

(1999) 08 MAD CK 0081

In the Madras High Court

Case No : Second Appeal No's. 209 and 210 of 1988

Ayyavu (died) and 8 others

APPELLANT

Vs

Shanti Bibi and 9 others

RESPONDENT

Date of Decision : 18-08-1999

Acts Referred:

Registration Act, 1908 — Section 17, 49
Transfer of Property Act, 1882 — Section 123

Citation : (1999) 3 CTC 400 : (2000) 1 LW 466

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : Mr. R. Swaminathan, for the Appellant; Mr. M.V. Venkataseshan, for the Respondent

Judgement

1. The first appellant filed the suit in O.S.No. 687 of 1982 on the file of the District Munsif Court, Bhavani, for declaration and for permanent

injunction against one Ghouse Mohideen Sahib, who died pending the suit whose legal representatives are appellants 2 to 5 in S.A.No.209 of

1988, and against Bhavani Municipality.

2. According to the 1st appellant, the suit property was owned by his father and he has been in possession and enjoyment of the same for the past

25 years and thereafter he became entitled to the same. The 1st defendant-municipality had recognised the 1st appellant/plaintiff as the owner of

the suit property and assessed property tax in his name and so the said Ghouse Mohideen Sahib 2nd defendant has no right or title or interest in

the suit property, but he attempted to interfere with the possession and enjoyment of the plaintiff.

3. The said Ghouse Mohideen along with one P.K. Babu filed the suit in O.S.No.

301 of 1983 on the same Court for declaration, delivery of possession and for mesne profits with respect to the same property. According to them they are the brothers, and the suit property is their ancestral property. Their father had mortgaged the same on 10.5.1947 to one Palanisami Chettiar and got it discharged on 25.6.1959. Thereafter the said Ghouse Mohideen leased out the suit property to Chinna Pillai, the father of Ayyavoo on monthly rent and since they had committed default and wilfully claiming title to the suit property, and so they have filed the said suit for declaration and recovery of possession. Pending the disposal of the said suit, P.K. Babu died and so his legal representatives were impleaded as plaintiffs 3 to 6.

4. The trial Court tried both the suits jointly and dismissed the suit in O.S. No. 687 of 1982 and decreed the suit in O.S.No. 301 of 1983.

Aggrieved against the judgment and decree of the trial court, the present appellants filed the Appeals in A.S.Nos. 34 and 44 of 1986 on the file of

the District Court Erode and they were subsequently transferred to Sub-Court, Erode and re-numbered as A.S.Nos. 36 and 45 of 1986. The

lower appellate Court after elaborately considering the oral and documentary evidence dismissed the appeals with costs. Still aggrieved, the

appellants have filed the above second appeals.

5. The only argument that has been advanced before this Court by the learned counsel appearing for the appellants is that the respondents has

come forward with the plea that the appellants are the lessees and thereby they have prayed for recovery of possession, and the Courts below

have erroneously relied on the said documents Exs. B3 to B5, which are unregistered lease deeds and granted the decree in favour of the

respondents for possession, which is contrary to the decision of this Court in Muruga Mudaliar v. Subba Reddiar, 1950 (II) M.L.J. 818 and in

Arumughachamy Nadar Vs. Deivanaiammal, . According to the learned counsel, the respondents are claiming possession from the appellants only

on the basis of the said documents which are unregistered and so the Courts below are not correct in relying on the said documents for collateral

purpose to decide about the character of possession especially when the appellants are denying such relationship.

6. The Courts below has relied on Exs. B1 and B2, the letter sent by the Tahsildar

in the year 1919 and 1922 to come to the conclusion that the suit property belongs to the respondents. To sustain the claim of the respondents that the appellants are in possession as tenant, the Courts below have relied on Exs. B3 to B5 and has come to the conclusion that the appellants are in possession only as tenants under the respondents and so the respondents are entitled for declaration and possession as prayed for. Apart from these documents, there is no other document available for the respondents to establish their right. Since the Courts below have relied on those documents to come to the conclusion that the respondents are entitled for the decree as prayed for this Court has to decide whether Exs. B3 to B5 can be relied on even for collateral purpose.

7. The learned counsel appearing for the appellants, as stated above, has mainly relied on the Full Bench decision of this Court in Muruga Mudaliar

v. Subba Reddiar, 1950 (II) M.L.J. 818. In the said decision, undoubtedly it is held that so long as the documents are not sought to be relied on as

evidence of any right, title or interest to or in immovable property, there is nothing to prevent the documents being received in evidence. In the said

decision, the suit was filed for damages for breach of agreement of lease. The document was rejected by the courts below for want of registration.

So, the issue before the Court was whether the Courts below are correct in rejecting the document mentioned for the purpose of claiming damages

for breach though it is unregistered as required u/s 17 of the Registration Act. The Full Bench has ultimately held that the agreement of lease in

writing can be used as evidence of the agreement in a suit for damages for its breach, though the document has to be registered, but it is

unregistered in that case. While coming to the conclusion, the Full Bench has found that Section 49(c) of the Indian Registration Act prohibits the

use of unregistered document in any legal proceedings in which the such document is sought to be relied on in support of the claim to enforce or

maintain any right, title or interest to or in immovable property, so long as the document is not sought to be relied on as evidence of any right, title

or interest to or immovable property, there is nothing to prevent the document being received in evidence for other purposes. So, in the present

case, the respondents are denying the abovesaid documents only for collateral purposes to prove the character of possession and not to enforce

the right agreed thereon. So, the said decision cannot be used against the respondents.

8. The Division Bench of this Court in Krishnaswami Naidu v. Secretary of State, AIR 1943 Mad. 15, while dealing with similar issue has held as

follows:

It is true that according to the inscription, Ex.A, the property was said to have been donated to Sadasivaswami who was authorised to hold and

enjoy the said property with all rights and according to the inscription, Ex.A.I, the other two properties were said to have been set apart for the

expenses of puja, deepam and establishment charges" for the Swami at the Samadhi Ashram that was "built and endowed for the said Swami", but

these exhibits do not comply With the provisions of Section 123, T.P.Act, or S. 17 Registration Act, and cannot be, for that reason, admitted in

evidence to prove the gifts in favour of the Swami but may be referred to for the collateral purpose of ascertaining the nature of his possession.

9. While considering the admissibility of the unregistered document V. Ramaswami, J., as he then was, Gangayya and Another Vs. S. Mandan

Chand Samdaria and Others, , relying on the decision in In Re: Vadasseri Tharawattil Karnavan and Manager Ittichathara Valia Mannadiar, has

held that even though the unregistered lease deed was not admissible in evidence, for proving the terms of tenancy, it could be relied on for the

purpose of proving the nature and character of possession of the tenants and also the date from which such possession in the hands of the tenant

commenced.

10. Referring to the decision of the Full Bench referred to above, Pratap Singh, J., as he then was, in the decision in Kovilpatti Sri

Dhandayuthapani Trust Vs. M. Tilakaraj, while deciding the issue whether the unregistered document can be received for looking into it for

collateral purposes, has held that to prove the purpose for which the possession was handed over, the document can be looked into.

11. While considering the similar issue, Raju, J., as he then was, in M.K. Varappan v. Sri Lakshminarayana Venugopalaswamy Temple by its

Executive Officer, 1997 (3) L.W. 27, has held as follows:

That is also a case of the plaintiff filing the suit for permanent injunction against the defendant from altering the superstructure and attempting to put

up a pucca masonry construction with a foundation. The case of the plaintiff temple was that the temple was the owner of the vacant site with the building and that it was leased out to the defendant on a monthly rent of Rs. 3 and that the defendant being a tenant has no right to remove the superstructures on the property etc., and attempted to put up a pucca masonry construction which necessitated that filing of the suit. The defendant in the written statement contended that what was leased Out was only the vacant site and the superstructures therein belonged to the defendant and the owner of the superstructure had every right to alter the superstructure or replace the same with a new superstructure. The trial Court came to the conclusion that was leased out was vacant site and the plaintiff is not the owner of the superstructure and therefore not entitled to have any injunction with regard to the superstructure. Consequently the suit was dismissed. Aggrieved, the plaintiff pursued the matter on appeal before the sub court in A.S.No. 25 of 1982. The learned Subordinate Judge chosen to re-appreciate the evidence by placing reliance upon the recitals contained in Ex.A1 an unregistered rent deed which disclosed that the subject matter of the lease was not only vacant site but the superstructure thereon. The Appellate court held that there was no impediment in relying upon the unregistered rent deed for collateral purpose and chose to disagree with the findings recorded by the learned trial Judge and came to the conclusion that the subject matter of lease between the parties was the land with superstructure. Hence the plaintiff filed a second appeal in this Court. It is argued on the side of the plaintiff that Ex.A1, is inadmissible in evidence for want of registration and non-payment of property stamp duty, etc.

15. ""The learned Judge (Raju, J.), held in para 4 (at page 28) that;

I have carefully considered the submission of the learned counsel appearing on either side. In my view, the judgment of the learned first Appellate Judge does not call for any interference. It is by now well settled that though a document particularly a document of the nature under consideration, the unregistered rent deed has not been registered under the law of registration, there is no impediment for referring to the same or relying upon the recitals therein for collateral purposes"".

12. Similarly, in Kousalya Ammal Vs. Valliammai Ammal and Another, , AR.

Lakshmanan, J., as he then was, after referring to various judgments on the issue which are relevant for the present case, has held that unregistered document can be looked into for collateral purposes, namely, for the purpose of proving the character of possession of the party, and mere marking the document does not prove any recitals of the document itself.

13. In view of the abovesaid decided cases on the same issue, and in view of the fact that the decision of the Full Bench decision in *Muruga Mudaliar (Deceased) and Others Vs. Subba Reddiar*, will not apply to the facts of the present case. I prefer to follow the abovesaid judgment, than the judgment reported in *Arumughachamy Nadar Vs. Deivanaiammal*, .,

14. So, the judgment and decrees of the Courts below does not call for any interference, as the lower Appellate Court looked into the abovesaid documents for collateral purposes, namely, for the purpose of proving character of possession of the land by the defendants and factually found that the appellants are in possession as tenants. Hence this Second Appeals are dismissed. No costs.