

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.782 of 2015 and M.P.No.1 of 2015

Panneerselvam .. Appellant/Defendant

-Vs-

Namasivayam .. Respondent/Plaintiff

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree passed in A.S.No.50 of 2014 dated 28.04.2015 on the file of the learned Principal Subordinate Judge, Mayiladuthurai, in confirming the judgment and decree passed in O.S.No.27 of 2013 dated 20.11.2013 on the file of the Principal District Munsif, Mayiladuthurai.

For Appellant : Mr.A.Muthukumar

J U D G M E N T

The defendant in O.S.No.27 of 2013 on the file of the learned Principal District Munsif, Mayiladuthurai is the appellant herein. The respondent is the plaintiff in the suit. The plaintiff filed the said suit for recovery of possession of the suit property. The trial court by decree and judgment dated 20.11.2013 decreed the suit as prayed for. As against the same, the appellant herein filed an appeal in A.S.No.50 of 2014 before the learned Principal Subordinate Judge, Mayiladuthurai. By decree and judgment dated 28.04.2015, the lower appellate court dismissed the appeal thereby confirming the decree and judgment of the trial court. As against the same, the appellant is before this Court with this Second Appeal.

2. This Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellant and I have also perused the records carefully.

3. The case of the plaintiff in brief is as follows:

The suit property was originally owned by one Mrs. Janaki, W/o. Thangarasu. The plaintiff purchased the same by means of a registered Sale Deed dated 22.02.1994. The extent of the property is 1122 sq.ft. comprised in Survey No.260/5, Eralacheri Village in Tharangampadi Taluk, Mayiladuthurai. The property had been described by means of four boundaries also. According to the plaintiff, the defendant has got no right whatsoever over the suit property. But the defendant trespassed the suit property in the month of April, 2011 during the absence of the plaintiff. Therefore, according to the plaintiff, he was forced to file the suit for recovery of possession.

4. In the written statement, the defendant took the plea that he is the owner of the suit property. According to him, he had been in possession and enjoyment of the suit property for 40 years and he had perfected his title by adverse possession. The plaintiff has got no right whatsoever over the suit property. Thus, according to the defendant, the plaintiff is not entitled for any relief in the suit.

5. Based on the above pleadings, the trial court framed appropriate issues. In order to prove the case, on the side of the plaintiff, he was examined as P.W.1 and one document was exhibited that is Ex.A.1 Sale Deed dated 22.02.1994. On the side of the defendant, 4 witnesses including the defendant were examined as D.W.1 to D.W.4 and no document was marked.

6. The learned Counsel for the appellant would submit that though the suit has been filed for 1122 sq.ft., the plaintiff during his evidence has stated that he has filed the suit only for 6 cents of land which is less than 900 sq.ft. According to the learned Counsel for the appellant, the courts below have not considered the same.

7. The learned Counsel for the appellant would further submit that the possession of the suit property by the defendant for 40 years has been established by the oral evidences of D.W.1 to D.W.4. Thus, according to the learned Counsel for the appellant, the courts below were not right in decreeing the suit as prayed for.

8. I have considered the above submissions.

9. On the side of the plaintiff, he has been examined as P.W.1 and Ex.A.1 was marked to prove the purchase made by him from Mrs. Janaki. The defendant's case is that he has perfected his title by adverse possession. In the written statement, he

has also not admitted that Janaki Ammal was the owner against whom he perfected his title by adverse possession. It is a well settled law that when the defendant sets up the plea of title based on adverse possession, the burden to prove the same lies on him.

10. Here in this case, in order to prove his possession for 40 years, that too, adverse possession, the defendant has let in oral evidence. But, there is no documentary evidence available. The Courts below have appreciated the oral evidences of the defendant side witnesses and the oral evidence let in by the plaintiff and Ex.A.1 and have come to the conclusion that the plaintiff is in possession and enjoyment of the suit property. This is essentially a factual issue which has been resolved by the two courts below. There is no question of law much less a substantial question of law involved in the same.

11. Now turning to the argument of the learned Counsel for the appellant that the plaintiff has admitted during cross-examination that the suit has been filed for 1122 sq.ft. whereas he has stated in his evidence that he is entitled only for 6 cents. The learned Counsel for the appellant would submit that since the suit is for recovery of possession, unless the property is identified, the decree cannot be workable and therefore, the courts below ought to have dismissed the suit, he contended. This argument, though seems to be attractive, it has not persuaded me at all.

12. The suit property has been described by four boundaries. On the two sides of the suit property, there are channels. On the other side, the other property of the plaintiff is situated. The fourth side is bounded by the property belonging to one Jagannathan. The defendant has got no property anywhere in the four boundaries of the suit property. Therefore, in this case, irrespective of the extent of the property, the four boundaries will prevail upon. Whatever be the extent of the property situated within the four boundaries shall be recovered by the plaintiff. Therefore, the contention that the plaintiff has failed to prove the identity of the suit property cannot be accepted. The courts below have appreciated this issue and have answered the same accordingly. In this also, I do not find any substantial question of law involved.

13. In view of the foregoing facts, I do not find any substantial question of law warranting admission of this Second Appeal. Therefore, this Second Appeal is liable to be dismissed.

14. In the result, the Second Appeal is dismissed. The

decree and judgment of the lower appellate court confirming the decree and judgment of the trial court is hereby confirmed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

tsi

To

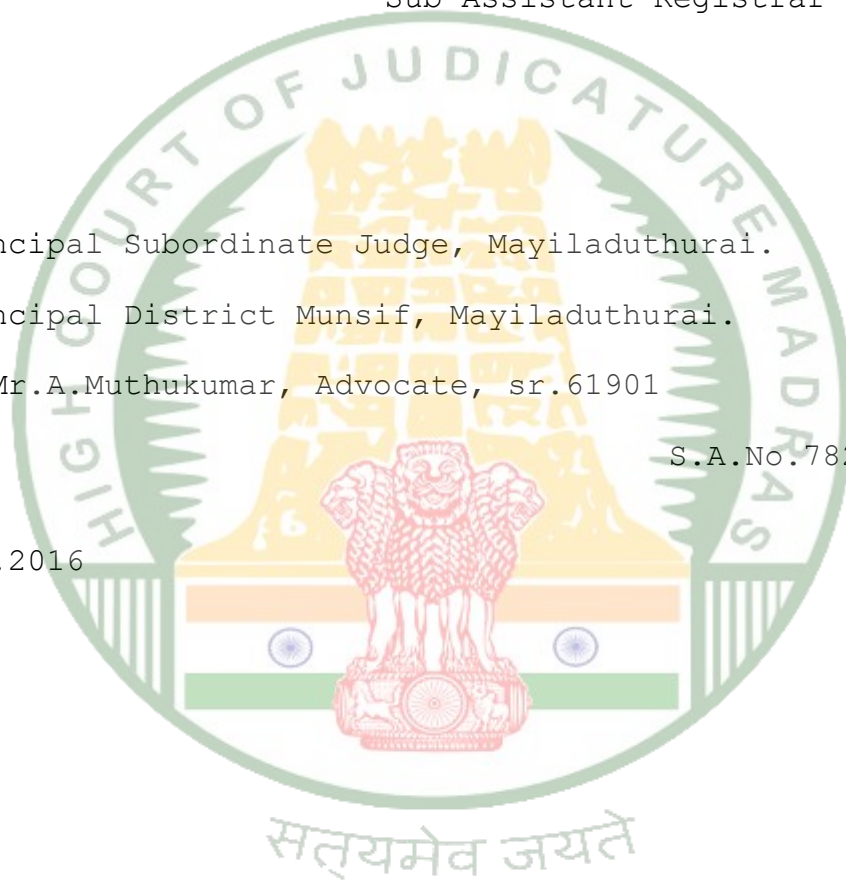
1.The Principal Subordinate Judge, Mayiladuthurai.

2.The Principal District Munsif, Mayiladuthurai.

+1 cc to Mr.A.Muthukumar, Advocate, sr.61901

S.A.No.782 OF 2015

vd co
kra 29.01.2016



WEB COPY