



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.91 of 2015 and M.P.No.1 of 2015

Arumugam (died)

1. Settu @ Krishnan

2. Kandasamy

.. Appellants/Defendant

-Vs-

Thangappan

.. Respondent/Plaintiff

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree passed in A.S.No.21 of 2012 dated 14.09.2013 on the file of the Subordinate Judge, Mettur reversing the judgment and decree passed in O.S.No.26 of 2007 dated 07.09.2012 on the file of the District Munsif, Mettur.

For Appellants : Mr.A.Sundaravadhanan

For Respondent : ...
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J U D G M E N T

The defendants in O.S.26/2007 on the file of the learned District Munsif, Mettur are the appellants herein. The respondent is the plaintiff in the suit. The said suit was filed by the plaintiff for permanent injunction to restrain the defendants from in any manner interfering with his peaceful possession and enjoyment of the suit property. By decree and judgment, dated 07.09.2012, the trial court dismissed the suit. As against the same, the plaintiff filed an appeal in A.S.No.21/2012 on the file of the learned Subordinate Judge, Mettur. By decree and judgment, dated 14.09.2013, the lower appellate court allowed the appeal, thereby setting aside the decree and judgment of the trial court and decreed the suit as prayed for. As against the same, the defendants are 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 Appellants and I have also perused the records carefully.



3. The case of the plaintiff is as follows:

The suit property measuring 41 ares comprised in Survey No.82/2E, Veerakkal Pudur Village, Mettur District, absolutely belongs to him. It was allotted to the share of the plaintiff in a family partition which took place on 12.03.1980. The defendants have got no right whatsoever over the same. But since they attempted to disturb his possession, the plaintiff was forced to file the suit, it is contended.

4. The case of the defendants is that the 1st defendant has got lands on the Eastern side of Survey No.82/2E. It is further stated that only to harass the defendants, the plaintiff has given a wrong description of the property and has also stated that the defendants are strangers to the suit property. It is also stated that the dead bodies of the wife of the 1st defendant and the father of the 1st defendant were all buried on the western side of the lands of the defendants. Now, without filing the Field Map Book, the suit has been filed. Thus, according to the defendants, the suit is liable to be dismissed.

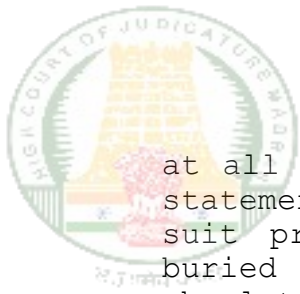
5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, two witnesses were examined and as many as 6 documents were exhibited. On the side of the defendants, 3 witnesses were examined and as many as 3 documents were exhibited. As many as 6 documents were marked as Witness Exhibits. Having considered the same, the trial court dismissed the suit which was reversed by the lower appellate court. That is how the defendants are before this Court with this Second Appeal.

6. In this Second Appeal, it is submitted by the learned Counsel for the appellants that the defendants are not strangers to the suit property as the suit property is used as a burial ground where the dead bodies of the wife of the 1st defendant and the father of the 1st defendant were all buried. The lower appellate court has not considered this evidence with their proper perspective, it is contended.

7. I have considered the above submission.

8. At the outset, I should say that in this Second Appeal, absolutely, there is no question of law, much less a substantial question of law involved, warranting admission of this Second Appeal. The only question raised by the appellants is that without there being a prayer for declaration of title, the present suit, which is a simple suit for injunction, is not maintainable.

9. In my considered opinion, this contention raised by the learned Counsel for the appellants is only to be rejected for the simple reason that the title of the plaintiff has not been disputed



at all in the written statement. Though it is stated in the written statement that the defendants have got their lands on the East of the suit property and though it is stated that the dead bodies were buried on the west of the property belonging to the defendants, absolutely, there is no acceptable evidence to prove the same. At any rate, there is no document to show that the suit property has been used as a burial ground and the defendants have got right over the same. The lower appellate court considered the documentary and oral evidence in their proper perspective to come to a conclusion that the suit property is in possession and enjoyment of the plaintiff alone. This, being a factual finding, this Court finds it difficult to interfere with the same as there is no infirmity or impropriety in the same. Above all, as I have already pointed out, there is no substantial question of law at all involved in this matter.

10. In the result, the Second Appeal fails and the same is accordingly dismissed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Subordinate Judge, Mettur.
2. The District Munsif, Mettur.

+1 cc to Mr.A.Sundaravadanan, Advocate,SR.14487.

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krd 29/5

S.A.No.91 OF 2015
& M.P. No. 1 of 2015