

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.759 of 2015

and

M.P. Nos. 1 and 2 of 2015

G.R.K.Duraiaraj ... Appellant/2nd Defendant

Vs.

1. S.M.Syed Jainudeen

2. Tamilnadu Government,
rep by its Collector,
Thiruvarur

3. The Tahsildar,
Taluk Office, Thiruvarur

... Respondents/Plaintiff &
Defendants 1 & 3

Prayer:- This Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 10.01.2014 made in A.S.No.11 of 2011 on the file of the Principal District Court, Tiruvarur, confirming the judgment and decree dated 13.04.2010 made in O.S.No.31 of 2008 on the file of Subordinate Court, Tiruvarur.

For Appellant : Mr.L.S.M.Hasanfizal
For Respondent 1 : Mr.A.Muthukumar
For Respondents 2 and 3: Mr.S.Babu,
Government Advocate (CS)

J U D G M E N T

The second defendant aggrieved by the unanimous decisions of the Courts below has preferred the above Second Appeal.

2. The suit relates to T.S.No.1107, which is sought to be declared as the private natham property of the plaintiff's family and for recovery of possession of the same from the defendants after removing superstructure on the same and also for damages for use in occupation.

2. T.S.No.1108 is a Government Poramboke land and T.S.No.1107 is a natham land. According to the plaintiff, a Darga is on the suit property, on the South and East of which, T.S.No.1107 is situate. There are also tiled shops bearing door Nos.1-A, 1-B, 1-C and 1-D. The rent received from those shops have been utilized for the purpose of maintaining the Darga. While so, the second defendant who is the appellant had snatched the key of the door No.1-C from the son-in-law of the plaintiff on 22.11.1997 and occupied the same for doing business by selling fish and not stopping with that the second defendant had also obtained 'B' memos in his name and got the property classified as Government poromboke land. As the action of the Village Administrative Officer is illegal, the plaintiff also sought for appropriate proceedings to be taken against the Village Administrative Officer.

3. The appellant / second defendant contended that the suit property is only a Government Poromboke land and denied that he had taken forcible possession from the son-in-law of the plaintiff. He also contended that he had purchased the said properties in the year 1982 from one Swaminathan.

4. On the above facts, after considering the documents and evidence, the Courts below had concurrently held in favour of the plaintiff by decreeing the suit. Aggrieved by the same, the above Second Appeal has been filed by the second defendant.

5. Though the defendant claimed right to property T.S.No.1108 to rebut the said contention, the plaintiff had produced the proceedings of the Collector in Ex.A.25 dated 27.05.2004, wherein, it is decided that Door No.1-C is situate only in T.S.No.1107. There is no dispute with regard to T.S.No.1108 and its location. The trial Court as well as the lower appellate Court had held that the suit property belonged to the family of the plaintiff based on the documents filed by him. The plaintiff also had produced Exs.A40 and A41, which was a decree passed in O.S.No.97 of 1951 dated 28.03.1952. Considering the said documents, the lower appellate Court has held that since T.S.Nos.1107 and 1108 and the buildings thereon are not amenable for partition, they should be kept and enjoyed in common. The plaintiff also had established that the second defendant/appellant had forcibly encroached into the suit property, which is also evidenced by Exs.A1 and A2. As the Courts below had found that the suit property belong to the plaintiff which is in possession of the second defendant, as a trespasser, rightly awarded damages of Rs.75,600/-.

6. From the above findings of the Courts below, it is clear that the suit property relates only to T.S.No.1107, whereas the defendant is making a claim for T.S.No.1108, which is not a subject matter in the suit. As the defendant was making a claim with respect to T.S.No.1108 only and the plaintiff had proved his right, title and possession with respect to T.S.No.1107, the suit was rightly decreed by the trial Court and confirmed by the lower appellate Court. In

the given circumstances, there is no question of law, much less, substantial question of law arising for consideration to be considered in this Second appeal.

7. In the result, the Second Appeal is dismissed. However, in the circumstances of the case, there shall be no order as to costs. Consequently, Connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

srn

To

1.The Principal District Judge, Tiruvarur

2.The Subordinate Judge, Tiruvarur.

+1 cc to the Special Government Pleader(cs)
sr.45119

+1 cc to Mr.L.S.M.Hasan Fizal, Advocate sr.45868

+1 cc to Mr.A.Muthukumar, Advocate sr.45776

copyto:

The Section Officer,
VR Section High Court, Madras

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