

Jesudoss Vs. Sebasthian (Died),

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Court : Chennai

Decided On : Jan-03-2003

Reported in : (2003)1MLJ447

Judge : A.K. Rajan, J.

Appeal No. : S.A. No. 1477 of 1993 and W.P. No. 7851 of 1994

Appellant : Jesudoss;d. Sebastln (Deceased), ;abraham Lincon, ;john Britto, ;peter Johnson, ;vijayan, ;caroline

Respondent : Sebasthian (Died), ;smt. Ayinisu Mathuram, ;s. Abraham Lincon, ;s. John Britto, ;s. Peter Johnson an

Advocate for Def. : V.K. Vijayaraghavan, Adv. in S.A. 1477 of 1993, ;P.P. Shanmughasundaram, G.A. for respondents-1 to 3 in W.P. 7851 of 1994 and ;S. Kasirajan, Adv. in W.P. 7851 of 1994

Advocate for Pet/Ap. : V.K. Vijayaraghavan, Adv. in W.P. 7851 of 1994 and ;S. Kasirajan, Adv. in S.A. 1477 of 1993

Judgement :

A.K. Rajan, J.

1. The parties are closely related to each other. Originally, a suit in O.S.255 of 199 was filed by one Sebastian, the writ petitioner herein (Sebastian died during the

pendency of the proceedings before the High Court and his legal representatives have been brought on record).

2. The suit was filed for injunction not to interfere with the possession of the suit property; that was dismissed by the trial Court; against that, an appeal was filed and the first Appellate Court reversed the finding and decreed the suit, as prayed for. Against the judgment of the first Appellate Court, the defendant in that suit, Jesudoss had filed the second appeal.

3. While these civil proceedings are pending before the City Civil Court, the said Sebastian made an application before the Revenue Authorities to declare him as the cultivating tenant of the properties; that claim was dismissed by the Tahsildar, against which he filed an appeal to the Special Deputy Collector who also confirmed the order of the Tahsildar. Against that a revision was preferred to the District Revenue Officer who also dismissed the claim of the said Sebastian. Against that, the present W.P.7851 of 1994 has been filed.

4. Since the subject matter of the second appeal as well as the writ petition is one and the same, this Court has passed an order for hearing both the writ petition and the second appeal together. Hence, they are taken up together and the following common order is passed. In the plaint in O.S.255 of 1985, the plaintiff Sebastian has stated that he was holding the properties on the basis of a lease and he was regularly paying the lease amount to the land owner Jesudoss, the defendant therein. While so, on 18.9.1988 at about 10.00 a.m., the defendant threatened the plaintiff stating that he would not allow him to enter into the suit land in a high-handed and unlawful manner; therefore, he filed the suit for bare injunction.

5. In the written statement filed by the defendant, it is stated that as the plaintiff was living in the village near the suit property and the defendant was working in a distant village, the 'the defendant entrusted the suit land to the plaintiff for cultivation.' The defendant had also advanced monies on several occasions to the plaintiff. After returning from service in September, he wanted to settle things, a panchayat was convened and that an award was passed by which the plaintiff surrendered the land to the defendant and also paid Rs. 16,400/- on 15.9.1988. Both the parties signed the award accepting the term. Thereafter, the defendant

was put in possession of the property on 7.9.1988. Therefore, it was the defendant who was in possession on the date when the suit was filed.

6. When the suit was instituted, the plaintiff filed two documents to support his claim; that is, one is a letter dated 25.6.1984 written by the defendant to the plaintiff and another one is the certificate dated 29.7.1988 given by the Village Administrative Officer to prove that he was in possession of the property. No other document was filed.

7. Before the trial Court, on the side of the plaintiffs, documents-1 to 12 were filed. Document No. 1 is the judgment in O.S. No. 150 of 1988 between the plaintiff and the defendant. Document No. 2 is not inter-parties. Document No. 3 is the kist receipt for the year 1990 (Fasli 1400). Other documents are not relatable to the possession of the properties such as kist receipt or adangal extract. They only refer to the list given by the Tamilnadu Agricultural Co-operative Society towards procurement of paddy from Civil Supplies Corporation etc. Considering all these documents, the trial Court found that the plaintiff has not proved his case that he was in possession of the property and therefore dismissed the suit. The first Appellate Court reversed the finding relying upon the written statement filed by the defendant in the suit which is extracted as follows:

Mdhy;. ,e;j tHf;fpy; vjph;thjp bjhLj;j vjph; tHf;Fiuapnyna thjpaplk; brhj;ij xg;gilg;g[bra;J ,Ug;gjht[k;. rhFgo epkpj;jkhf jdf;F thjp gzk; tH';fp te;jhh; vd;gija[k;xg;g[f;bfhz;oUf;fpwhh;/

On the basis of the averment in the written statement, the first Appellate court has come to the conclusion that the defendant himself has admitted that the 'possession' of the land has been transferred to the plaintiff for cultivation and therefore reversed by the finding of the trial Court. As stated above in the written statement, he only says that the defendant 'entrusted' the suit land for cultivation. The defendant also advanced monies on several occasions to the plaintiff. Taking these together, it means that the land was only 'entrusted' for cultivation and monies were sent by the defendant for expenses of cultivation. It cannot be said that the 'possession' of the land was transferred as such to the plaintiff by the defendant. That is, the cultivation is only by the landlord; for cultivation, the

landlord was spending monies. Only in that manner, the land was entrusted to the plaintiff. When a dispute arose between the parties, with respect to the accounts on the proceeds, it resulted in a panchayat whereby the plaintiff agreed to pay Rs. 16,400/- to the defendant. When that amount was not paid, the defendant filed a suit O.S.150 of 1988 for recovery of that money. The judgment rendered in the suit which is marked by the plaintiff is Ex.A.1. A perusal of this judgment shows that the defendant therein, Sebastian herein has filed the written statement to the effect that it is not correct to state that he agreed to pay the amount of Rs. 16,400/-. Further, he has stated the suit land itself was purchased by the plaintiff herein Sebastian in the name of Jesudoss and further, he has stated that he was paying kist amount regularly. Therefore, from this it is seen that the plaintiff herein has taken a stand in that suit that he was the owner of the property; and in the present proceedings, he has taken a stand that he was tenant of the property.

8. Learned counsel Mr. Vijayaraghavan submitted that even though a plea was taken at the time of the filing of the written statement, that point was not pursued ultimately and therefore that was not a stand taken by the defendant therein, (plaintiff herein). It is true that the defendant can take an inconsistent stand while filing the written statement, but he has to elect any one of them at the time of trial. But, there is no evidence to show that he has so elected. Therefore, both the inconsistent stands taken in the written statement continued. Therefore, it proves that the defendant was capable of taking any stand depending upon the circumstances. Therefore, his oral evidence cannot be given any credence. In the absence of any documentary evidence, it cannot be held that he was in possession of the properties as 'lessee' on the date when the suit was filed, viz., on 19.9.1988. The conclusion of the first Appellate Court that the plaintiff herein was in possession of the property as a lessee is not legally sustainable and hence it is liable to be set aside and therefore, it is set aside.

9. The defendant, Jesudoss, in the written statement has stated clearly that he 'entrusted' the land to the plaintiff. The etymological meaning of the word 'entrusted' is that 'domain over a thing has been transferred.' Therefore, when the thing was entrusted, it creates a trust which is only an obligation annexed to the ownership of the property; it arises out of a confidence reposed on the person to

whom the domain was transferred as held by the Supreme Court in COMMON CAUSE, A REGISTERED SOCIETY v. UNION OF INDIA : Also, the Supreme Court in the case of RASHMI KUMAR v. MAHESH KUMAR BHADA : has held that 'handing over the possession for some purpose which may not imply the conferment in the proprietary right therein. ' The Supreme Court has interpreted the expression, 'entrustment ' to include all cases in which property was voluntarily handed over for a specific purpose. In STATE OF GUJARAT v. JASWANTAL : the Supreme Court has held,

'the expression, 'entrustment' carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another continues to be its owner. Further, the person handing over the property must have confidence in the person taking the property so as to create fiduciary relationship between them. '

Though the latter two decisions are with respect to criminal cases, still the interpretation of the word, 'entrustment' equally applies to a civil case. Therefore, when the defendant states that he entrusted the land to the plaintiff, it only amounts to admitting that the domain of the property was given to the plaintiff. That does not mean that it was given as a lease; and that handing over of the domain amounts to transfer of possession of the land by the landlord. Therefore, the first Appellate Court was erroneous in interpreting the word, 'entrustment' as handing over 'possession' of the land.

10. Therefore, the possession of the land was only with Jesudoss on the date when the suit O.S.255 of 1988 was filed. This finding of the civil Court is binding in the revenue proceedings; the revenue proceedings as referred to above culminated in the Writ Petition No. 7851 of 1994. The revenue authorities have also concluded that Jesudoss was in possession of the properties and therefore, rejected the claim of Sebastian, the plaintiff herein and the petitioner in the writ petition herein.

11. Since the revenue authorities are bound by the decision of the civil Court with reference to the factum of possession of the properties, the revenue authorities cannot take a different stand. Therefore, the writ petition filed by the petitioner

cannot be allowed. Therefore, the writ petition is to be dismissed on the ground of the decision arrived at in the Second Appeal that the property was in possession of the fourth respondent in the writ petition and the defendant in that suit, viz., Jesudoss.

12. In the result, the Second Appeal is allowed and the Writ Petition No. 7851 of 1994 is dismissed.

13. Mr. V.K. Vijayaragavan, strenuously contended on behalf of the writ petitioner; In spite of the fact that he put forth his best efforts, he could not succeed; this Court places on record its appreciation on his arguments.

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