

In the High Court of Judicature at Madras

Dated: 10.06.2015

Coram:

The Honourable Mrs. Justice PUSHPA SATHYANARAYANA

Second Appeal No.434 of 2015

and

M.P.No.1 of 2015

The Executive Officer
Perundurai Municipality
Perundurai Town, Perundurai Taluk
Erode District.

Appellant/Appellant/3rd Defendant

Versus

1. C.Venkatachalam ...1st Respondent/1st Respondent/Plaintiff
2. State of Tamilnadu
District Collector
Erode District.
3. Tahsildar
Tahsildar Office
Perundurai Taluk
Erode District. ...Respondents 2 & 3/Respondents 2 & 3/
Defendants 1 and 2.

Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 28.10.2014 made in A.S.No.9 of 2014 on the file of the Sub Judge, Perundurai, confirming the judgment and decree dated 17.02.2014 made in O.S.No.45 of 2013 on the file of the District Munsif cum Judicial Magistrate Court, Perundurai.

For Appellant .. Mr.S.Rajmakesh

JUDGMENT

The defendant - Perundurai Municipality is the appellant.

2. The suit is filed by the plaintiff for permanent injunction. The suit property is 0.01.0 ares in Old S.No.903 in Chenniyavalasu village, Perundurai Taluk. The plaintiff has sought for permanent injunction restraining the defendants from interfering with the suit property for the above extent within the specific boundaries. According to the plaintiff, there is a building in the suit property with electricity service connection and water connection.

3. The possession of the plaintiff is not denied by the defendant. The third defendant, who is the appellant, contended that only 0.00.52 square meters alone are in possession with the plaintiff, for which a patta was issued under Ex.A2 in the year 1984 and the balance of the suit property is encroached by the plaintiff and accordingly, he is in possession of the same.

4. From the available records, it is seen that HSD patta was issued in favour of the plaintiff as per Ex.A1 dated 18.09.1984 which was for an extent of 0.01.0 ares. In the said patta, the measurements of the property were also mentioned. After a passage of 10 years, Ex.A2 patta dated 31.05.1995 was issued in favour of the plaintiff, but in Ex.A2 patta, the extent is only 0.00.52 square meters.

5. The objection of the third defendant, who is the appellant, is that the plaintiff cannot claim right under Ex.A1 patta as Ex.A2 patta superseded the same and therefore, the possession of the plaintiff is not lawful. It is further contended by the appellant that the plaintiff had not challenged Ex.A2 patta, which has given for a lesser extent.

6. Admittedly, the plaintiff had not encroached the property recently and he has been in possession of the property pursuant to Ex.A1 patta. He has stated that earlier he has also put up a small construction and running a grocery shop in the premises. Admittedly, the plaintiff has been in possession from 1984. The defendant - municipality had not objected it for all these years. Even patta was originally granted only based on the possession of the plaintiff. If according to third defendant/appellant, the plaintiff is in possession of the excess land for which he is not having title, there is no impediment for the appellant to take any action for recovery of the same. Till now, the appellant had not taken any action to recover possession from the plaintiff. On these grounds, courts below have decreed the suit for bare injunction restraining the third defendant/appellant from interfering with the peaceful possession of the plaintiff. In the above factual matrix, there is no question of law arising for consideration in this Second Appeal.

7. Accordingly, the Second Appeal is dismissed. It is open to the appellant to take independent action for recovery of possession of the suit property, which is in occupation of the plaintiff in excess of what he is entitled to. Consequently, connected Miscellaneous petition is closed. No costs.
mra

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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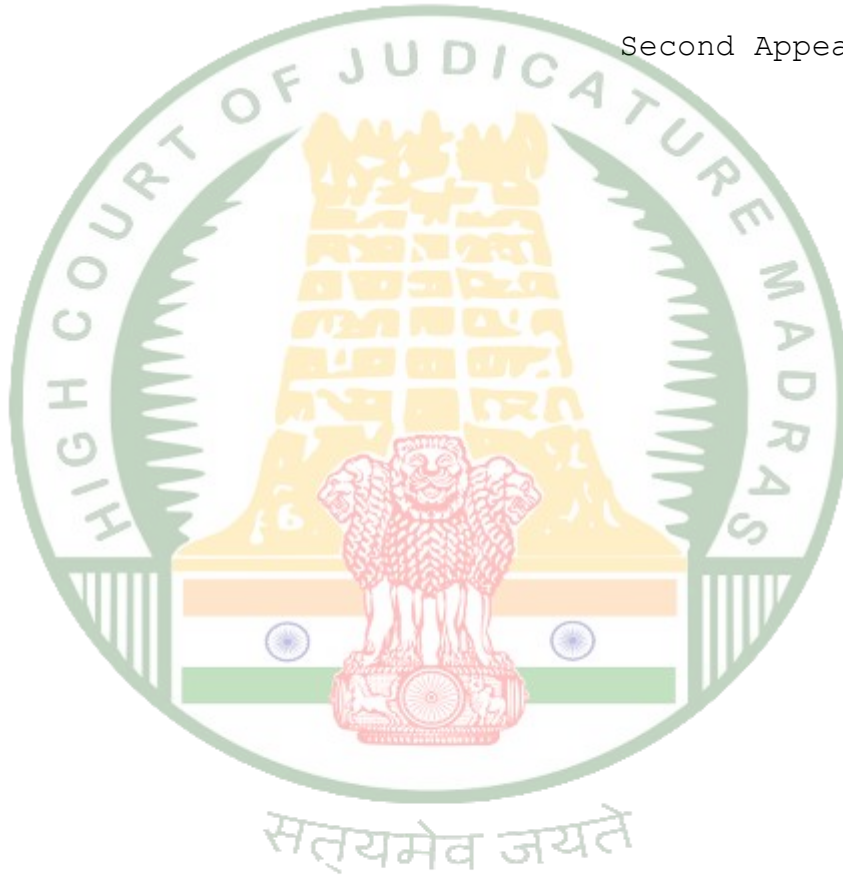
1. The Sub Judge, Perundurai.

2. The District Munsif cum Judicial Magistrate, Perundurai.

+ 1 cc to Mr.S.Rajmakesh, Advocate SR 28369

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