

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.147 of 2015 and M.P.Nos.1 and 2 of 2015

1. Kairunbi
2. Allabaksh
3. Asia Begum
4. Abdul Kadhar
5. Mahaboob Bi .. Appellants/ Appellants/ Plaintiffs

-Vs-

1. Kazarul Big Majeed Trust rep. by its President, Polur, Tiruvannamalai District.
2. Selection Grade Town Panchayat rep. by Executive Officer, Polur, Tiruvannamalai District.
3. Tamil Nadu Electricity Board by its Junior Engineer (O&M), T.N.E.B. Polur Town, Tiruvannamalai District.
4. Executive Engineer (O&M), T.N.E.B., Polur, Tiruvannamalai District. ... Respondents/ Respondents/ Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree in A.S.No.20 of 2013 dated 25.07.2014 on the file of the learned Subordinate Judge, Arni, Tiruvannamalai District, which was confirmed the judgment and decree in O.S.No.250 of 2005 dated 22.04.2013 passed by the learned District Munsif, Polur.

For Appellants : Mr.A.Rajesh Kanna

For Respondents : ...

J U D G M E N T

The plaintiffs in O.S.No.250 of 2005 on the file of the learned District Munsif, Polur are the appellants. The respondents are the defendants in the suit. The said suit was filed for permanent injunction to restrain the 1st defendant from in any manner interfering (interfering with what not mentioned) and for permanent injunction to restrain the 2nd defendant from transferring the ownership of the house on the suit property in the name of anybody including the 1st defendant and for permanent injunction restraining the defendants 3 and 4 from transferring the electricity Service Connection No.2/469 of Polur Town. The suit was dismissed by the trial court by decree and judgment dated 22.04.2013 and the same was confirmed by the lower appellate court in A.S.No.20 of 2013 by decree and judgment dated 25.07.2014. Challenging the same, the appellant has come up with this Second Appeal.

2. This Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellants and I have also perused the records carefully.

3. The case of the plaintiffs is that the suit property is a Wakf Property belongs to the 1st defendant and the plaintiffs are the permissible occupiers. In the earlier suit in O.S.No.831 of 1978 filed by the 1st defendant, the learned District Munsif, Vellore had declared that the 1st defendant is the absolute owner of the property and thus, according to the plaintiff, the 1st defendant is the owner, but the plaintiffs continued to be in possession of the property even after the disposal of the said suit in O.S.No.831 of 1978. The said suit was taken up on First Appeal and then in Second Appeal in S.A.No.1017 of 1981 before this Court. The Second Appeal was disposed of by this Court on 01.11.1990. Even after that, according to the plaintiffs, they are in possession of the suit property. Therefore, the plaintiffs are entitled for possession, it is contended.

4. In the written statement filed by the 1st defendant, it is stated that the suit is barred in view of the provisions of the Wakf Act. In essence, according to the 1st defendant, the civil court has no jurisdiction to entertain any suit against the Wakf property. It is further contended that the plaintiffs, being the permissible occupiers, they are not entitled for the reliefs as sought for by them in the suit.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiffs, two witnesses were examined and as many as 11 documents were exhibited. On the

side of the defendants, two witnesses were examined and as many as 7 documents were exhibited. Having considered all the above, the trial court dismissed the suit which was also confirmed by the lower appellate court as well. That is how, the appellants are before this Court with this Second Appeal.

6. In this Second Appeal, the learned Counsel for the appellants would submit that since the appellants are admittedly the permissible occupiers, the courts below ought to have granted the decree as prayed for. The learned Counsel for the appellants would further submit that the suit is not barred by the provisions of the Wakf Act.

7. I have considered the above submissions.

8. In my considered opinion, the grounds raised by the learned Counsel for the appellants do not make out any substantial question of law warranting admission of the Second Appeal. It is admitted that the plaintiffs are the permissible occupiers and the 1st defendant has not disputed the same in the written statement. According to the factual findings recorded by the courts below, as of now, there is no house situated on the suit property. It is only a Kabarstan, that means, it is used as a burial ground. The plaintiffs are permitted only to use the suit property, but, not to take possession of the same. At any rate, in respect of a burial ground, the plaintiffs cannot have any order of injunction because the dead bodies are to be buried by the general public belonging to the Muslim religion. Further, regarding ownership, the plaintiffs cannot prevent the Panchayat from changing house tax demand based on ownership. Similarly the electricity service connection also. At any rate, all these questions raised are pure questions of facts. There is no substantial question of law involved warranting admission of the Second Appeal.

9. In the result, the Second Appeal fails and the same is accordingly dismissed. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Asst.Registrar (CS II)

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Sub Asst. Registrar

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To

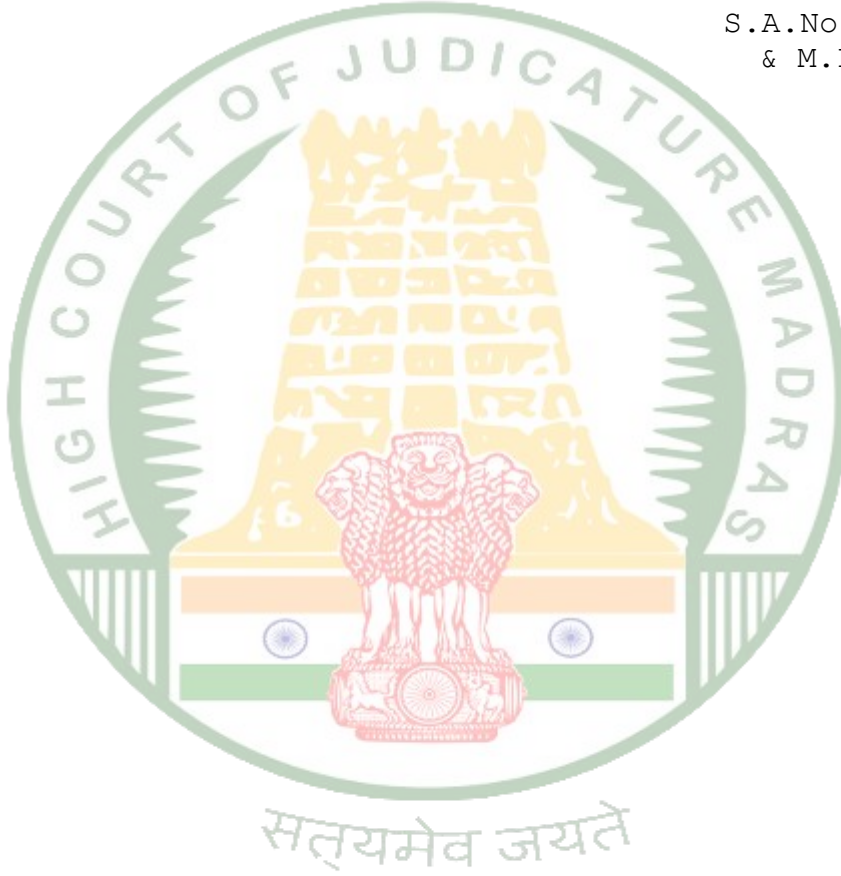
1. The Subordinate Judge, Arni
Thiruvannamalai District.

2. The District Munsif, Polur
Thiruvannamalai District

1 cc to Mr.M.V. Muralidaran, Advocate, sr. 15587

S.A.No.147 OF 2015
& M.P. No. 1 of 2015

GP (CO)
kk 22/5



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