it is liable to be dismissed.

CONCLUSION:

16. Resultantly, the Second Appeal is dismissed. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs. Connected Civil Miscellaneous Petition shall be closed.

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Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

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To
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- 1.The Subordinate Court
Thiruvarur.
- 2.The District Munsif cum
Judicial Magistrate Court
Nannilam.



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R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN

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