

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.941 of 2015

Deivanai

.. Appellants/Plaintiff

-Versus-

1.J.Masilamani Reddi

2.Kannammal

.. Respondents/Defendants

This second appeal is filed against the judgment and decree dated 14.07.2014 made in A.S.No.33 of 2014 by the Subordinate Judge, Arakkonam, reversing the judgement and decree dated 13.04.2010 made in O.S.No.345 of 2004 by the learned District Munsif, Sholinghur.

For Appellant : Ms.R.Poornima

For Respondents : Mr.A.Balasingh Ramanathan

JUDGMENT

The plaintiff in O.S.No.345 of 2004 on the file of the learned District Munsif, Sholinghur, is the appellant. The respondents are the defendants in the suit. The said suit was filed for permanent injunction restraining the defendants from in any manner interfering with the peaceful possession and enjoyment of the plaintiff over the B-schedule property. The learned District Munsif, by decree and judgement dated 13.04.2010, decreed the suit. Aggrieved by the same, the defendants preferred an appeal in A.S.No.33 of 2014 on the file of the learned Subordinate Judge, Arakkonam. By decree and judgement dated 14.07.2014, the first appellate court, allowed the appeal and set aside the decree and judgement of the trial court and dismissed the suit. As against the same, the plaintiff is now before this court with this second appeal.

2. This second appeal has come up today for admission. I have heard the learned counsel for the appellant and the learned counsel appearing for the respondents and I have also perused the records carefully.

3. The case of the plaintiff in brief is as follows:- There are two items of properties described as 'A' and 'B' schedule in the suit. The A-schedule property is a patta land comprised in S.No.238/1 at Nandhivedu Thangal Village, measuring an extent of 1.35 Acres out of the total extent of 1.48 Acres. The A-schedule property has been described by means of four boundaries as well. The B-schedule property is situated on the north of the A-schedule property and comprised in S.No.237/1 measuring an extent of 0.06.5 Hectares. Admittedly, the B-schedule property is the Government poramboke land. According to the plaintiffs, she has been enjoying the B-schedule property, for which, the Government has issued B-memos and collected penalty from her. According to the plaintiff, the defendants have got no right what soever over the B-schedule property. Since the defendants have made an attempt to disturb the possession of the plaintiff, she filed the present suit.

4. The case of the defendants is that out of the total extent of 1.48 Acres of land in S.No.238/1, the plaintiff purchased only 1.35 Acres. But, the four boundaries in the document were not properly mentioned. It is true that the property comprised in S.No.237/1 is the proramboke land. But, the defendants are in possession of the remaining 13 cents in S.No.238/1 and also the proamboke land comprised in S.No.237/1 to an extent of 4 (four) cents. Thus, according to the defendants, the plaintiff has got no right what so ever over the B-schedule property.

5. Based on the above pleadings, the trial court framed appropriate issues. During trial, on the side of the plaintiff, 3 witnesses were examined as P.W.1 to P.W.3 and as many as 18 documents were exhibited as Exs.A1 to A.18. On the side of the defendants, 1st defendant was examined as D.W.1 and as many as 7 documents were exhibited. Pending trial, an Advocate Commissioner was appointed and his report was exhibited as Ex.C.1 and rough sketch was exhibited as Ex.C.2.

6. Having considered all the above, the trial court decreed the suit, but, however, the first appellate court reversed the same. That is how, the plaintiff is now before this court with this second appeal.

7. In this second appeal, the following substantial question of law has arisen for consideration:-

Whether the first appellate court was right in reversing the decree and judgement of the trial court ignoring B-Memos issued by the

Tahsildar recognizing the possession of the plaintiff solely on the ground that there is no office seal in the said documents?

8. I have heard the learned counsel on either side extensively on the above substantial question of law as well as on facts.

9. So far as the B-schedule property is concerned, it is not in dispute that it is a poramboke land belonging to the Government. The plaintiff claims that she is in possession and enjoyment of the same; whereas the defendants claim that they are in possession and enjoyment of the same. Of course, in this suit, the plaintiff is bound to prove that she is in possession and enjoyment so as to get a decree for permanent injunction. It is common knowledge that if a poramboke land belonging to the Government is possessed by an individual the Government is at liberty to issue B-memo and collect penalty from the possessor. Similarly, if necessary, the Government is always at liberty to evict such trespasser. But, the person who is in occupation of the Government land and has been paying penalty to the Government is certainly entitled to maintain a suit for permanent injunction against a third party by which he can protect his possession. In this case, the trial court had found that there are B-memos issued by the Government and that the plaintiff had proved her possession over the B-schedule property. But, the first appellate court has concluded otherwise on the ground that the B-memos did not contain the office seal of the Tahsildar and one B-memo did not even contain the signature of the issuing authority. The plaintiff has explained the same through her evidence that what ever was served upon her has been produced in evidence. It is not at all the case of any of the parties that these documents were forged documents or documents prepared for the purpose of the case. When that be so, in my considered view, the absence of the office seal of the Tahsildar does not make the documents invalid. But, at the same time, it is seen that though the defendants claim that they are in possession of the B-schedule property, which is a poramboke land, they did not have even a semblance of document to prove their possession. In such view of the matter, in my considered view, the trial court was right in decreeing the suit in respect of B-schedule property; whereas the first appellate court was not right in reversing the decree and judgement of the trial court. Thus, I answer the question of law in favour of the appellant. It is, however, made clear that if the Government intends to take possession of the land in question, the Government is always at liberty to evict the plaintiff by following the procedure established by law.

In the result, the second appeal is allowed. The decree and judgement dated 14.07.2014 made in A.S.No.33 of 2014 by the Subordinate Judge, Arakkonam, is set aside and the decree and judgement of the trial court dated 13.04.2010 made in O.S.No.345 of 2004 by the learned District Munsif, Sholinghur, is restored. However, there shall be no costs.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

kmk

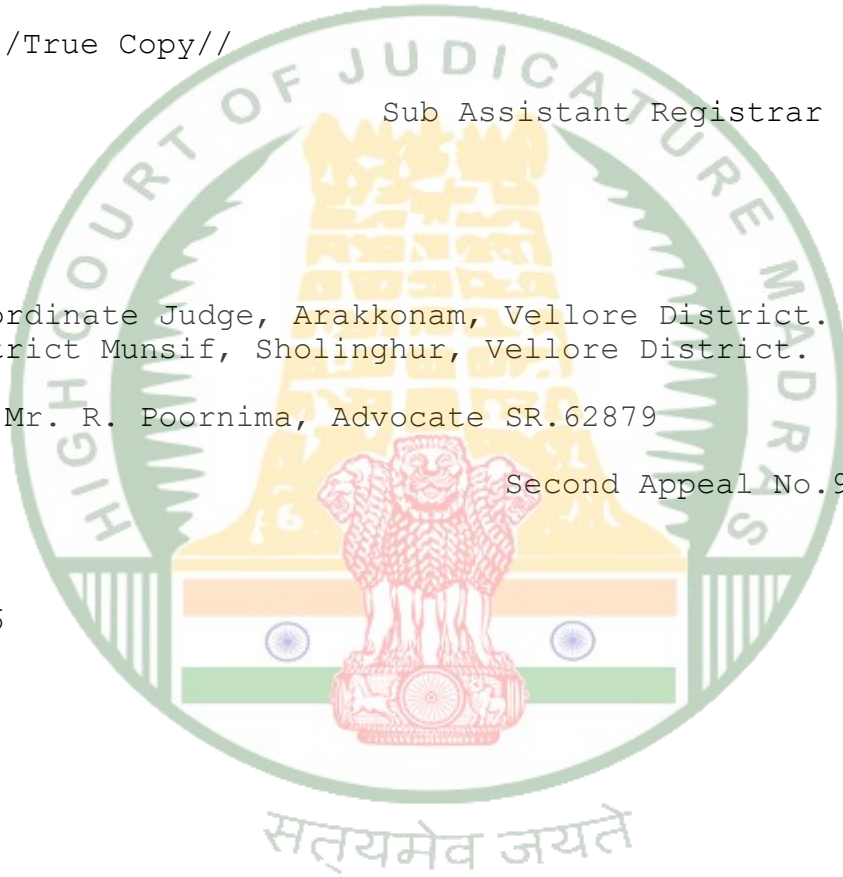
To

- 1.The Subordinate Judge, Arakkonam, Vellore District.
- 2.The District Munsif, Sholinghur, Vellore District.

+ 1 cc to Mr. R. Poornima, Advocate SR.62879

Second Appeal No.941 of 2015

NM(CO)
Eu 2.02.16



WEB COPY