

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.801 of 2015

and

M.P.No.1 of 2015

Sheik Mohideen ...Appellant/Appellant/Defendant

Vs.

Israth Banu
rep by Power Agent

Mr.Abdul Ayuf ...Respondent/Respondent/Plaintiff

Prayer:- This Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 23.09.2014 made in A.S.No.43 of 2012 on the file of the III Additional District and Sessions Judge, Salem, confirming the judgment and decree dated 25.01.2012 made in O.S.No.344 of 2009 on the file of the I Additional Subordinate Court, Salem.

For Appellant : Mr.A.Nagarathinam

For Respondent : Mr.T.Meganathan

J U D G M E N T

The defendant, who is the appellant herein, aggrieved by the unanimous decisions of the Courts below had filed the above Second Appeal.

2. The suit was filed by the plaintiff for declaration and injunction. The dispute is only with respect to the second item of the suit property, which is in possession and enjoyment of the plaintiff. The first item was owned by the plaintiff, which is not in dispute. The second item of the property belonged to Salem

Municipality, and classified as Therumunai Poramboke, measuring an extent of 294 Sq.ft, which is in continuous possession and enjoyment of plaintiff's predecessor for over 40 years. As the plaintiff's predecessor had been in long enjoyment of the said property, the Salem Municipal Council by its resolution dated 22.02.1991 had assigned the land in favour of Kathija Bi, predecessor of the plaintiff. Thereafter, in and by proceedings dated 22.02.1991, the lands were converted into house sites to facilitate assignment in favour of Kathija Bi, who gifted second item in favour of the plaintiff. Thus, the plaintiff has been in long and continuous possession of the suit schedule second item of the property by paying property tax, etc.

3. The appellant herein, who is the defendant, contending that the Government ought to have been made as a party and the suit is bad for non-joinder of necessary parties, when admittedly, the property is a poramboke property and the said property was assigned in favour of Kathija Bi converting the same into a house site, the plaintiff cannot have any right or interest over the same. The appellant / defendant also contended that the Courts below had failed to take into serious consideration with respect to the possession of the plaintiff in the suit property, viz., the period from which the plaintiff claimed adverse title. The appellant also contended that there was no animus on the part of the plaintiff to claim adverse title.

4. Though the property was originally Therumunai Poramboke land, it was converted into a house site and assigned to the plaintiff. While so, the assignment is a document of title and for the possession. Hence, the contention of the defendant is rejected. The plaintiff also independently proved that the Kathija Bi, in whose favour the assignment was granted, has settled the property in favour of the plaintiff and pursuant to which, the T.S.L.R extract proceedings also had effected the name change. When the Government property is assigned, the patta granted pursuant to the same would be document of the title. Hence, TSLR extract in favour of the plaintiff is deemed to be valid title in her favour and her possession, pursuant to the same is valid. The defendant has got no right or title in the suit property, as he himself has admitted that it is a poramboke property originally. In such circumstances, there is no substantial question of law arises for consideration in the above Second Appeal.

5. In the result, the Second Appeal is dismissed, thereby confirming the judgments and decrees of the Courts below. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

srn

To

1.The III Additional District and Sessions Judge,
Salem

2.The I Additional Subordinate Court,
Salem.

3.The Section Officer,
V.R.Section,
High Court,
Madras - 104.

1 CC to Mr.A.Nagarathinam, Advocate SR.No. 49307

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RSK (CO)
PSI (13.10.2015)

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