

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal Nos.1055 to 1058 of 2015

and

M.P. No. 1 and 1 of 2015

in

S.A.Nos.1055 and 1056 of 2015

S.A.No.1055 of 2015:

Peravur Aided Primary School
rep. by its agent Rev. Father Soosai,
S/o.Gnanaprakasam,
Main Road, Peravur Village,
Kanjivay Post,
Mayiladuthurai Munsif,
Kuttalam Taluk.

... Appellant/1st Respondent
/Plaintiff

Vs.

1. Ganesan

2. Sekar

... Respondents 1 & 2/Appellants/
Defendants 4 & 5

3. Anthonysamy

4. Dakshinamoorthy

... Respondents 3 & 4/Respondents
2 & 3/Defendants 2 & 3

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree dated 24.11.2014 made in A.S.No.46 of 2012 on the file of the Principal Subordinate Judge, Mayiladuthurai reversing the judgment and decree dated 28.09.2011 made in O.S.No.88 of 2008 on the file of the Additional District Munsif, Mayiladuthurai.

For Appellant : Mr.V.K.Rajagopalan

For Respondents 1&2 : Mr.S.Sounthar

S.A.No.1056 of 2015:

Peravur Aided Primary School
rep. by its agent Rev. Father Soosai,
S/o.Gnanaprakasam,
Main Road, Peravur Village,
Kanjivay Post,
Mayiladuthurai Munsif,
Kuttalam Taluk.

... Appellant/1st Respondent
/Plaintiff

Vs.

1. Ganesan

2. Sekar

... Respondents 1 & 2/Appellants/
Defendants 3 & 4

3. Dakshinamoorthy

... 3rd Respondent/2nd Respondent/
2nd Defendant

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree dated 24.11.2014 made in A.S.No.64 of 2012 on the file of the Principal Subordinate Judge, Mayiladuthurai reversing the judgment and decree dated 28.09.2011 made in O.S.No.286 of 2006 on the file of the Additional District Munsif, Mayiladuthurai.

For Appellant : Mr.V.K.Rajagopalan

For Respondents 1&2 : Mr.S.Sounthar

S.A.No.1057 of 2015:

Peravur Aided Primary School
rep. by its agent Rev. Father Soosai,
S/o.Gnanaprakasam,
Main Road, Peravur Village,
Kanjivay Post,
Mayiladuthurai Munsif,
Kuttalam Taluk.

... Appellant/Appellant/
Plaintiff

Vs.

1. Kalyani (Deceased)

2. Dakshinamoorthy

3. Sekar

4. Ganesan

... Respondents/Respondents/Defendants

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree dated 24.11.2014 made in A.S.No.58 of 2012 on the file of the Principal Subordinate Judge, Mayiladuthurai reversing the judgment and decree dated 28.09.2011 made in O.S.No.88 of 2008 on the file of the Additional District Munsif, Mayiladuthurai.

For Appellant : Mr.V.K.Rajagopalan

For Respondents 1&2 : Mr.S.Sounthar

S.A.No.1058 of 2015:

Peravur Aided Primary School
rep. by its agent Rev. Father Soosai,
S/o.Gnanaprakasa,
Main Road, Peravur Village,
Kanjivay Post,
Mayiladuthurai Munsif,
Kuttalam Taluk.

... Appellant/Appellant/
Plaintiff

Vs.

1. Kalyani (Deceased)

2. Dakshinamoorthy

3. Sekar

4. Ganesan

... Respondents/Respondents/Defendants

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree dated 24.11.2014 made in A.S.No.98 of 2012 on the file of the Principal Subordinate Judge, Mayiladuthurai reversing the judgment and decree dated 28.09.2011 made in O.S.No.286 of 2006 on the file of the Additional District Munsif, Mayiladuthurai.

For Appellant : Mr.V.K.Rajagopalan

For Respondents 1&2 : Mr.S.Sounthar

J U D G M E N T

The plaintiff in O.S.No.286 of 2006 and O.S.No.88 of 2008 on the file of the learned Additional District Munsif, Mayiladuthurai is the appellant in these appeals. The respondents are the defendants in the suit. Both the suits relate to one and the same property. The suit in O.S.No.286 of 2006 was filed for declaration of title for the suit property and for permanent injunction restraining the defendants 3 and 4 from in any manner interfering with the peaceful possession and enjoyment of the plaintiff. The suit in O.S.No.88 of 2008 was filed for declaration that the plaintiff school is in legal possession and enjoyment of the suit property and for cancelling the decree passed by the District Munsif, Mayiladuthurai in O.S.No.407 of 2005 dated 27.06.2006 and for permanent injunction to restrain the defendants from in any manner interfering with the peaceful possession and enjoyment of the plaintiff over the suit property.

2. Both the suits were tried jointly. By a common judgment dated 28.09.2011, the learned Additional District Munsif dismissed the suit in O.S.No.286 of 2006 in part thereby declining to declare the title of the plaintiff, however, granted decree in favour of the plaintiff for permanent injunction only to a lesser extent, though the suit was filed for 12 cents of land. So far as O.S.No.88 of 2008 is concerned, the trial court declined to cancel the decree in O.S.No.407 of 2005, however, granted permanent injunction to a lesser extent as the same has been granted in O.S.No.286 of 2006.

3. Challenging the denial of the decree for declaration of title in O.S.No.286 of 2006, the plaintiff filed an appeal in A.S.No.58 of 2012. Challenging the grant of injunction, the defendants in O.S.No.286 of 2006 filed an appeal in A.S.No.64 of 2012. Similarly, challenging the grant of injunction in O.S.No.88 of 2008, the defendants 4 and 5 filed an appeal in A.S.No.46 of 2012 and challenging the denial of the relief of cancellation of the decree in O.S.No.407 of 2005, the plaintiff filed an appeal in A.S.No.98 of 2012. Thus, there were 4 appeals before the learned Principal Subordinate Judge, Mayiladuthurai.

4. By a common judgment dated 24.11.2014, the learned Principal Subordinate Judge, Mayiladuthurai dismissed the appeals filed by the plaintiff and allowed the appeals filed by the defendants. Thus, both the suits now stand dismissed in full. Challenging the same, the appellant school has now come up with these four Second Appeals.

5. All these four Second Appeals have come up before me today for admission. I have heard the learned Counsel for the appellant and the learned Counsel for the respondents 1 and 2. I have also perused the records carefully.

6. The common features in the pleadings in both the suits is that the suit property is one and the same. The plaintiff is an aided school. The 2nd defendant is running the school on the suit property. On 02.07.1997, the school management was transferred to the plaintiff by the 2nd defendant for a consideration of Rs.95,000/-. Thus, as of now, the plaintiff school is run by its agent Mr.Soosai. The defendants have got no right whatsoever over the suit property. Earlier, Kalyani, the 1st defendant in O.S.No.88 of 2008, who is now no more, filed a suit in O.S.No.407 of 2005 before the learned District Munsif, Mayiladuthurai for declaration of title for the suit property and for permanent injunction to restrain the plaintiff from making any construction over the suit property. That suit was decreed on contest by decree and judgment dated 27.06.2006. According to the plaintiff, the said decree is liable to be cancelled for various reasons. The lower appellate court has dismissed both the suits in their entirety. That is how the appellant school is before this Court with these four Second Appeals.

7. The learned Counsel for the appellant would submit that admittedly, the plaintiff is in possession of the suit property and therefore, the injunction granted by the trial court ought not to have been reversed by the lower appellate court. So far as the title of the suit property is concerned, the plaintiff school has been functioning on the suit property from 1970 onwards and thus, the plaintiff has got title for the suit property. So far as the decree in O.S.No.407 of 2005 is concerned, according to the learned Counsel, it was filed by one Mrs.Kalyani against the school and the school was represented by its Secretary Anthonisamy. On contest, a decree was passed in the suit in favour of Kalyani. But the learned counsel for the appellant would submit that Anthonisamy had no authority to contest the suit on behalf of the school as Mr.Soosai who is presently representing the said school alone is the competent person to represent the school.

8. I have considered the above submissions.

9. At the outset, I should say that there is no question of law much less a substantial question of law involved in these Second Appeals warranting admission. I also do not find any perversity in the judgment of the lower appellate court

warranting admission of the Second Appeals. The facts involved in these cases are so simple. Though it is claimed by the appellant school that the school has got title for the suit property, absolutely, there is no pleading or evidence available on record to prove the same. At any rate, the learned District Munsif, Mayiladuthurai in the earlier suit in O.S.No.407 of 2005 has declared that Mrs.Kalyani, the 1st defendant is the absolute owner of the suit property. No appeal has been filed against said declaratory decree by the school. When that be so, it is not possible to grant yet another declaratory decree in favour of the appellant herein as though the appellant has got title for the suit property. Above all, as I have already pointed out, the appellant has not proved as to how he claims title for the suit property. He has not even pleaded adverse possession.

10. So far as the suit in O.S.No.405 of 2005 is concerned, in that suit, the school was represented by its Secretary Anthonisamy. The said Anthonisamy is none other than the brother of Mr.Soosai who is presently representing the appellant school. As pointed out by the lower appellate court, the plaintiff Mr.Soosai, who is presently representing the suit has admitted during her cross examination that Anthonisamy still continues to be the Secretary of the School. In such capacity, he defended the school in O.S.No.407 of 2005. It is not as though the decree in O.S.No.407 of 2005 was passed ex-parte without proper intimation or court summons. It was a hotly contested suit where the District Munsif, Mayiladuthurai granted declaratory decree in favour of Kalyani on appreciating the evidence. In the present case, Mr.Soosai, who claims to have been representing the school has not stated as to why no appeal was filed against the said declaratory decree.

11. Assuming that Mr.Soosai can represent the school, it is not known as to what would have prevented him from filing an appeal against the decree and judgment passed in O.S.No.407 of 2005. Therefore, there is no possibility to set aside or cancel the decree passed in O.S.No.407 of 2005. As a matter of fact, the plaintiff has not made out any case for cancelling the decree in O.S.No.407 of 2005.

12. So far as the decree for injunction is concerned, earlier in O.S.No.407 of 2005, the learned District Munsif, Mayiladuthurai has granted a decree for injunction against the appellant herein. Therefore, there cannot be yet another injunction against the defendants herein and in favour of the appellant. It is also not proved that the appellant is in possession and enjoyment of the suit property. At any rate, these findings recorded by the lower appellate court are on facts and there is no question of law much less a substantial

question of law involved in this Second Appeal. Thus, I find no merit at all in these Second Appeals.

13. In the result, all the four Second Appeals fail and the same are accordingly dismissed. The decrees and common judgment of the lower appellate court are hereby confirmed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Munsif,
Mayiladuthurai.
2. The Principal Subordinate Judge,
Mayiladuthurai.

+1cc to Mr.S.Sounthar, Advocate, S.R.No.353

+4cc's to Mr.V.K.Rajagopalan, Advocate, S.R.No.790

S.A.Nos.1055 to 1058 of 2015

CNR(CO)
CA(29/02/2016)

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