

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.146 of 2015

1.P.Sellamuthu
2.P.Velu
3.P.Madhu
4.P.Raja
P.Mani

... Appellants/Defendants

Vs.

Arumugham

... Respondent/Plaintiff.

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 23.08.2013 passed in A.S.No.55 of 2012 on the file of the I Additional Sub Court, Salem, confirming the judgment and decree dated 03.12.2011 made in O.S.No.341 of 2009 on the file of Principal District Munsif Court, Salem.

For Appellants : Mr.T.Murugamanickam

J U D G M E N T

The defendants who lost their case in O.S.No.341 of 2009 has filed the above appeal, challenging the concurrent judgments of the Courts below.

2.The brief facts of the case is as follows:

The suit was filed by the plaintiff for bare injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property by him. The suit property is 0.75 cents of land to a total extent of 2.29 acres. The lands were purchased by the plaintiff on 28.11.1980 by sale deed which is marked as Ex.A1. From the date of purchase, the plaintiff used to cultivate the said lands by raising dry crops. The defendants are siblings and the first defendant is the eldest of them. According to the plaintiff, the defendants expressed their willingness to purchase the suit land which was refused by the plaintiff. Hence, out of enmity, the defendants were trying to trespass into the suit property and committing detrimental act like cutting of trees etc.

3. On the pleadings of both the parties, necessary issues were framed by the Trial Court. Before the Trial Court, the Plaintiff had marked Exs.A1 to A8 and PW.1 and P.W.2 were examined on the side of the plaintiff. D.W.1 to D.W.3 were examined on the side of the Defendants and Exs.B1 to B20 were marked on the defendants' side.

4. The Trial Court, after considering both the oral and documentary evidence, dismissed the suit and the first appeal filed as against the Judgment and Decree of the Trial Court was also dismissed by the lower Appellate Court. Hence, this second appeal has been filed by the defendants.

5. This court heard the submissions of the learned counsel for the Appellants and also perused the material records placed.

6. Admittedly, the plaintiff and the defendants' lands are adjacently placed. The defendants contended that the lands in possession of the plaintiff is on the north, abetting the poramboke pathway. The said pathway is common to the public to take cattle or even vehicles from the portion of the defendants' land. However, the defendants have not produced any documents to establish the same. The plaintiff has produced Ex.A1 which is the sale deed and also Ex.A8 which is the patta issued to him. The above two documents are not disputed by the defendants. The marking of the said documents was not also not objected by the appellants. To establish the possession, the plaintiff/respondent had also filed Exs.A4 to A7. The defendants/appellants have made their claim based on Ex.B20 which is a joint patta. Though the appellants claimed that the suit property is not a land but only a cart track, there is no iota of evidence produced by them to prove the same. The revenue records also do not disclose that the suit property is a cart track. The suit was only filed for injunction. The factum of possession is established by the plaintiff. To substantiate his possession, plaintiff also produced Exs.A1, A8 and tax receipts viz., A4 to A7. There is no contra evidence adduced by the defendants either to disprove the case of the plaintiff or to prove the case of their own. In the above factual matrix, there is no question of law that arise for consideration in the above Second Appeal. Hence, this Court finds that there is no illegality or infirmity in the findings of the Courts below and the same are confirmed.

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7. Accordingly, the Second Appeal is dismissed and the judgment and decree dated 03.12.2011 made in O.S.No.341 of 2009 on the file of Principal District Munsif Court, Salem, as confirmed by the judgment and decree dated 23.08.2013 passed in A.S.No.55 of 2012 on the file of the I Additional Sub Court, Salem, are affirmed. No costs.

s/d-
Assistant Registrar(J)

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Sub-Assistant Registrar

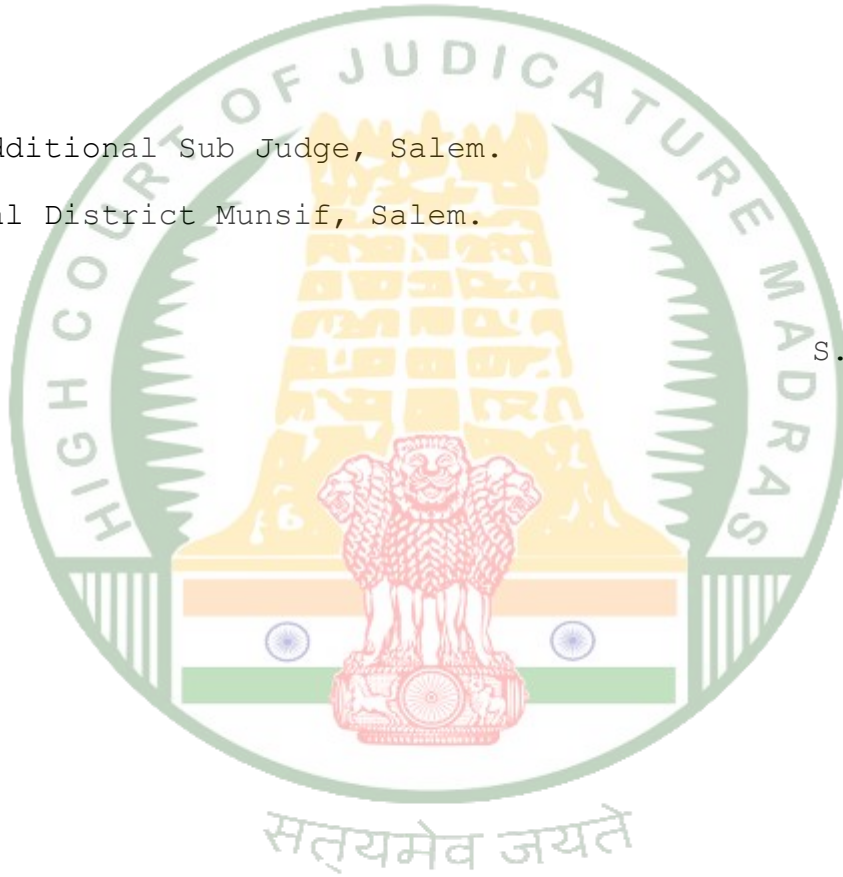
To

1.The I Additional Sub Judge, Salem.

2.Principal District Munsif, Salem.

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