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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01..12..2015

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THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.61 of 2015
and
M.P.No.1 of 2015

1.Kaliamurthy
2.Radhakrishna

... Appellants/Plaintiffs

-Versus-

The President,
Adi Narayanapuram Panchayat,
Adi Narayanapuram,
Cuddalore Taluk,
Cuddalore District.

... Respondents/Defendant

This second appeal is filed against the judgment and decree dated 20.10.2014 made in A.S.No.78 of 2011 by the learned II Additional District Judge, Chidambaram, confirming the judgement and decree dated 22.04.2010 made in O.S.No.17 of 2008 by the learned District Munsif-cum-Judicial Magistrate, Parangipettai.

For Appellants : Mr.V.Neethidurai

For Respondent : Mr.T.Jayaramaraj,
Govt. Advocate (CS)

JUDGMENT

The plaintiffs in O.S.No.17 of 2008 on the file of the learned District Munsif, Parangipettai, are the appellants. The respondent is the sole defendant in the suit. The said suit was filed for declaration of title for the suit property in favour of the 2nd plaintiff and for a consequential relief of injunction restraining the defendant from in any manner interfering with the 2nd plaintiff's peaceful possession and enjoyment of the same. The trial court, by decree and judgement dated 22.04.2010, dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.78 of 2011 before the learned II Additional District Judge, Chidambaram. By decree and judgement, the first appellate court dismissed the appeal thereby confirming the decree and judgement of the trial court.



Challenging the same, the plaintiffs are now before this court with this second appeal.

2. This second appeal has come up today for admission.

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3. I have heard the learned counsel for the appellants/plaintiffs and the learned Government Advocate (CS) appearing for the respondent/defendant and also perused the records carefully. The respondent - Mr.K.Kothandapani S/o.Kaliyan, the President of Adinarayanapuram Panchayat, himself present. I have heard him also.

4. The case of the plaintiffs in brief is as follows:- The suit property was originally a poramboke land belonging to the Government. The forefathers of the plaintiffs encroached upon the suit property 70-80 years before and all these decades they have been in possession and enjoyment of the same. There was a family partition between the plaintiffs and their family members in which the suit property was allotted to the 2nd plaintiff. Thus, the 2nd plaintiff has been in possession and enjoyment of the suit property. The 2nd plaintiff had also perfected his title by adverse possession. Since the respondent / defendant who has got no right whatsoever over the suit property is trying to disturb their possession questioning the title of the plaintiffs, the suit has been filed.

5. In the written statement, the defendant contended that the suit property is a poramboke land and the same is classified as "Odai Poramboke". A portion of the said poramboke land has been used as grave yard for many years. The suit property is required for a public purpose, but, the plaintiffs have encroached upon the same. However, the encroachment was removed later on. Thus, as of now, the plaintiffs are not in possession of the suit property.

6. Based on the above pleadings, the trial court framed appropriate issues. During trial, on the side of the plaintiffs 4 witnesses were examined and 5 documents were exhibited while on the side of the defendants 2 witnesses were examined and 2 documents were exhibited.

7. Having considered all the above, the trial court dismissed the suit which was later on confirmed by the first appellate court. That is how, the plaintiffs are now before this court with the present second appeal.

8. Having heard the submissions of the learned counsel on either side and having perused the available records, I find the



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following substantial questions of law in this second appeal for consideration:-

(1) Whether the courts below were right in dismissing the suit when there is an evidence to prove that the plaintiffs have been in settled possession of the property.

(2) Whether the plaintiffs have perfected their title by adverse possession?

9. In the written statement filed by the respondent / defendant, there is an admission that the suit property was encroached upon by the plaintiffs' forefathers and now the plaintiffs are in possession. Though it is stated that the said encroachment was later on removed, no document whatsoever has been filed to prove the same. Thus, it is crystal clear from the evidences available on record that the plaintiffs are in possession of the property. Of course the plaintiffs have got no right to remain in possession of the same because the suit land is admittedly a poramboke land and the Government is the owner of the same. Thus, the defendant has got every right to evict the plaintiffs and there can be no legal impediment also for the defendant to evict the plaintiffs from the suit property by following the procedure established by law. Therefore, the courts below ought to have granted limited decree for injunction in favour of the plaintiffs restraining the defendant from disturbing their possession and enjoyment until the plaintiffs are evicted from the suit property by lawful means. So far as the decree for title is concerned, since it is stated that the Government is the owner of the property against whom the plaintiffs claim to have perfected their title by adverse possession, in the absence of the Government no such relief can be granted. Therefore, the courts below were right in declining to grant a decree for declaration of title. Accordingly, I answer both the substantial questions of law.

10. In the result, the second appeal is partly allowed in the following terms:-

(1) The decree and judgement of the trial court and confirmed by the first appellate court declining to grant a decree declaring the title of the 2nd plaintiff in respect of the suit property is confirmed.

(2) The decree and judgement of the trial court and confirmed by the first appellate court declining to grant a decree for injunction is set aside and instead decree for permanent injunction is granted in favour of the plaintiffs restraining the defendant from



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disturbing the possession of the 2nd plaintiff until the 2nd plaintiff is evicted from the suit property by the Government by lawful means and by following the procedure established by law.

No costs. Consequently, connected MP is closed.

sd/-
Assistant Registrar (CO)

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Sub-Assistant Registrar

kmk

To

- 1.The II Additional District Judge, Chidambaram, Cuddalore District.
- 2.The District Munsif-cum-Judicial Magistrate, Parangipettai, Cuddalore District.

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CO-SR
JD 18/01/2016