

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.898 of 2015

and

M.P.No.1 of 2015

1. The District Collector,
Salem.
 2. The Head Master,
Government Higher Secondary School,
Kootathupatti.
 3. The Chief Educational Officer,
Salem
- ... Appellants

Vs.

1. Selvam
 2. Chandramohan
- ... Respondents

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 16.07.2014 made in A.S.No.50 of 2013 on the file of the II Additional Sub court, Salem, confirming the judgment and decree dated 30.01.2013 made in O.S.No.803 of 2011 on the file of Principal District Munsif Court, Salem.

For Appellants : Mr.T.Jayaramaraj
Government Advocate (CS)

J U D G M E N T

The defendants, the Government authorities, who had suffered a decree concurrently, have filed the above Second Appeal.

2. The suit is filed for permanent injunction, restraining the appellants / defendants from interfering with the peaceful possession and enjoyment of the suit property by the first respondent / plaintiff.

3. The suit property was purchased by the grandfather of the first respondent / plaintiff on 21.08.1938 under Ex.A1-Sale Deed. After his demise, an extent of 0.70 cents out of 1.73 acres was sold to one Natesan Gounder on 07.10.1975. The remaining extent of 1.03 acres was in possession and enjoyment of the plaintiff's father and after his demise, the plaintiff has been in possession of the suit property. The said Natesan Gounder settled his properties in favour of the Government Higher Secondary School, Koothathupatti, Salem under the settlement deed. As the second defendant tried to trespass into the suit property by fixing boundary line on the Western side of the School, the suit has been filed for injunction.

4. It is admitted by the defendants that the gift settlement deed has been settled by Natesan Gounder of 0.70 acre in favour of the third defendant. According to the defendants, the suit property was subdivided as Survey No.57/2B. The School wanted to put up a compound wall with the help of the fourth defendant and hence, measured the School premises and earmarked the boundaries. Accordingly, FMB, 'A' Register and adangal relating to S.F.Nos.57/2B, 57/3B, 57/4, 58/1D and 58/2A stand in the name of Salem District Educational Officer. The defendants sought for dismissal of the suit, as the property description was not proper.

5. The plaintiff had examined himself as P.W.1 and produced the original sale deeds dated 21.08.1938 under which his grandfather purchased the suit property and also the sale deed dated 07.10.1975 under which the part of the property was sold to one Natesan Gounder. The other documents filed by the plaintiff in support of his case were Ex.A3-patta, Ex.A4-Patta Pass Book, Exs.A5 and A6 -Kist Receipts and the certified copy of the settlement deed dated 15.07.1977 in favour of the third defendant, which was marked as Ex.A7. The above said documents marked by the plaintiff were not disputed by the defendants.

6. The defendants had also produced FMB, 'A' Register Extract and plan issued by the Taluk Surveyor, which were marked as Exs.B1 to B3. On a perusal of the documents and evidence, the Courts below had held that the plaintiff is the owner of the suit property and that he is entitled to a decree for injunction.

7. The only defence taken by the appellants / defendants is that Survey No.57/2B was subdivided. When confronted with the question as to whether the notice was issued to the original owner of the suit property at the time of resurvey, the answer was given in negative.

8. Ex.A3 is the Patta granted in favour of the plaintiff's grandfather, namely, Theerthagirigounder for an extent of 1.73 acres in Survey No.57/2 and the same is not disputed by the defendants. Admittedly, the Eastern side portion of Survey No.57/2 is a poromboke land. Though the gift settlement deed under Ex.A7 conveyed only 0.70 cents of land in Survey No.57/2, it is subdivided into three as 57/2A, B and C, measuring 83cents, 39 1/2 cents and 50 1/2cents respectively, totalling an extent of 1.73 acres, in which, excepting the extent covered under Ex.A7-Gift Settlement Deed, the balance 1.03 acres belong to the legal heirs of the said Theerthagiri Gounder. Accordingly, they are also in possession of the suit property. The defendants have got no right or title and are trying to interfere with the peaceful possession of the plaintiff. When the ownership of the land is proved and not denied by the defendants, the defendants have got no right to interfere with the possession of the plaintiff. Hence, in view of the above findings, there is no merit in the Second Appeal for interference. On the given factual matrix, there is no question of law that arises for consideration.

9. In the result, the Second Appeal is dismissed, confirming the judgments and decrees of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

True Copy

Sub Assistant Registrar

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To

1.The II Additional Subordinate Judge,
Salem,

2.The Principal District Munsif Court,
Salem.

+1cc to Special Government Pleader Sr.58890

S.A.No.898 of 2015
and
M.P.No.1 of 2015

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srg 6/11/2015



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