

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2016

PRONOUNCED ON : 26.10.2016

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal Nos.680 and 681 of 2008
and
M.P.No.1 of 2008 in

1.Ramagounder
2.Perumal
3.Gopal

... Appellants/Appellants/Defendants
in both Second Appeals

Vs

1.C.Perumal
2.K.Valliyappan

... Respondents/Respondents/Plaintiffs
in S.A.No.680/2008

Perumalgounder

... Respondent/Respondent/Plaintiff
in S.A.No.681/2008

Prayer in S.A.No.680 of 2008: Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 21.11.2007 in A.S.No.25 of 2007 on the file of the Sub Court, Mettur confirming the judgment and decree dated 22.09.2006 made in O.S.No.317 of 2004 on the file of the learned District Munsif, Mettur (Sub Court Sankari O.S.No.72 of 1998) (Sub Court Mettur O.S.No.120 of 1999).

Prayer in S.A.No.681 of 2008: Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 21.11.2007 in A.S.No.24 of 2007 on the file of the Sub Court, Mettur confirming the judgment and decree dated 22.09.2006 made in O.S.No.27 of 1998 on the file of the learned District Munsif, Mettur.

For Appellants : Mr.N.Manokaran
in both S.As

For Respondent(s): Mr.R.Siddharth for
in both S.As Mr.T.R.Rajaraman

COMMON JUDGMENT

While the appellants herein filed O.S.No.314/2014 seeking declaration and injunction, the respondent has filed a suit in O.S.No.27/1998 seeking injunction in respect of same property. Both the suits were tried together and common judgment was passed allowing the suit for bare injunction filed by the respondents and dismissing the declaratory suit filed by the appellants.

2. Aggrieved by the common judgment and decree, appeals in A.S.Nos.24 & 25 of 2007 were preferred by the appellants herein. Both the appeals were dismissed by the First Appellate Court confirming the decree and judgment of the trial Court. As a result, the present second appeals were filed by the appellants who are the plaintiffs in O.S.No.371 of 2004 and the defendants in O.S.No.27/1998.

3. Since, common issues were framed by the trial Court and common judgment was passed by the trial Court and the First Appellate Court, this Court finds that it is appropriate to pass a common judgment in both the second appeals directed against A.S.Nos.24 & 25 of 2007 dated 22.11.2007.

4. Brief facts, leading to these appeals, are as follows:-

The appellants herein have entered into an agreement for sale of suit schedule property with the respondents on 05.09.1977. Alleging that the respondents have failed to perform their part of contract, the appellants have resorted to a suit for specific performance before the District Munsif, Sankari, Salem, by instituting a civil suit in O.S.No.68/1978. It so happened that the suit for specific performance was decreed exparte in favour of the appellants on 16.06.1978. Thereafter, the appellants have not ventured to get the decree executed in the manner known to law. However, based on the exparte decree got the patta of the land transferred in their name. While so, on 10.01.1998, it is alleged by the appellants that the respondents along with the rowdy elements had tried to trespass into the suit property and ousted the plaintiffs' possession by use of force and violence. With the said averment, the suit in O.S.No.72/1998 was initiated before the Sub Court, Sankari on 12.01.1998. The same has been transferred to Munsif Court for want of jurisdiction and renumbered as O.S.No.317/2004.

5. While the appellants have approached the Court for the relief of declaration and permanent injunction regarding the suit property, the respondents herein have filed the suit for bare injunction on 19.01.1998 before the District Munsif, Mettur in O.S.No.27 of 1998. Both the suits were heard together and

disposed of by the trial Court holding that the appellants herein are not in possession of the suit property and they have failed to execute the exparte decree of specific performance passed in the year 1978 and therefore, no title is transferred upon them.

6.Relying upon Exs.A.35 and A.36 and the drought relief grant given by the Government, the trial Court has held that the appellants are not in possession of the property they are not entitled for declaration or injunction as prayed for. The First Appellate Court has also confirmed the judgment and decree of the trial Court.

7.Aggrrieved by the concurrent finding and having lost the case before both the Courts, the present second appeals have been preferred by the appellants who are the plaintiffs in O.S.No.317 of 2004 and defendants in O.S.No.27 of 1999.

8.The learned counsel for the appellants, firstly relying upon the patta- Ex.A.11, issued in favour of the appellants, contended that Ex.A.11 proves title and adangal - Ex.A.12 proves possession and enjoyment of the suit property by the appellants whereas, the Courts below have not considered these documents in its proper perspectives.

9.Secondly, he concluded that having failed to contest the specific performance suit, the respondents have lost their right over the suit property and based on the decree, the appellants are in possession and enjoyment of the property which was disbelieved by the Courts below without any basis.

10.Per contra, the learned counsel for the respondents submitted that the patta in favour of the appellants was transferred subsequent to the suit based on the earlier exparte decree. When that was pointed out to the Tahsildar, he has passed a proceeding - Ex.B.34 wherein, he admits that the patta was transferred based on the exparte decree. Since the specific performance decree has not been executed within 12 years, it has become non est in the eye of law and therefore, the consequential issuance of patta based on unexecuted decree also gets vitiated. Further, the learned counsel for the respondents submitted that the entire revenue records like chitta, adangal and kist receipts stand in the name of Mr.Perumal Gounder, the plaintiff in O.S.No.27/1998 which proves the possession and enjoyment of the suit property. Therefore, the Courts below have rightly dismissed the suit filed by the appellants and allowed the injunction suit filed by the respondents herein.

11.The case of the appellants is that to declare the title of the plaintiffs to the suit properties, the plaintiff had

relied upon the exparte decree passed in their favour on 16.06.1978 which is marked as Ex.A.2. In this decree, it is found that the appellants are granted an exparte decree of specific performance directing the respondents to execute the sale deed, within two months, failing which, given liberty to the appellants for execution of the sale deed through Court.

12.Admittedly, till date, the respondents have not executed the sale deed nor the appellants have executed their liberty to seek execution of sale deed through Court. As pointed out by the Courts below, the limitation prescribed for execution of the specific performance decree is 12 years and the said 12 years for the enforcement of the exparte decree rendered in favour of the appellants expired in the year 1990 itself. While so, the claim of possession alleging that the respondents have handed over the possession at the time of entering into a sale agreement not found favour with the trial Court.

13.Similarly, the alternate plea of adverse possession which requires proof of continuous uninterrupted possession with the knowledge of the real owner has not even been pleaded or proved by the appellants. Contrarily, the respondents have filed a suit for bare injunction alleging interference by the appellants and have succeeded establishing their settled possession, title through revenue documents like kist receipts, adangal and chitta.

14.Ex.B.32 - adangal extract for the fasli year 1395-1408 and kist receipts Exs.B.5 to B.29 were held to be in favour of the defendants by the Courts below. Under these circumstances, this Court finds no points to frame substantial question of law hence, the second appeals are liable to be dismissed.

15.In the result, both the second appeals are dismissed thereby confirming the decrees and judgments of the Courts below. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Sub Judge,

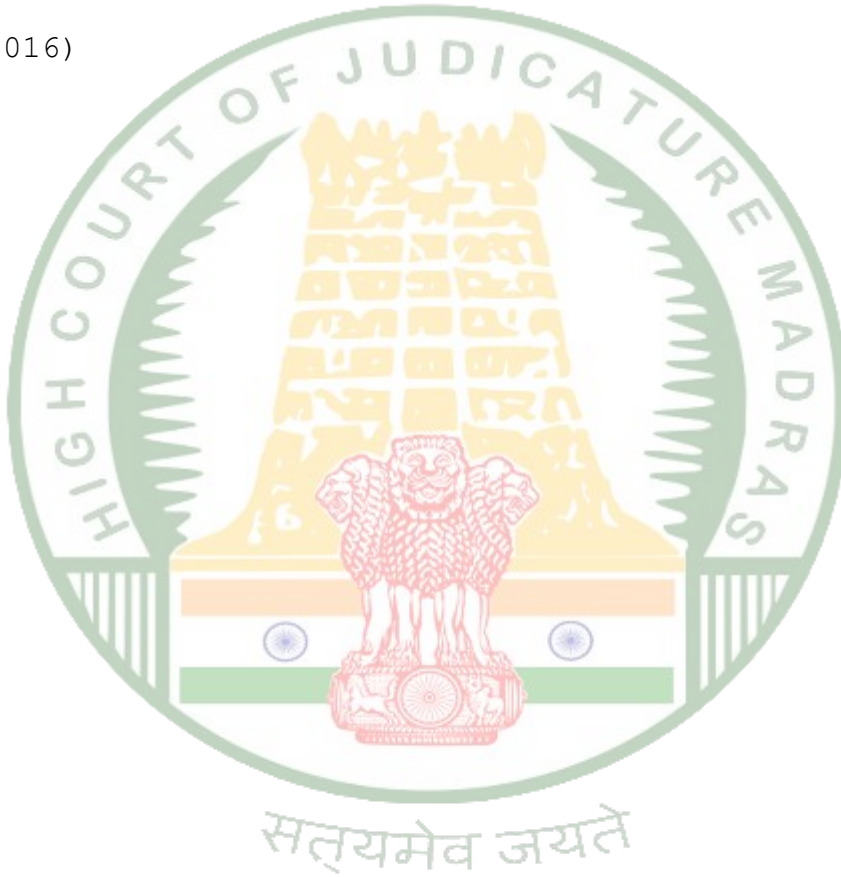
Sub Court,
Mettur.

2.The District Munsif,
Mettur.

+2cc's to Mr.N.Manokaran, Advocate, S.R.No.61366
+1cc to Mr.T.R.Rajaraman, Advocate, S.R.No.61667

Second Appeal Nos.680 & 681 of 2008

NM I (CO)
CA(05/12/2016)



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