

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.976 of 2015
and M.P.No.1 of 2015

1.Raju @ Raji
2.Rani

... Appellants

-Versus-

Saraswathi

... Respondent

This second appeal is filed against the judgment and decree dated 03.06.2015 made in A.S.No.96 of 2013 by the learned Subordinate Judge, Poonamallee, confirming the decree and judgement dated 19.11.2013 made in O.S.No.349 of 2009 by the learned Principal District Munsif, Poonamallee.

For Appellants : Mr.R.Bharath Kumar

JUDGMENT

The plaintiffs in O.S.No.349 of 2009 on the file of the learned District Munsif, Poonamallee, are the appellants herein. The respondent is the sole defendant in the suit. The said suit was filed by the plaintiffs in respect of two items of properties described as 'A' and 'B' Schedule. The relief sought for by the plaintiffs was for mandatory injunction directing the defendant to quit and deliver the vacant possession of "B" schedule property and also for a permanent injunction restraining the defendant from altering the suit property in any manner. The trial court, by decree and judgement dated 19.11.2013, dismissed the suit. As against the same, the plaintiffs filed an appeal suit in A.S.No.96 of 2013 on the file of the learned Subordinate Judge, Poonamallee. By decree and judgement dated 03.06.2015, the first appellate court dismissed the appeal thereby confirming the decree and judgement of the trial court. Challenging the same, the plaintiffs are 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 appellants and also perused the records carefully.

3. The case of the plaintiffs is that the B-Schedule property is a portion of A-Schedule property. The dispute is only with regard to B-schedule property. The plaintiffs are the husband and wife. The defendant is the sister of the 1st plaintiff. According to the plaintiffs, the defendant was permitted by the plaintiffs to occupy the B-schedule property. Thus, the defendant has been in possession of the B-schedule property as a permissive occupier. But, even after the permission was withdrawn, the defendant has not vacated and handed over the vacant possession of the B-schedule property to the plaintiffs. With this grievance the present suit has been filed by the plaintiffs.

4. But, the defendant contested the suit stating that the B-Schedule property belongs to her absolutely. Admittedly, it is a natham land. As a matter of fact, she has been in possession and enjoyment of the B-schedule property for the past 30 years by putting up constructions and residing in the house situated on the same. She has paid kist to the revenue department for the property. It is her further case that patta has also been issued in her favour under natham survey settlement in respect of the B-Schedule property.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiffs, the 1st plaintiff was examined as P.W.1 and 7 documents and on the side of the defendant, she was examined as D.W.1 and 7 documents were marked. Having considered all the above, the trial court dismissed the suit and on appeal the first appellate court confirmed the decree and judgement of the trial court. That is how, the appellants are now before this court with this second appeal.

6. In my considered view, there is no substantial question of law at all involved in the second appeal. The questions raised in the second appeal are purely questions of fact. The courts below have considered that the suit property is a natham land. For the suit survey number under Ex.A.4, the Tahsildar, Poonamallee has issued patta in favour of the 2nd plaintiff for Survey No.7/3 to an extent of 10.06 X 8.8 meters. The Tahsildar has issued patta under Ex.B.6 to the 1st defendant for survey No.10/2. The defendant claims that the B-schedule property is covered by Ex.B.6. These documents and others documents as well as the oral evidence have been considered by both the courts below and both the courts have come to a right conclusion that

the defendant is in possession and enjoyment of the B-schedule property as a rightful owner and the same is covered by Ex.B.6. The courts below have also held that the plaintiffs have failed to prove that the B-schedule property forms part of A-schedule property and covered by Ex.A.4. In this conclusion arrived at by the courts below, I do not find any infirmity. Thus, I do not find any question of law much less a substantial of law warranting admission of the second appeal. In such view of the matter, the second appeal fails and the same deserves only to be dismissed.

7. In the result, the second appeal is dismissed. The decree and judgement of both the courts below are confirmed. No costs. Consequently, connected MP is closed.

sd/-

Assistant Registrar (Cs-IV)

/TRUE COPY/

Sub-Assistant Registrar

kmk

To

1.The Subordinate Judge, Poonamallee,
Tiruvallur District.

2.The Principal District Munsif,
Poonamallee, Tiruvallur District.

+1 CC to MR.R.Bharath Kumar Advocate. SR.NO. 60660

Second Appeal No.976 of 2015

CO-MP

JD 28/01/2016

सत्यमेव जयते

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