

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 14.12.2016

Judgment pronounced on : 20.12.2016

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.No.940 of 1988

Bharatha Kounder

.. Appellant/Plaintiff)

Versus

1.Gopalakrishna Kounder (died)

..1st Respondent (Defendant)

2.Jayachandran

3.Sankaran

4.Kalaivanan

5.Mathivanan

.. Respondents 2 to 5
(LR's of the deceased sole
Respondent /Defendant)

(Respondents 2 to 5 are brought on record as legal heirs of deceased sole respondent as per order of this Hon'ble Court dated 14.12.2016 made in CMP.Nos.2996 to 2998/2000)

Prayer: Petition filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree as made in A.S.No.202 of 1987 dated 11.11.1987 on the file of the Additional District Judge, Cuddalore reversing the judgment and decree made in O.S.No.211 of 1984 dated 13.01.1986 on the file of the District Munsif, Villupuram.

For Petitioner : Mr.V.Narayanasami

For Respondents : No appearance

JUDGMENT

The plaintiff is the appellant. The suit is filed for declaration of title, for delivery of possession and determining the future mesne profits. Both the Courts below rejected the claim of the plaintiff, hence this Second Appeal.

2.The short point involved in this case is that the plaintiff, who is the actual purchaser of the suit property in O.S.No.132 of 1966 took symbolic possession of the property on 08.04.1969. However, no possession was given to him. The plaintiff pleads that possession was taken subsequently through

Panchayat have not been proved and not accepted by the Courts below.

3.The case of the plaintiff is that on 27.02.1983, defendants attempted to trespass into the land, but it was prevented. Again in September 1985, when the plaintiff was away, the defendant successfully trespassed into the suit property and has raised paddy crop. The Trial Court after considering 8 exhibits on behalf of the plaintiff, 26 exhibits on behalf of the defendants and the depositions of PW1, PW2, DW1 and DW2 held that plaintiff has failed to prove the possession, whereas the defendants have established that they are in possession for more than twelve years adverse to the plaintiff's interest. Therefore, dismissed the suit. The First Appellate Court also confirmed the same. The substantial questions of law raised by the appellant is

"Whether the Lower Appellate Court is right in view it took that the suit is barred by limitation, is the substantial question of law that arises for consideration in this Second Appeal."

4.The learned counsel for the appellant submitted that once the Court has concluded that the defendant cannot claim adverse possession due to symbolical delivery recorded on 10.04.1969, the plea of limitation does not arise. No doubt, both the Courts have accepted the recording on symbolical delivery by the plaintiff. However, the Court has disagreed with the contention of the plaintiff on the point of limitation, since the plaintiff has failed to recover the possession after symbolical delivery within the period prescribed in the Limitation Act. Relying upon Ex.A-5-Sale deed of the year 1979, the appellant claims that their suit is well within the period of limitation.

5.This Court is unable to agree with the contention of the appellant. The limitation for recovery of possession in this case has to be reckoned from the date of symbolic possession and not from the date of subsequent transaction. If the limitation reckoned from the date of symbolic delivery, in the absence of proof, that actual delivery was taken by the plaintiff through Panchayat, the suit is hopelessly barred by limitation. The Courts below have rightly held that plaintiff is not entitled for any relief. This Court finds no substance in the questions of law raised by the appellant.

6. In the result, Second Appeal is dismissed. There shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rm

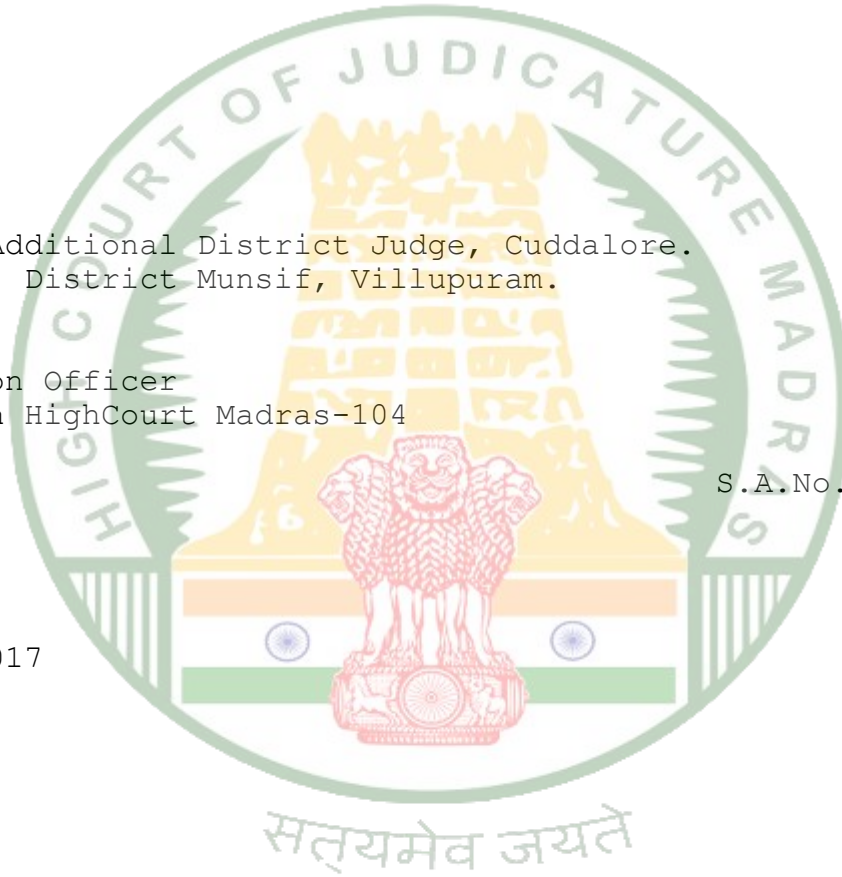
To

1. The Additional District Judge, Cuddalore.
2. The District Munsif, Villupuram.

copy to
The Section Officer
VR Section HighCourt Madras-104

S.A.No.940 of 1988

sv(co)
aa25/01/2017



WEB COPY