
(2011) 01 MAD CK 0423

In the Madras High Court

Case No : S.A. No. 761 of 1997 and C.M.P. No's. 7562, 7563, 15064 and 15065 of 1997

P.M. Nanjappan, Kappinisamy, Rangammal @ Rani and
Palaniammal @ Thangam

APPELLANT

Vs

S. Ramasamy

RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:

Citation : (2011) 01 MAD CK 0423

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : N. Damodaran, for the Appellant; K. Govi Ganesan, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The unsuccessful Defendants are the Appellants in the Second Appeal.

2. The Respondent/Plaintiff filed the suit for injunction stating that the property was owned by one Natarajan and in the year 1964, he leased out the property to the Plaintiff on an yearly rent of Rs. 2,100/-and the said Natarajan, settled the property in favour of the Appellants in the year 1966. Thereafter, the Respondent/Plaintiff was a tenant under the Appellants/Defendants and was paying the rent and the Respondent/Plaintiff has also spent Rs. 40,000/-for the purpose of deepening the well and he is paying the electricity consumption charges. As the Appellants/Defendants threatened the Respondent/Plaintiff to vacate and handover the possession and the Respondent/Plaintiff has filed the suit for injunction.

3. The Appellants/Defendants contested the suit stating that the Respondent/Plaintiff was not given the entire properties and the properties were cultivated by the mother of the Respondent/Plaintiff and she died in the year 1968. Thereafter,

the Respondent/Plaintiff and his brother Mayilsamy, partitioned the tenancy rights and in that partition deed, the eastern portion was given to the Respondent/Plaintiff and the western portion was given to Mayilsamy and the said Mayilsamy, was enjoying the western portion. Later on, the said Mayilsamy, surrendered his western portion to the Appellants/Defendants by executing a surrendered deed dated 11.08.1978, and therefore, the Appellants/ Defendants are in possession of the western half of the property and therefore, the Plaintiff cannot claim injunction in respect of the entire property.

4. It is further stated by the Appellants/Defendants that the Respondent/Plaintiff filed an application before the Record Tenancy Tahsildar, to register his name as a tenant in respect of the entire extent in T.R. No. 41 of 1990 and that petition was dismissed holding that the Respondent/Plaintiff has not proved his possession as a cultivating tenant and that would also prove that the Respondent/Plaintiff is not in possession of the entire property.

5. Both the Courts below have held that the Respondent/ Plaintiff is a cultivating tenant in respect of the entire property and the Appellants/Defendants have not proved the partition between the Respondent/Plaintiff and his brother Maylsamy and the document viz., Ex.B18, the alleged surrendered deed cannot be received in evidence and it was also not proved to be executed by Mayilsamy, by examining proper persons. Hence, this Second Appeal is filed.

6. At the time of admitting the Second Appeal, the following substantial questions of law were framed by this Court:

i) Whether in law the Courts below are right in overlooking that they have no jurisdiction to decide and determine whether the Plaintiff is a cultivating tenant or not vide Periathambi Goundan Vs. The District Revenue Officer, Coimbatore and Others,

ii) Whether in law the Courts below erred in not relying on Exs.B.1 to B.14, which would prove Appellant's possession of the western half of the suit property?

iii) Whether in law, the Courts below had erred in holding that Exs.B.18, was not proved, as attestors have not been examined, overlooking that the attestors of Exs.B.18, were already dead?

7. It is submitted by Mr. N. Damodaran, the learned Counsel appearing for the Appellants that the Courts below erred in rejecting Ex.B18, on the ground that it is only a photocopy and the Respondent/ Plaintiff has not proved that he is in possession of the entire extent and as per Ex.B17, the Respondent/ Plaintiff was also found not to be a cultivating tenant by the Competent Authority and that has become final and though the appeal was said to have been filed against the said order, no proof has been filed by the Respondent/Plaintiff. Therefore, having regard to Exs.B17 and B.18, the Court ought to have held that the Respondent/ Plaintiff is not the cultivating tenant in respect of the entire extent of the suit property and he is not in possession of the same.

8. The learned Counsel appearing for the Appellants further submitted that the property was enjoyed by the mother of the Respondent/Plaintiff. After the death of the mother in the year 1968, her sons partitioned the property. In that partition deed, the eastern half was taken by the Respondent/Plaintiff and the western half was taken by his brother Maylsamy, who later on surrendered his western half share to the Appellants/Defendants under Ex.B18. Therefore, the Appellants/Defendants are in possession of the western half of the suit property and hence, the Courts below erred in granting the relief of injunction in respect of the entire property.

9. According to me, the Courts below have rightly held that the Respondent/Plaintiff is entitled to the relief of injunction. Though the Respondent/Plaintiff claimed possession in respect of three items of property, the dispute is only in respect of properties in S. No. 169/3, measuring an extent of 6.01 acres and 174/1-A, measuring an extent of one acre.

10. It is the specific case of the Respondent/Plaintiff that he was let into possession by previous owner Natarajan, in the year 1964 and after the settlement of the property in favour of the Appellants, he continued to be a tenant under the Appellants/Defendants and was paying the rent.

11. The case of the Appellants/Defendants was that the property was enjoyed by the mother of the Respondent/Plaintiff till the year 1968 and after her death, her two sons viz., the Respondent/Plaintiff and Maylsamy, partitioned the property and the eastern portion was cultivated by the Respondent/Plaintiff and the western portion was cultivated by his brother Maylsamy. Though the Respondent/Plaintiff has stated that he was let into possession under the lease deed dated 10.06.1964, by Natarajan, no document was filed by the Respondent/Plaintiff to prove the same.

12. Nevertheless, the Respondent/Plaintiff filed Exs.A1 to Ex.A21, the various receipts issued by the first Defendant/first Appellant to prove that the rent was received by the Defendants/Appellants in support of lease in respect of the property situate in S. No. s.169/3 and 174/1 from the Respondent/Plaintiff. Therefore, the Courts below have rightly held that the Respondent/Plaintiff was in possession of the leased property in S. Nos. 169/1 and 174/1.

13. It is the specific case of the Appellants that after the death of the mother in the year 1968, the properties were partitioned between the Respondent/Plaintiff and his brother Maylsamy and the said Maylsamy, was cultivating the western portion and the Respondent/Plaintiff was cultivating eastern portion. To prove the same, the Appellants marked Ex.B18. Ex.B18, is the photocopy of the document, alleged to have been signed by Maylsamy. The document was marked subject to objection by the Respondent/Plaintiff and though it was stated that the original of Ex.B18, was handed over to the counsel for the Appellants/Defendants who, originally conducted the case in the Trial Court and he lost the same, no proper explanation has been given by the Appellants for the non-examination of

the Counsel especially, when Ex.B18, is disputed by the Respondent/ Plaintiff. Further, no attempt was made by the Appellants/Defendants to prove Ex.B18, either by examining witness or scribe and no evidence was also let in to prove that the witness or scribe are dead. Thereafter, the Courts below have rightly rejected Ex.B18. In the absence of Ex.B.18, there is no other evidence to support the contention of the Appellants that the western half was cultivated by Mayilsamy.

14. As stated supra, Ex.A1 to Ex.A21, would prove that the rent was demanded only from the Respondent/ Plaintiff in respect of the entire lease property and therefore, it has to be presumed that the Appellants have recognized only the Respondent/ Plaintiff as a tenant and in that capacity they demanded rent. Ex.B.17, cannot be given any importance inasmuch as the possession of the Respondent/ Plaintiff in respect of the suit property was admitted by the Appellants by issuing receipts viz., Ex.A1 to A.21.

15. Therefore, even though the Respondent/ Plaintiff was not recognized as the cultivating tenant by the Competent Authority, having regard to Ex.A1 to Ex.A21, wherein, the Appellants have recognized the Respondent/Plaintiff as a tenant, in my opinion, the Respondent has proved his possession in respect of the entire properties. Considering all these aspects, the Courts below have rightly held that the Respondent is in possession of the suit properties and Exs.B1 to B14, will not prove the possession of the Appellants in respect of the western half of the property, having regard to the fact that the Appellants failed to prove that the western half share was cultivated by Mayilsamy, which was surrendered by him later in favour of the Appellants. Further, the Courts have rightly held that Ex.B18, was not proved and the same cannot be relied, as it was not proved through the attesting witnesses. Hence, the substantial questions of law No. 2 and 3, are answered against the Appellants. Insofar as the substantial question of law No. 1, is concerned, it is settled law that in a suit for injunction by cultivating tenants, the Civil Court has got jurisdiction and the suit is not barred and the substantial question of law No. 1 is also answered against the Appellants.

16. In the result, the judgment and decree of the Courts below are confirmed and this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.