

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2015

CORAM:

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

S.A.No.1200 of 1998

1.Thangavelu

2.Mani

..1&2 Appellants/1&2 Respondents/  
Defendants 1 & 2

3.Kaliammal

4.Athayee

5.Rajammal

6.Ayyavu

..3 to 6 Appellants/ 6 to 9<sup>th</sup>  
Respondents/ Defendants 6 to 9

Vs.

1.Kandappa Gounder

2.Muthusamy Gounder

3.Arumuga Gounder

4.Palanichamy

5.Madeswaran

..1&2 Respondents/Appellants/Plaintiff

..3 to 5 Respondents/ Respondents 3 to  
5 / Defendants 3 to 5

Second Appeal is filed under Section 100 C.P.C against the judgment and decree dated 21.1.1997 made in A.S.No.226 of 1994 on the file of the III Additional District Judge, Salem, reversing the judgment and decree dated 28.4.1994 made in O.S.No.351 of 1988 on the file of the Additional District Munsif, Salem.

For appellants : Mr.T.R.Rajaraman

For respondents: Mr.N.Manokaran

1 and 2

J U D G M E N T

The present second appeal is arising out of the suit in O.S.No.351 of 1988 filed by the respondents 1 and 2. The appellants herein are the defendants 1 and 2 and 6 to 9 in the suit. The suit was filed for the reliefs of declaration of title, recovery of possession and consequential injunction in respect of the suit property on the ground that the suit property was encroached upon by the defendants. Whereas, the suit reliefs were contested by the defendants by denying the plaintiffs' right, title and interest and by setting up title on themselves. The suit was tried along with yet another suit in O.S.No.1516/1985 filed by the defendants 1 and 2 in O.S.No.351 of 1988, who are the appellants 1 and 2 herein. The earlier suit in O.S.No.1516/1985 is one claiming right to use 9 feet cart track running through the lands in S.Nos.29/2, 28, 29/5 and 29/6 belonging to the plaintiffs/respondents 1 and 2 herein and such right was claimed to reach the lands belonging to the defendants 1 and 3 in S.Nos.30/2, 30/5, 30/4, 30 and well in S.No.30/2 who are the defendants in O.S.No.351/1988.

2.Both the suits were tried together and were disposed of by common judgment, in and under which, O.S.No.351 of 1988 was dismissed and O.S.No.1516/1985 was decreed. Aggrieved against the same, the plaintiffs in O.S.No.351/1988, who are the defendants in O.S.No.1516/1985 preferred two appeals in A.S.Nos.226 and 265/1994. The lower appellate court, on the basis of the available records, reversed the judgment and decree made in O.S.No.351/1988 and confirmed the judgment and decree made in O.S.No.1516/1985. The defendants in O.S.No.1516/1985 did not prefer any further appeal against the judgment and decree in respect of use of cart track. Whereas, the defendants 1 and 2 and 6 to 9 in O.S.No.351/1988 preferred the present second appeal against the judgment and decree made in AS.No.226/1994, reversing the judgment and decree made in O.S.No.351 of 1988, thereby declaring the title, right and interest in favour of the plaintiffs in respect of the property in S.Nos.29/2, 29/3 and 29/4 and other consequential relief of recovery of possession and injunction.

3.The appellants have questioned the judgment and decree of the lower appellate court by raising the following substantial question of law:

"Is the learned District Judge right in reversing the decree and judgment of the learned District Munsif when the appellants have prescribed the right of the suit property by adverse possession in view of long and continued possession through their vendor from 1969?"

4.Heard both sides and perused the records.

5.The perusal of the records and the reading of the memorandum of grounds of second appeal and substantial question of law raised herein would reveal that the contesting defendants in O.S.No.351/1988 who are the appellants herein, seek to challenge the correctness of the declaratory relief granted in favour of the plaintiffs in the suit in respect of the land in S.Nos.29/2, 29/3 and 29/4 mainly by claiming prescriptive title upon themselves through adverse possession.

6.As rightly argued by the learned counsel for the respondents, who come on record on notice issued, no such plea was raised in the written statement filed by the contesting defendants in the suit in O.S.351/1988. The defendants have also not adduced any evidence in support of the claim for adverse possession. As a matter of fact, the plea of adverse possession was raised only at the appellate stage. As such claim is based on facts and as there is no pleadings and evidence adduced before the lower court, the defendants cannot now be permitted to raise any substantial question of law regarding the same at this second appeal stage. As the defendants has raised no other legal ground and substantial question of law against the correctness of the findings of the courts below which are based on sufficient evidence and supported by proper reasonings, the same warrants no interference.

7.The second appeal is hence liable to be dismissed at the admission stage.

8.In the result, the second appeal is dismissed. No costs.

Sd/-  
Assistant Registrar

True Copy

Sub Assistant Registrar

To

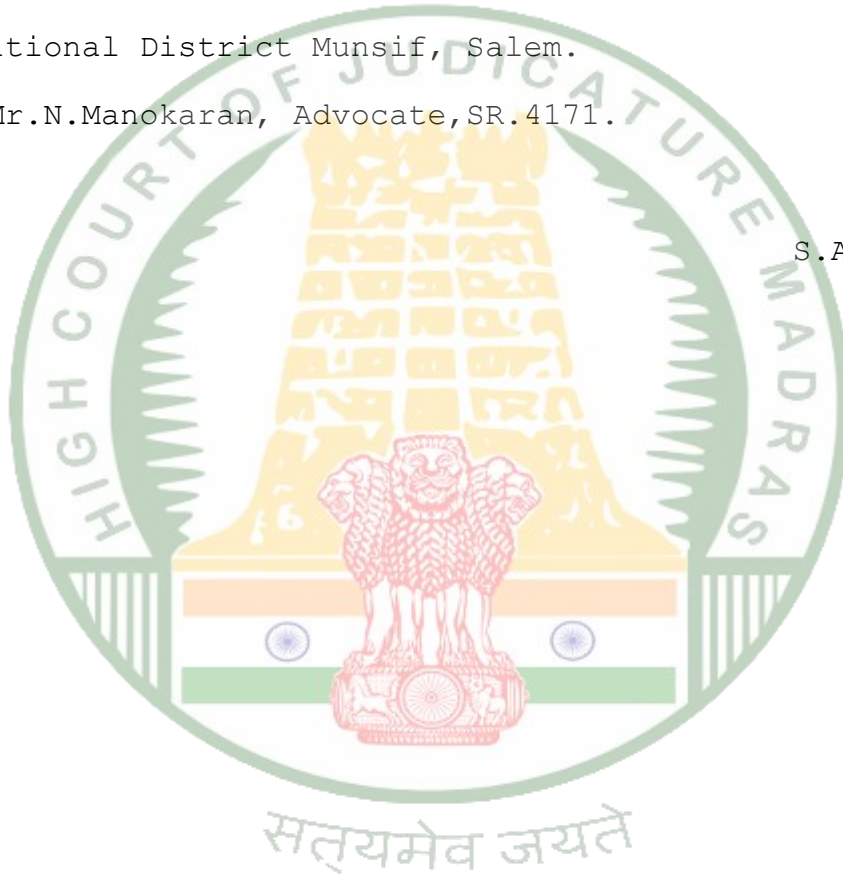
1.The III Additional District Judge, Salem.

2.The Additional District Munsif, Salem.

+1 cc to Mr.N.Manokaran, Advocate,SR.4171.

Km(co)  
krd 8/7

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