



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.65 of 2015 and
M.P.No. 1 of 2015

1.Arunachala Gounder
2.Paramasivam
3.Angammal

.. Appellants/Plaintiffs.

-Vs-

1.Ponnusamy
2.Lakshmi
3.Krishnaveni
4.Premkumar
5.Gowriammal
6.Selvaraj
7.Kamalam

.. Respondents/Defendants.

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 14.07.2014 made in A.S.No.91 of 2012 on the file of the learned First Additional Subordinate Judge, Erode confirming the judgement and decree dated 21.03.2012 made in O.S.No.480 of 2007 on the file of the learned Second Additional District Munsif, Erode.

For Appellants : Mr.N.Manokaran

For Respondents :
1 to 6/Caveator Mr.P.Valliappan

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J U D G M E N T

The plaintiffs in O.S.No.480 of 2007 on the file of the learned Second Additional District Munsif, Erode are the appellants herein. The respondents are the defendants in the suit. The said suit was filed for permanent injunction to restrain the defendants from in any manner interfering with the peaceful possession and enjoyment of the suit properties. The trial Court by decree and judgement dated 21.03.2012, dismissed the suit. As against the same, the appellants filed an appeal in A.S.No.91 of 2012 on the file of the learned First Additional Subordinate Judge, Erode. By decree and judgement dated 14.07.2014, the First Appellate Court dismissed the appeal thereby



confirming the decree and judgement of the trial Court. As against the same, the appellants are before this Court with this second appeal.

2. This second appeal has come up today for admission. I have heard the learned counsel for the appellants and the learned counsel for the respondents 1 to 6 and I have also perused the records carefully.

3. The case of the plaintiffs in brief is that, the suit properties are their ancestral properties. According to them, one Mr. Subbaraya Gounder had purchased an extent of 1.94 ½ acres by means of registered sale deed dated 05.09.1930 from one Mr. Pongiya Gounder. It is further stated that the very same Mr. Subbaraya Gounder, again purchased the suit properties under a registered sale deed dated 25.08.1939 (Ex.A.1) and again on 26.07.1945, he purchased another property under Ex.A.3. The plaintiffs are the legal representatives of Mr. Subbaraya Gounder and they are in possession and enjoyment of the suit properties.

4. The case of the defendants is that the suit properties are their ancestral properties and they are in possession and enjoyment of the same.

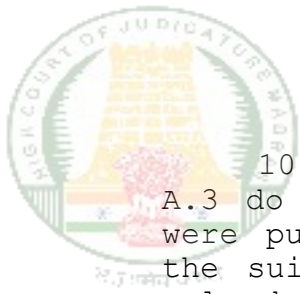
5. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiffs, three witnesses were examined and 19 documents were exhibited. On the side of the defendants, four witnesses were examined and 14 documents were exhibited. Exs.C.1 to C.10 were exhibited as Court documents.

6. Having considered all the above, the trial Court dismissed the suit which was confirmed by the First Appellate Court. That is how the appellants are before this Court with this second appeal.

7. The learned counsel for the appellants would submit that the Courts below have dismissed the suit mainly on the ground that when the title was disputed by the defendants, the plaintiffs ought to have amended the suit to include the prayer for declaration of title as well. Mainly on this ground, the suit was dismissed by the First Appellate Court which according to the learned counsel, is not correct. According to him, the Courts below ought to have gone into the question of title as an incidental issue.

8. So far as possession is concerned, according to the learned counsel for the appellants, the Courts below have failed to look into the the oral as well as documentary evidences in its perspective since, by which, the plaintiffs have proved that they are in possession of the suit properties.

9. I have considered the above submissions.



10.The plaintiffs claim title under Exs.A.1 to A.3. Exs.A.1 to A.3 do not contain the suit survey numbers of the properties which were purchased. Thus, Exs.A.1 to A.3 have not been correlated with the suit properties. So far as Ex.A.2 is concerned, a part of the sale deed alone has been marked i.e., the first page of the document has not been marked in evidence. Therefore, no reliance could be placed under Ex.A.2 also. Thus, these three documents have not been either correlated or proved properly so as to prove that the plaintiffs' ancestors had title for the suit properties.

11.So far as the possession is concerned, the Courts below have held that the plaintiffs during cross examination has admitted that the defendants have got their house on the suit properties. It is only on appreciating these evidences and other evidences, the Courts below, on facts, have come to the conclusion that the plaintiffs have not proved their possession. In the said conclusion, I do not find any infirmity.

12.Above all, I do not find any substantial question of law at all involved in this second appeal warranting admission. Thus, the second appeal deserves only to be dismissed. At the same time, I should clarify that since, the suit is a simple suit for injunction, the dismissal of the present suit shall not operate as res judicata for the plaintiffs to file a suit for declaration of title and for any other proper consequential relief.

13.In the result, the second appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

jbm

-s/d-
Deputy Registrar(J)
Dt:30/3/2015

True Copy

Sub-Assistant Registrar

To

1.The First Additional Subordinate Judge,
Erode.

2.The Second Additional District Munsif,
Erode.

+ 1 cc to Mr.P.Valliappan, Advocate SR 13957

+ 1 cc to Mr.N.Manokaran,Advocate SR 13886
ctk(co)
prk31/3

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