

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.753 of 2015

and

M.P.No.1 of 2015

1. Bhaskaran
2. Jayaraman
3. Ravichandran
4. Vijayan
5. Moorthy

... Appellants/Defendants 2,6,7,8 &10

Vs.

1. Noordin
2. Nagarajan
3. Raju
4. Moorthy
5. Sekar
6. Gopalakrishnan
7. Kalayani
8. Gopalamudram Panchayat
Represented by its President
Gopalamudram

... Respondents/Plaintiff,
Defendants 3,4,5,9,11,12
and 1st Defendant

(R2 to R8 set exparte before lower Court.
Hence notice may be dispensed with)

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 08.02.2012 made in A.S.No.49 of 2011 on the file of the Principal Sub Court, Mayiladuthurai, confirming the judgment and decree dated 19.02.2010 made in O.S.No.162 of 2006 on the file of the District Munsif, Sirkali.

For Appellants : Mr.S.Sounthar

For Respondent-1 : Mr.A.Muthukumar

J U D G M E N T

The defendants 2,6,7,8 and 10 are the appellants having lost before the Courts below in a suit filed by the plaintiff for declaration of title and for recovery of possession.

2. Admittedly, the suit property is a vacant site to an extent of 69 feet x 50 feet. It was originally owned by Mr. Mohammed Salik Maraikar, having purchased the same on 15.12.1938 under Ex.A.1 and after him, his son Dadha Maraikar was enjoying the suit property. Thereafter, his son/the present plaintiff has been enjoying the suit property by constructing 14 shops and let them for rent and also for the own use. The plaintiff also had produced tax receipts for the suit property. While so, in the year 1995, the President and Members of Kollidam Motor Sangam, and Taxi drivers, attempted to trespass into the suit property, which resulted in O.S.No.6 of 1995 filed by the plaintiff. The said suit was ended in favour of the plaintiff. In fact, the violation of the said decree was also brought to the notice of the Court in the contempt proceedings filed by the plaintiff. While so, again on 11.06.2006, the defendants have encroached the suit property and erected thatched shed. The report of the Commissioner and Surveyor also speak of the same.

3. The learned counsel for the appellant contended that the suit property was not a private land and it is the Highways Poromboke land and the plaintiff never enjoyed the same. The defendants also contended that the judgment in the earlier suit was not binding on them.

4. Considering the facts and evidence, the Courts below had concurrently held against the defendants holding that the plaintiff is in possession of the suit property. Aggrieved by the same, the Second Appeal has been filed.

5. The only contention raised by the learned counsel for the appellants is that the suit is not maintainable for non-joinder of necessary parties as plaintiff has got other co-sharers for the same property. However, the said pleading was not raised in the written statement and raised for the first time in the appeal only.

6. The defendants / appellants have not either produced any document to rebut the contention of the plaintiff nor got themselves examined. In the absence of any evidence to show that it was a road poromboke and in considering the documents filed by the plaintiff under Ex.A1 and Ex.A16 which are the title documents, the Courts below have concurrently held in favour of the plaintiff and decreed the suit.

7. In such circumstances, there is no reason to interfere with the concurrent findings of the Courts below on facts. No question of law arises for consideration in the

Second Appeal. Accordingly, the Second Appeal is dismissed. The judgment and decree of the Courts below are confirmed and the suit is decreed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

srn

To

1.The Principal Sub Judge, Mayiladuthurai

2.The District Munsif, Sirkali.

3. The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.S. Sounthar, Advocate, S.R.No.46490

+1cc to M/s. A. Muthukumar, Advocate, S.R.No.46302

UG(CO)
EU(03/11/2015)

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