



S.A.(MD)Nos.107 and 109 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved : 30.10.2024

Pronounced on : 08.05.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)Nos.107 and 109 of 2016

and

C.M.P.(MD)No.2266 of 2016

S.A.(MD)No.107 of 2016 :

Meerasrivastsava,

Rep. by special power of attorney,

K.S.Venugopal

... Appellant / Respondent / Plaintiff

Vs.

Muralikrishnan

... Respondent / Appellant / Defendant

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, to allow this appeal by setting aside the judgment and decree of the IV Additional Sub Court / Trainee District Judge, Thiruchirapalli made in A.S.No.171 of 2014 dated 20.03.2015 reversing the judgment and decree of the District Munsif Court, Manapari made in O.S.No.287 of 2009 dated 26.08.2014 and to uphold the judgment and decree of the District Munsif Court, Manapari made in O.S.No.287 of 2009 dated 26.08.2014.



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For Appellant : Mr.K.Sridhar,
For Mr.K.Sathiya Singh.

For Respondent : Mr.P.Thiyagarajan,
For Mr.K.S.Kathiravan.

S.A.(MD)No.109 of 2016 :

Meerasrivastsava,
Rep. by special power of attorney,
K.S.Venugopal ... Appellant / Respondent / Plaintiff

Vs.

Muralikrishnan ... Respondent / Appellant / Defendant

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, to allow this appeal by setting aside the judgment and decree of the IV Additional Sub Court / Trainee District Judge, Thiruchirapalli made in A.S.No.169 of 2014 dated 20.03.2015 reversing the judgment and decree of the District Munsif Court, Manapari made in O.S.No.320 of 2009 dated 26.08.2014 and to uphold the judgment and decree of the District Munsif Court, Manapari made in O.S.No.320 of 2009 dated 26.08.2014.

For Appellant : Mr.K.Sridhar,
For Mr.K.Sathiya Singh.

For Respondent : Mr.P.Thiyagarajan,
For Mr.K.S.Kathiravan.



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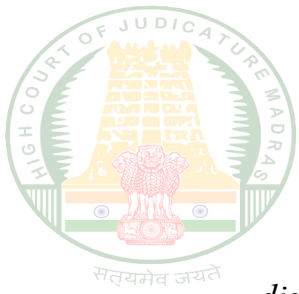
COMMON JUDGEMENT

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The plaintiff in O.S.Nos.287 and 320 of 2009 on the file of the District Munsif Court, Manapparai is the appellant in these second appeals. The suits are for directing the defendant to delivery possession of the suit property and to pay a sum of Rs.7,200/- towards past rent and for payment of future profits and for permanent injunction. The suits were decreed by the trial Court vide the impugned judgments and decrees dated 26.08.2014. Aggrieved by the same, the defendant filed A.S.Nos.169 and 171 of 2014 before the IV Additional Sub Court, Thiruchirappalli. The said appeals were taken up along with another appeal. The first appeals were allowed and the decision of the trial Court was reversed by the first appellate Court on 20.03.2015. Aggrieved by the same, these second appeals came to be filed.

2.S.A.(MD)No.107 of 2016 was admitted on 23.10.2024 on the following substantial questions of law:-

“1.Whether the first appellate Court was justified in interfering with the decision of the trial Court on the ground that the trial Court ought to have gone into the question of title?



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2. Whether the first appellate Court was justified in dismissing the suit on the ground that the plaintiff failed to prove the tenancy?”

3.S.A.(MD)No.109 of 2016 was admitted on 23.10.2024 on the following substantial question of law:-

“Whether the first appellate Court was justified in ignoring the overwhelming evidence adduced by the plaintiff to show her possession?”

4.The learned counsel for the appellant reiterated all the contentions set out in the memoranda of grounds of the second appeals and called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the impugned judgments and decrees of the first appellate Court and restore the decision of the trial Court.

5.Per contra, the learned counsel for the respondent submitted that the impugned judgments and decrees are well reasoned and that they do not call for interference.



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6.I carefully considered the rival contentions and went through the evidence on record.

7.The case of the plaintiff is as follows:-

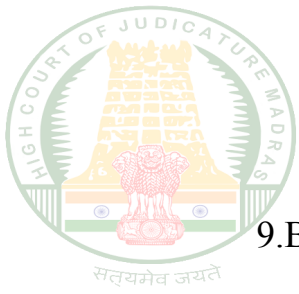
The plaintiff purchased an extent of one acre in S.F.No.212/1 which is the suit property from the Chairman of Sarvodaya Ashram vide registered sale deed dated 30.09.1990 for valuable consideration of Rs.30,000/-. The plaintiff constructed a house in the north eastern portion of the property purchased by her. The said house alone is the suit schedule in O.S.No.287 of 2009. According to the plaintiff, the defendant is a tenant in the said house. The remaining extent of land purchased by her is agricultural lands. The plaintiff's power agent / K.S.Venugopal is cultivating the property. The agricultural lands are shown in the suit schedule of O.S.No.320 of 2009. According to the plaintiff, she is in possession of the agricultural lands and cultivating the same. Since the defendant interfered with her possession and enjoyment, she was constrained to file a suit in O.S.No.320 of 2009 for the relief of permanent injunction restraining the defendant from interfering with her peaceful possession and enjoyment of the property. The plaintiff is residing in USA and



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she has given power of attorney in favour of K.S.Venugopal who is one of her brothers. The defendant who is also a brother of the plaintiff took the property on oral lease in 2005. Since the defendant was not paying rent properly, the plaintiff terminated the lease and called upon him to vacate the property and hand over possession. Since the defendant did not comply with the demand set out in the notice dated 07.07.2009, she filed O.S.No.287 of 2009.

8.The defendant filed written statement controverting the plaint averments. He conceded that the property was purchased by Srinivasan in his capacity as Chairman of Sarvodaya Ashram. Srinivasan is none other than the father of the parties to the suit. Srinivasan had no right to sell the suit property. The defendant denied that there was any tenancy arrangement between himself and the plaintiff. The defendant also denied that the plaintiff is in possession of the agricultural lands. According to him, it is he who is cultivating the said lands. The defendant claimed that he is in possession of the suit property as a member of joint hindu family. The defendant also denied the plaintiff's claim that the house was constructed by her. According to him, a portion of a house was constructed by Srinivasan and that it was the defendant who completed the remaining part.



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9. Based on the rival pleadings, the trial Court framed necessary issues.

K.S.Venugopal, the power agent was examined as P.W.1 while Kamal Srinivasan, the mother of the parties was examined as P.W.2. Exs.A1 to A14 were marked in O.S.No.287 of 2009 and Exs.A1 to A22 were marked in O.S.No.320 of 2009. The defendant examined himself as D.W.1 and marked Exs.B1 to B9. After considering the evidence on record, the trial Court decreed the suits as prayed for. As already mentioned, the first appellate Court reversed the decision of the trial Court.

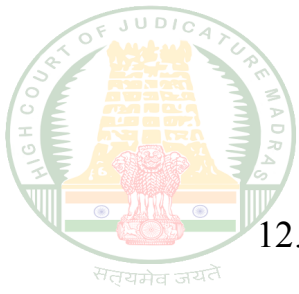
10. The case of the appellant suffers from a glaring lacuna. The plaintiff did not enter the witness box to depose. It was only the power agent who testified on her behalf as P.W.1. In his cross examination, P.W.1 admitted that it was only the plaintiff who knew about the tenancy arrangement with the defendant and that he did not have any personal knowledge. P.W.2 / mother of the plaintiff also admitted in the cross examination that the defendant was residing in the suit property ever since his marriage. She had also not spoken about the tenancy agreement between the plaintiff and the defendant. It is true that revenue record as well as service connection stand in the name of the plaintiff. Earlier it stood in the name of Srinivasan. If the suit had been filed for recovery of possession on the strength of the plaintiff's title, it should have



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been valued under Section 30 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1965. But the plaintiff filed an ejectment suit and valued it under Section 43 of the Act. The first appellate Court dismissed the suit for ejectment because the tenancy could not be proved. It is well settled that an ejectment suit is liable to fail, if tenancy could not be established. The plaintiff alone could have proved that there was oral tenancy in favour of the defendant. But on account of her failure to do so, the first appellate Court cannot be faulted for having allowed the appeals filed by the respondent / defendant and dismissed the suits. Even if the substantial questions of laws are answered in favour of the appellant, that would not still advance her case. The appellant ought to have instituted an appropriate suit and valued it correctly. There is not even a scrap of evidence to show that the defendant was her tenant. Failure on the part of the plaintiff to step into the witness box is fatal. I, therefore, decline to interfere with the impugned judgments and decrees of the first appellate Court.

11.The defendant in his written statement had pleaded that he is in occupation of the suit property as a member of the joint hindu family. Therefore, he cannot claim any adverse possession against the appellant. The appellant is therefore given liberty to file a comprehensive suit against the defendant / respondent herein.



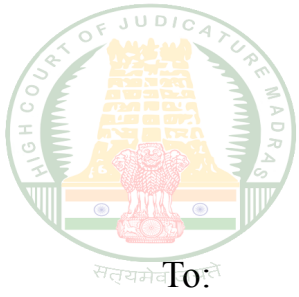
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12.The first appellate Court noted that even though the suit property was purchased by the plaintiff way back in the year 1990, the documents marked by her to show her possession were of recent origin. The defendant on the other hand adduced oral and documentary evidence to show his possession. As already noted, the plaintiff did not enter the witness box to prove her possession. On the other hand, her mother / Kamala Srinivasan who was examined as P.W.2 in her cross examination admitted that the defendant is in possession of the suit property. Her grievance was that the profits of the lands are not being shared. Therefore, the first appellate Court rightly reversed the decision of the trial Court and denied the relief on injunction for the appellant. Of course, the injunction suit filed by Muralikrishnan was also dismissed since he had not come to the Court with clean hands.

13.The substantial questions of law are answered against the appellant and the second appeals are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.05.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:

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1.The IV Additional Sub Court,
Thiruchirapalli.

2.The District Munsif Court,
Manapari.

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V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN, J.

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**Pre-Delivery Common Judgment in
S.A.(MD)Nos.107 and 109 of 2016**

08.05.2025