

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1074 of 2015

1. M.Rajagopal
2. Booshanam

... Appellants/Appellants/
Defendants

Vs.

1. S.Balaraman
2. B.Kanthamani

... Respondents/Respondents/
Plaintiffs

Appeal under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 30.8.2013 made in A.S.No.97 of 2011 on the file of the Sub Court, Ranipet, confirming the decree and judgment dated 27.4.2011 made in O.S.No.138 of 2006 on the file of the District Munsif Court, Sholingur.

For Appellants : Mr.R.Thanjan

J U D G M E N T

The defendants in O.S.No.138 of 2006 on the file of the learned District Munsif, Sholingur are the appellants. The respondents are the defendants in the suit. The respondents filed the said suit for declaration of title and for consequential relief of injunction to restrain the defendants from in any manner interfering with the peaceful possession and enjoyment of the suit property. The trial Court, by decree and judgment dated 27.4.2011, decreed the suit as prayed for. As against the same, the defendants filed an appeal in A.S.No.97 of 2011. By decree and judgment dated 30.8.2013, the lower Appellate Court confirmed the decree and judgment of the trial Court. Challenging the same, the defendants are before this Court with this appeal.

2. This appeal has come up for admission today. I have also perused the records.

3. The case of the plaintiffs is that the suit properties were originally Government lands, which were assigned to them by the Tahsildar, Arakkonam, as house sites. From the date of issuance of patta, the plaintiffs have been in possession and enjoyment of the suit properties. The defendants, according to the plaintiffs, have got no rights whatsoever over the properties. But, the defendants took a stand that they have been in enjoyment of the suit properties for several decades. Based on the above statement, they made an application to the revenue authorities requesting grant of patta, but patta has not so far been given. Though patta has not been issued by the Government so far, the defendants are in possession of the property and therefore, the suit is liable to be dismissed.

4. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiffs, two witnesses were examined and three documents were exhibited. On the side of the defendants, two witnesses were examined and as many as eight documents were exhibited. During the trial, an Advocate Commissioner was appointed whose report was marked as Ex.C1 and his survey map was marked as Ex.C2. Having considered all the above, the trial Court dismissed the suit, which was confirmed by the lower Appellate Court. That is how the appellants/plaintiffs are before this Court with this second appeal.

5. The learned counsel for the appellants would submit that though it is true that under Exx.A1 and A2, patta for the properties were given by the Government to the plaintiffs, that would not go to prove the possession of the suit properties by the plaintiffs. The learned counsel would further submit that the defendants have been all along in possession and therefore, the trial Court ought not to have decreed the suit as prayed for.

6. At the outset, I should say that I do not find any question of law, much less a substantial question of law in this second appeal. So far as title is concerned, admittedly, the suit properties were Government lands and by means of Ex.A1 and A2, assignment was given to the plaintiffs respectively, as house sites. Thus, the plaintiffs have title for the suit properties. So far as possession is concerned, admittedly, the suit properties remain to be vacant sites and therefore, the presumption is that possession follows title. The said presumption needs to be rebutted only by the defendants. But, absolutely, there is no evidence to rebut the said presumption. There is no acceptable evidence to prove that the defendants are in possession of the property. Above all, the question of

possession is essentially a question of fact, which was actually held by the Courts below in favour of the plaintiffs. I do not find any perversity in the findings of the Courts below. Thus, I do not find any merit in this second appeal. To repeat, there is no substantial question of law involved in this second appeal warranting admission of this second appeal. In the result, this second appeal fails and the same is dismissed, thereby confirming the decree and judgment of the Courts below. No costs. Consequently, M.P.No.1 of 2015 is also dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kpl

To

1. The Sub Court
Ranipet.
2. The District Munsif Court
Sholingur.

+1 cc to Mr.R.Thanjan, Advocate sr.68798

+1 cc to M/S.S.Balasubramanian Advocate sr.68219

S.A.No.1074 of 2015.

ug(co)
aa02/02/2016

सत्यमेव जयते

WEB COPY