

(1995) 03 MAD CK 0012
In the Madras High Court
Case No : Second Appeal No. 1517 of 1992

S.M. Sheik Abdulla Muthavalli	Vs	APPELLANT
N.K. Kaliyannan, etc. and 3 others		RESPONDENT

Date of Decision : 29-03-1995

Acts Referred:

Citation : (1995) 03 MAD CK 0012

Hon'ble Judges : Srinivasan, J;S.S. Subramani, J

Bench : Division Bench

Advocate : S. Gopalaratnam, for Mr. I. Mahaboob Sheriff, for the Appellant; V. Srinivasan, for the Respondent

Judgement

Srinivasan, J.—The plaintiff is the appellant. The suit is for recovery of possession and for arrears of rent plus damages for use and

occupation. The trial Court decreed the suit, while the Appellate Court reversed it and dismissed the same. In view of the fact that we are

remanding the matter to the trial Court, we do not want to express any opinion on the merits of the contentions. We would only state such facts as

are necessary for the purpose of making this order of remand.

2. The basis of the claim of the plaintiff is that the defendant entered into possession as a tenant under a rent deed dated 7.3.1974. According to

the plaintiff, the building in the suit property was the subject matter of the lease and the defendant has failed to pay the rent and also chosen to deny

the title. The defendant's contention is that the property belongs to the Government and it was a "Mayanam" poramboke. It does not belong to

the plaintiff. According to the defendant, "B" Memos have been issued to the defendant and charges have been collected.

3. The trial Court held that the plaintiff was entitled to recover possession and granted a decree. On appeal apart from the documents already on

record, the defendant produced certain documents as additional evidence, which were marked in the course of the appeal and the Appellate Judge

held in favour of the defendant, holding that the property was a poramboke property.

4. The main contention before us is that the question of title ought not to have been gone into by the Courts below as the suit is based on a tenancy

agreement between the parties. Both sides have referred to authorities in support of their respective contentions. It is not necessary for us to deal

with them at length in this judgment. Suffice it to point out that in P.V. Chinniah Goundar Vs. P. Ponnusamy and Another, a learned Judge of this

Court has expressed the opinion that when the question of title is not decided between the landlord and the third party in whom the title is set up by

the tenant, the tenant is estopped from denying landlord's title. We agree with the proposition laid down in that judgment and in this case the

question of title is pending decision between the Government on the one hand and the plaintiff on the other, in O.S.No. 360/92 of District Munsif's

Court, Tiruchengode. In this suit when an attempt was made by the defendant to get the Government impleaded as a party, the Government

opposed it and the application was dismissed. Hence, the Government was not made a party to the suit Therefore, the question of title can be

rightly gone into as between the plaintiff in this case on the one hand and the State Government on the other in O.S.No. 360/92 which is admittedly

pending on the file of District Munsif's Court, Tiruchengode.

5. In the circumstances, we are of the opinion that the interest of justice will be best served by trying both the suits together so that the question of

title can be satisfactorily decided and the question whether the plaintiff is entitled to recover possession from the defendant in this action can also be

decided. It may also be necessary to decide as to who constructed the building in the suit property. Consequently, we set aside the judgments of

the Courts below in A.S.No. 42 of 1990 Sub Court, Sankari and O.S.823/81 of District Munsif's Court, Tiruchengode and remand the suit

O.S.823/81 for fresh disposal in accordance with law. The said suit shall be tried along with O.S.360/92 already pending on the file of the said

Court. It is open to the parties to adduce such other evidence as they desire. The Court shall decide all the questions, which are raised by the

parties. The appeal is allowed on the above terms. There will be no order as to costs. The appellant will be entitled to refund of Court Fees paid

on this appeal and the respondents 2 to 4 in this appeal shall be entitled to refund of Court Fees paid on the first appeal before the lower Court.

Both parties shall appear before the trial Court on 19th June 1995. Both the suits shall be disposed of by the District Munsif, Tiruchengode on or

before 31.12.1995 and a report must be sent to this Court.