
(2012) 01 MAD CK 0171
In the Madras High Court
Case No : Second Appeal No. 621 of 1999

Rangaraju

APPELLANT

Vs

Kannayal, Pachiannan @ Palkaranand and Jayaramu

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Evidence Act, 1872 — Section 65, 74, 77

Citation : (2012) 01 MAD CK 0171

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : T. Murugamanickam, for the Appellant; A. Sundaravadhanam for M/s. V. Bharathidasan for R1 and R2 and No appearance for R3, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Appellant/Plaintiff has projected this instant Second Appeal as against the Judgment and Decree dated 19.11.1998

in A.S. No. 40 of 1998 passed by the Learned Sub Judge, Bhavani in reversing the Judgment and Decree dated 24.09.1997 in O.S. No. 573 of

1991 passed by the learned Principal District Munsif, Bhavani.

2. The First Appellate Court, viz., Learned Sub Judge, Bhavani, while passing the judgment in A.S. No. 40 of 1998 on 19.11.1998, has among

other things observed that the ""Plaintiff (Appellant) has not been residing in the suit property as spoken to by P.W. 2 in his evidence in cross-

examination"" and has resultantly come to the conclusion that Ex. A1 -Rent Deed has been created for the purpose of the case and accordingly

allowed the appeal, thereby setting aside the Judgment and Decree in O.S. No. 573 of 1991, dated 24.09.1997 passed by the trial Court.

3. Earlier, before the trial Court, in the main suit, one to two issues have been

framed for determination. On behalf of the Appellant/Plaintiff, witnesses P.Ws.1 and 2 have been examined and Exs.A1 to A10 have been marked. On the side of Respondents/Defendants, D.W. 1 has been examined and Exs.B1 to B18 have been marked.

4. The trial Court, on appreciation of entire oral and documentary evidence available on record has come to a conclusion that the

Appellant/Plaintiff is entitled to get the relief of permanent injunction and accordingly decreed the suit with costs.

5. The Appellant/Plaintiff, as an aggrieved person on account of being dissatisfied with the Judgment and Decree passed in A.S. No. 40 of 1998 on 19.11.1998, has preferred the Second Appeal before this court.

6. At the time of admission of the Second Appeal, this court has framed the following Substantial Questions of Law for determination:

1. Whether production of house tax receipts can be construed as evidence of possession of property?

2. Whether a Voters List can be marked in evidence to prove possession of the property, particularly when it is not a public document as envisaged u/s 74 of the Indian Evidence Act?

3. Whether the Ration Card cannot be construed as proof of possession of residential property?

The Contentions, Discussions and Findings on Substantial Questions of Law 1 to 3:

7. Learned Counsel for the Appellant/Plaintiff contends that the First Appellate Court ought to have dismissed the First Appeal in A.S. No. 40 of

1998 on the basis that Defendants 2 and 3 have not been in possession of the suit property and per contra, the Appellant/Plaintiff has been in

lawful possession of the suit property pursuant to the Rent Deed - Ex. A1, dated 02.02.1991.

8. The Learned Counsel for the Appellant/Plaintiff urges before this court that the Appellant/Plaintiff has been indebted into possession in

pursuance of Ex. A1, Lease Deed dated 02.02.1991 and the first Defendant, a Lessor has joined hands with his wife and brother-in-law to disturb

the possession of the Appellant/Plaintiff, which necessitated the Appellant/Plaintiff to file a suit before the trial Court.

9. The Learned Counsel for the Appellant/Plaintiff projects the plea that so long

as the first Defendant as a Lessor does not dispute the Lease

Deed, Ex. A1 dated 02.02.1991 and has deliberately avoided the witness box, a presumption has to be drawn in favour of Ex. A1, Rent Deed as

a valid document. Therefore, no further evidence is necessary to prove Ex. A1, Rent Deed.

10. The stand of the Appellant/Plaintiff is that in as much as the first Defendant has not been examined as a witness before the trial Court, it will

only be a circumstance against the Appellant/Plaintiff and further, it will only go to prove that the first Defendant has avoided the witness box by

joining hands with the other Defendants. Moreover, there is no necessity to infer that Ex. A1 - Rent Deed, dated 02.02.1991 has been executed to

drive out the second Defendant from the suit property, particularly when the suit has been filed in the year 1991 and also when the Maintenance

suit has been filed only in the year 1993.

11. The Learned Counsel for the Appellant/Plaintiff puts forward a plea that the First Appellate Court has committed an error in not relying upon

Ex. A1 0 - photocopy of Ration Card and in fact, the said Ration Card is only a substituted one to the existing Ration Card and the said Card

shows the proof of residence. Further, it has been issued after due verification of occupation of an individual in respect of the property.

12. According to the Learned Counsel for the Appellant/Plaintiff, the First Appellate Court is not correct in placing reliance on Ex. B17 - Voters

List as proof of possession of Defendants 1 and 2, but in the evidence, it transpires that the first Defendant has been residing at Pachampalayam

and also that the Voters List is not a public document and also the same has not been proved in the manner known to law as per Section 77 of the

Indian Evidence Act.

13. Lastly, it is the contention of the Learned Counsel for the Appellant/Plaintiff that just because the first Defendant is living separately in

Pachampalayam, it does not mean that the second Defendant is living in the suit property.

14. Per contra, it is the submission of the Learned Counsel for Respondents 1 and 2/Defendants 2 and 3 that the First Appellate Court has

scanned the entire oral and documentary evidence on record. Furthermore, it is the evidence of P.W. 2 to the effect that the Appellant/Plaintiff has

not been residing in the suit property. Also, the First Appellate Court has come to a right conclusion that Ex. A1 - Rent Deed, dated 02.02.1991

has been created for the purpose of the case and also that the Appellant/Plaintiff has not been residing in the suit property and rightly negated the

relief of permanent injunction and allowed the appeal to prevent aberration of justice, which need not be disturbed at this distant point of time.

15. The Appellant/Plaintiff in the plaint has averred that the house property in Door No.2/130 Patlur Village, namely, the suit property is within the

jurisdiction of the trial court and further, the site over which the house property in Door No.2/130 has been constructed belongs to the

Appellant/Plaintiff, the first Defendant, his other brothers and their mother as joint family property and the first Defendant has constructed a tiled

house out of his personal money and efforts and has been residing there. Further, the first Defendant, on 02.02.1991 has let out the house property

to the Appellant/Plaintiff on a monthly rent of Rs.50/- for a period of 11 months. The first Defendant executed the Rent Deed in favour of the

Appellant/Plaintiff and also received a sum of Rs.550/- being the rent payable for 11 months period. As per the Rent Deed, the Plaintiff has been

put into possession of the suit property ever since 02.02.1991.

16. That apart, in the plaint, it is averred by the Appellant/Plaintiff that the second Defendant (second Respondent) is the wife of the first Defendant

and the third Defendant (first Respondent) is her brother. The first Defendant's right leg has been fractured in a lorry accident two years ago. The

second Respondent/second Defendant is not a good wife ever since her marriage with the first Defendant and she left her husband in the lurch and

joined her brother. The first Defendant's mother took care of him and treated him at huge expenses. Ever since the date of accident, it is his

mother who has taken care of him at Pachampalayam.

17. The second Respondent/second Defendant during June 1990 has carried away all the belongings from the suit house to her parents' house and

deserted her husband at a time when he needed her attention and service. The Appellant/Plaintiff understands and believes that the same be true

that the second Defendant/second Respondent is leading a questionable life detrimental to the family's name. The Appellant/Plaintiff who has been

residing in a rented house at Kundooriyur near Poosariyur, became a tenant in

respect of the suit property as mentioned supra, since it fell vacant for a number of months.

18. The stand of the Appellant/Plaintiff is that the second and third Respondents have no manner of right to disturb the possession and enjoyment of the suit property. The second Defendant, last month has lodged a police complaint claiming that she has been removed from the suit house by the Appellant/Plaintiff and the first Respondent forcibly. The Police has directed all the parties, namely, Defendants 1 and 2 and the Appellant/Plaintiff not to enter the house and that the vacant possession of the suit property be delivered in favour of the Appellant/Plaintiff's mother by 18.09.1991.

19. The police through the Deputy Superintendent of Police, Erode, has warned the Appellant/Plaintiff that stern action will be taken against him, if he does not vacate the suit property by 18.09.1991. The first Defendant has borrowed a sum of Rs.10,000/- from the Appellant/Plaintiff on 15.02.1991 for meeting his hospital expenditure and had executed a pro note. The Appellant/Plaintiff requested the first Defendant to discharge the said pro note in view of the first Defendant's quarrel and subsequent police complaints by the second Respondent/second Defendant. All of a sudden, the first Defendant, aggrieved over the demand for return of a sum of Rs.10,000/- with interest, appears to have changed sides. On 15.09.1991, the first Defendant demanded the Appellant/Plaintiff to vacate the suit property by 18.09.1991. The Appellant/Plaintiff has reason to believe that the Defendants 1 to 3 would join together and dispossess him by force irrespective of the hollowness of the Police threat.

20. Hence, the Appellant/Plaintiff has filed a suit for permanent injunction restraining the Defendants, their men and agents from interfering with the peaceful possession and enjoyment of the suit property as a tenant in any manner whatsoever, unless and until evicted under due process of law.

21. The second Respondent/first Defendant has remained absent in Appeal proceedings before the Appellate Court. The Respondents 1 and 2/Defendants 2 and 3 filed written statement making a mention that so far as the Appellant/Plaintiff is concerned, they deny the averments in paragraph 4 of the plaint and also that the second Defendant has been married to the first Defendant with 6 sovereign of gold jewels and other

utensils and seers about 11 years ago and that the first Defendant has been ill-treating and often driving her out to her parents home for obtaining money and as every Hindu wife joined with her husband, the second Defendant has been living with the first Defendant. When the accident has taken place, she has taken all pains to treat him and even money was borrowed for the purpose of treatment from Chinnasamy, son of Muthu Gounder, residing at Poosariyur, Patloor Village by the second Defendant and only with that amount, the first Defendant has recovered. The second Respondent is living in the suit property along with her son. After recovery, the first Defendant has taken to his old habit of being addicted to drinks and also because of his bad habits, the Appellant/Plaintiff has forged and fabricated documents as if the first Defendant had executed them. When the second Defendant has questioned the conduct and drunkenness of the first Defendant, the Appellant/Plaintiff has taken advantage and control over the first Defendant, which resulted in filing of the present suit. Never the Plaintiff is in possession of the suit property as a tenant nor he has any rights over the same. The second Respondent/second Defendant has filed O.S. No. 44 of 1993 against the Appellant/plaintiff on the file of the Principal District Munsif Court, Bhavani.

22. It has to be pointed out that a document cannot be said to be a public document within Section 74 of the Indian Evidence Act, unless it is shown to have been prepared by a public servant in discharge of his official duty as per the decision rendered in S. V. Chimanlal's case reported in AIR 1942 Bombay 161.

23. Whenever there is a duty to record official doings, the record thus kept is admissible. As a general principle, it may be laid down that wherever there is a duty to do so, then there is also a duty to record the things done (Wigmore S 1639).

24. A public document is one made by a public officer for the purpose of the public making use of it and being able to refer it as per the decision made in *Sturla vs. Ferriccia* (1882) 5 App Cas 623 HL at 643 per Lord Blackburn.

25. The rule as to public document is that the publicity must be contemporaneous and publicity means such publicity as would afford an opportunity of correcting anything that is wrong.

26. The test of publicity is that the public are interested in it and entitled to see it

so that if there is anything wrong in it, they are entitled to protest.

27. When a public has a right to inspect an official document, it becomes a public document and the certified copy of the same will be given to that

person who has applied for it, provided his right of inspection is not taken away by any other provisions of the Indian Evidence Act or by any other

law, as opined by this court.

28. As a matter of fact, a certified copy of a public document need not be proved by calling a witness as per the decision of the Honourable

Supreme Court reported in *Madamanchi Ramappa and Another Vs. Muthalur Bojjappa*, .

29. Section 65(e) of the Indian Evidence Act allows secondary evidence such as certified copy to be given where the original is a public document

within the meaning of Section 74 of the Indian Evidence Act. It is only for the convenience, the statutory provision has been made for proving a

public document by tendering its certified copy, in the considered opinion of this court.

30. It is to be noted that Ex. A1 - Rent Deed, dated 02.02.1991 is between the Appellant/Plaintiff and the first Defendant. The Rent Deed refers

to the superstructure agreement entered into between the parties. Ex. A1 is for 11 months. The rent agreed between the parties is specified as

Rs.50/- per month. A perusal of Ex. A1 -Rent Deed clearly points out that there are two witnesses to the Rent Deed and before the trial Court,

none has been examined. The first Defendant whose name finds place in Ex. A1 - Rent Deed has also not been examined as a witness before the

trial Court.

31. Though the Learned Counsel for the Appellant/Plaintiff placed much reliance on Ex. A1 0 - photo copy of the Ration Card, this court

pertinently points out that the present suit filed by the Appellant/Plaintiff before the trial Court in O.S. No. 573 of 1991 has been decreed during

the year 1991 and the Ration Card has come into existence in the year 1994. When the Appellant/Plaintiff has come out with a categorical and

definite case that he has been in possession and enjoyment of the suit property as a tenant, further, he cannot be evicted except by a due process

of law, then, heavy burden is caused on the Appellant/Plaintiff to prove before the court of law that he has been in possession and enjoyment of the

suit property to the subjective satisfaction of this court.

32. The evidence of P.W. 1 (Appellant/Plaintiff) is to the effect that on 02.02.1991, the first Defendant has let out his suit house on rent for which,

Ex. A1 - Rent Deed has been executed for a period of 11 months and an advance of 11 months' rent has been paid and that the house has been

constructed in the year 1987. Also the superstructure of the house has been built by his brother and the land belongs to all of them in the family.

Ex. A2 - Patta has been issued in favour of his brother and Ex.A3 is the notice demanding payment of loan amount issued by Bhavani House Co-

operative Society and Exs. A4 to A6 are E.B. Receipts.

33. It is the further evidence of P.W. 1 that his mother had obtained a small loan of Rs.10,000/- from him and the first Defendant's leg has been

fractured in a road accident and his wife has already left to her father's place and therefore, the suit property has been let out to him and the

second Defendant is his brother's wife and the third Defendant is his brother's nephew.

34. P.W. 1 (in his cross-examination) has deposed that the suit property belongs to his mother and brothers and it is his ancestral property and the

patta stands in the name of the first Defendant. Added further, it is the evidence of P.W. 1 that in the suit property, the second Defendant is

residing and it is not correct to state that she is deliberately residing in the said house. Further, P.W. 1 in his (re-examination) states that he is

paying the electricity charges.

35. P.W. 2 (an Assistant in the Panchayat Office), in his evidence has deposed that the Appellant/Plaintiff is not residing in the suit property and

only the first Defendant has been residing in the suit property and the Tax Receipts are in the name of the first Defendant, but he does not know

who is residing and that the Appellant/Plaintiff is not residing in the suit property.

36. As seen from the evidence of P.W. 2, (a witness from Panchayat Office), it is clear that the Appellant/Plaintiff has not resided in the suit

property and only the first Defendant has been residing in the suit property. P.W. 2 is an independent and unbiased witness, who has no grudge or

animosity against the Appellant/Plaintiff. P.W. 2, in his evidence has also stated that the name of the second Respondent/second Defendant is

shown in the Tax Receipts. If really, the Appellant/Plaintiff is residing in the suit

property, then there is no need/necessity for P.W. 2 (an independent witness), to say in candid terms that the Appellant/Plaintiff is not residing in the suit property. Though Ex. A1, Rent Deed dated 02.02.1991 has been projected as an Exhibit before the trial Court, the first Defendant, Jayaramu has not been examined and also other witnesses mentioned in the documents have also not been examined as witnesses before the trial Court. In the absence of non-examination of the first Defendant, Jayaramu and other witnesses, mentioned in Ex. A1 - Rent Deed dated 02.02.1991, this court holds that the execution of Ex. A1 - Rent Deed dated 02.02.1991 has not been proved to the subjective satisfaction of this court in the manner known to law and in accordance with law.

37. In view of the categorical and clear evidence of P.W. 2 that the Appellant/Plaintiff is not residing in the suit property, coupled with the evidence of D.W. 1 (2nd defendant) to the effect that she is residing in the suit property and her husband after taking up a quarrel, has left the house and also from the documents filed on behalf of Defendants 2 and 3, it is clear that they are only residing in the suit property and as such, this court comes to a inescapable conclusion that the Appellant/Plaintiff has not resided in the suit property and when he is not residing in the suit property, it is not open to the Appellant/Plaintiff to file a suit for permanent injunction as if he is residing in the suit property and further to protect his possession and enjoyment of the suit property in the manner known to law.

38. Accordingly, this court holds that the Appellant/Plaintiff is not entitled to the relief of injunction and this court further holds that mere production of house tax receipts ipso facto cannot be construed as evidence of possession of the suit property, when P.W. 2, in categorical terms has stated in his evidence that the Appellant/Plaintiff is not residing in the suit property. Moreover, placing reliance on Voters list will not come to the aid of the Appellant/Plaintiff on any score for the simple reason that P.W. 2 in his evidence has clearly deposed that the Appellant/Plaintiff has not been residing in the suit property and also that the Appellant/Plaintiff cannot even place reliance on the Ration Card, which has been issued subsequent to the filing of the suit. Accordingly, this court answers the substantial questions of law 1 to 3 against the Appellant/Plaintiff.

39. In the result, the Second Appeal is dismissed, leaving the parties to bear their own costs. Resultantly, the Judgment and Decree of the First

Appellate Court dated 19.11.1998 in A.S. No. 40 of 1998 are affirmed by this court for the reasons assigned in this Appeal. The suit in O.S. No.

573 of 1991 filed by the appellant/plaintiff on the file of the learned Principal District Munsif, Bhavani is dismissed. Consequently, connected

C.M.P. No. 6968 of 1999 and C.M.P. No. 10081 of 1999 are closed.