

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.965 of 2015

S.C.Velu .. Appellant/Plaintiff

-Vs-

1.Asokan

2.The State of Tamil Nadu
rep. by the District Collector,
Thiruvannamalai, having office at
Collectorate Office, Vengikkal,
Tiruvannamalai.

3. The Tahsildar,
Taluk Office, Arni,
Tiruvannamalai District.

4.The Village Administrative Officer,
Meyyur Village & Post,
Arni Taluk, Tiruvannamalai District.

.. Respondents/Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 17.02.2014 made in A.S.No.12 of 2009 on the file of the Subordinate Judge, Arni, Tiruvannamalai District, confirming the judgment and decree dated 30.06.2009 made in O.S.No.339 of 2006 on the file of the District Munsif, Arni, Tiruvannamalai District.

For Appellant : Mr.N.Suresh

For Respondents : ...

J U D G M E N T

The plaintiff in O.S.No.339 of 2006 on the file of the learned District Munsif, Thiruvannamalai is the appellant

herein. The respondents are the defendants in the suit. The said suit was filed for Mandatory Injunction directing the 1st defendant to remove the encroachment made in the 'B' Schedule Property and also for permanent injunction restraining the 1st defendant from putting up any kind of construction in the 'C' Schedule Property. The trial court dismissed the suit by decree and judgment dated 30.06.2009. As against the same, the appellant herein filed an appeal in A.S.No.12 of 2009 before the learned Subordinate Judge, Arni. The same was dismissed by decree and judgment dated 17.02.2014 thereby confirming the decree and judgment of the trial court. Challenging 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 is as follows:

There are three items of suit properties described as 'A', 'B' and 'C' Schedule of properties. So far as the 'A' Schedule of property is concerned, barring a portion described as 'B' schedule, there is no dispute that it belongs to the plaintiff. The eastern portion of the 'A' Schedule property is the 'B' schedule property. In other words, the 'B' Schedule property is included in the 'A' Schedule property. The 'B' Schedule property, according to the plaintiff, is a pathway through which he can reach the 'A' Schedule property and the Thottam belonging to him. The 'C' schedule property is a street situated on the south of the 'A' Schedule property. The plaintiff claims that the 1st defendant has got no right whatsoever over the 'B' schedule property, but, he has encroached upon the same. So far as the 'C' Schedule property is concerned, according to the plaintiff, it is a public street over which the 1st defendant has got no right whatsoever to put up any construction.

4. The 1st defendant contended that he has not encroached upon any portion of the property belonging to the plaintiff. The house belonging to him was built in the year 1984 in the adjacent land. He has not made any attempt to put up any construction on 'B' Schedule property or 'C' schedule property, he contended.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, 5 witnesses were examined as P.W.1 to P.W.5 including the plaintiff and as many as 13 documents have been exhibited. On the side of the 1st defendant, 3 witnesses were examined as D.W.1 to D.W.3 including

the 1st defendant and as many as 2 documents have been exhibited as Ex.B.1 and Ex.B.2. Apart from that, the Court Documents, namely, Ex.C.1 to Ex.C.5 were also marked. Finally, the trial court dismissed the suit and the lower appellate court confirmed the same. That is how, the appellant is before this Court with this Second Appeal.

6. In this appeal, the learned Counsel for the appellant would submit that there are substantial questions of law. They are as follows:

a. Whether the courts below are right in dismissing the suit when the plaintiff has clearly and categorically proved beyond doubt that the defendant put up compound wall not only by encroaching common private pathway (B Schedule Property) belonged to the plaintiff and others but also encroaching upon the public street through Exs.A1, C1 to C5 and deposition of P.W.5?

b. Whether the burden of proof in proving the right and title over the encroached portion of common private pathway namely, B schedule property is on the part of the defendant?

c. Whether the courts below are right in dismissing the suit without framing the points for determination with regard to the right and title over the disputed common private pathway, namely, B Schedule property? and

d. Whether the lower appellate court failed to exercise its power as envisaged under the provisions and rules of C.P.C.?

7. In my considered view, these questions are only questions of fact and there is no question of law much less a substantial question of law warranting admission of this Second Appeal. The 1st defendant has stated that he has not made any attempt to encroach upon either 'B' Schedule or 'C' Schedule of properties. The house was constructed by the 1st defendant in the year 1984 in the adjacent land.

8. On appreciating the facts, the courts below have held that there is no encroachment on the pathway and the 1st defendant has not made any attempt to put any construction in the 'C' Schedule of property, namely, public street. When these findings are on facts and since there is no question of law involved, I am not inclined to admit this appeal.

9. In the result, the Second Appeal fails and the same is accordingly dismissed. No costs.

Sd/-
Assistant Registrar (CS-III)

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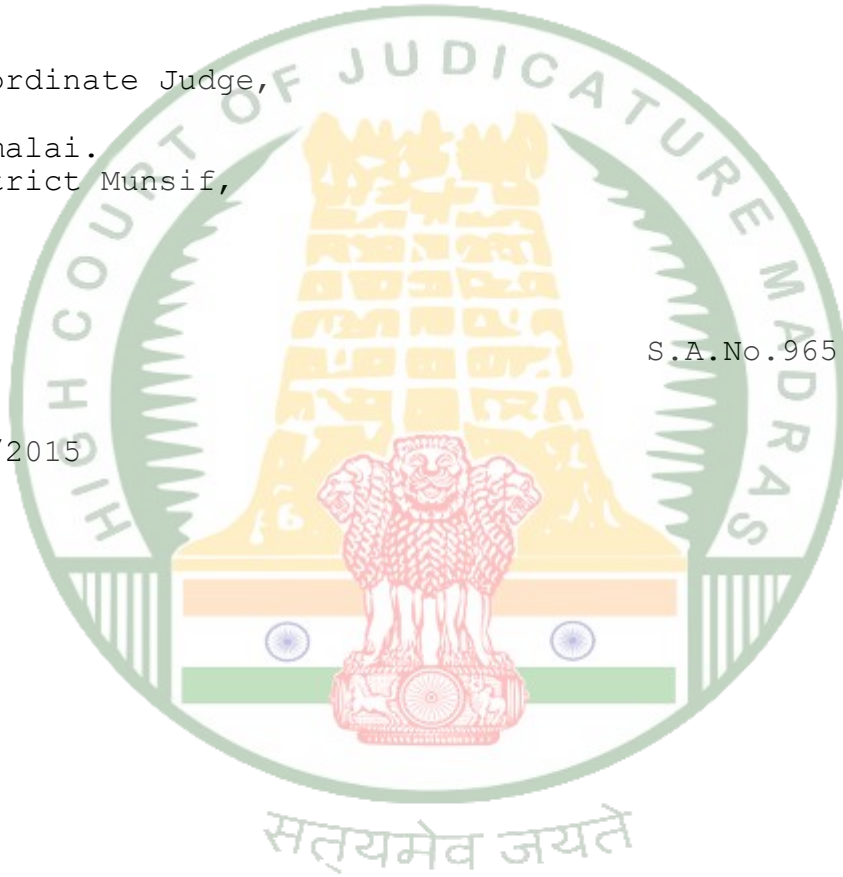
Sub Assistant Registrar

To

1.The Subordinate Judge,
Arni,
Tiruvannamalai.
2.The District Munsif,
Arni.

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srg 16/12/2015



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