

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1087 of 2015
and M.P. No. 1 of 2015

Amsavalli (died)

1. Selvaraj
2. Rajendran
3. Mallika
4. Jayam
5. Manimekalai

... Appellants/Appellants/
Plaintiffs

Vs.

Sarangabani

... Respondent/Respondent/
Defendant

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree of the learned Principal Subordinate Judge, Mayiladuthurai dated 27.01.2015 made in A.S.No.35 of 2014 confirming the judgment and decree of the Principal District Munsif, Mayiladuthurai dated 27.02.2014 made in O.S.No.270 of 2008.

For Appellants : Mr.S.Sounthar

For Respondent : ...

J U D G M E N T

The plaintiff in O.S.No.270 of 2008 on the file of the learned District Munsif, Mayiladuthurai was one Mrs.Amsavalli. She filed the said suit against the respondent herein for recovery of possession of the 'B' Schedule Property and for permanent injunction to restrain the defendant from putting up any construction on the 'B' Schedule property. The trial court, by decree and judgment dated 27.02.2014 dismissed the suit. As against the same, Mrs.Amsavalli filed an appeal in A.S.No.35 of 2014 on the file of the learned Principal Subordinate Judge, Mayiladuthurai. By decree and judgment dated

27.01.2015, the lower appellate court dismissed the appeal thereby confirming the decree and judgment of the trial court. After passing of the decree by the lower appellate court, Mrs.Amsavalli passed away. Therefore, her legal heirs are before this Court with this Second Appeal.

2. The Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellants and I have also perused the records carefully.

3. The case of the plaintiff in brief is as follows:

The suit property was originally belonged to Thiruvavaduthurai Aatheenam. The total extent of the property is 9 cents. The plaintiff had been in possession of the same all along. Under Ex.A.6, Kudiyruppu Patta has been given to the husband of Amsavalli by the Government for an extent of 4 cents in the suit property. The defendant is an adjacent land owner whose land is situated on the west of the suit property. According to the plaintiff, the defendant has encroached upon a small portion of her property which has been now described as 'B' schedule. The defendant is also making arrangement to put up construction on the 'B' schedule property. Therefore, the plaintiff filed the present suit for recovery of possession of the 'B' schedule property and for permanent injunction to restrain the defendant from putting up any construction on the same.

4. The defendant contended that he has not encroached upon any portion of the property belonging to the plaintiff. He reiterated that he is in possession and enjoyment of the property belonging to him alone.

5. Based on the above pleadings, the trial court framed appropriate issues. During the trial of the case, an Advocate Commissioner was appointed who measured the respective properties with the aid of a Surveyor. In order to prove the case, on the side of the plaintiff, 4 witnesses were examined and as many as 6 documents have been exhibited. On the side of the defendant, 4 witnesses were examined and as many as 30 documents have been exhibited. Apart from that, 17 documents have been marked as witness documents as Ex.X1 to Ex.X.17. The Advocate Commissioner's report and sketch were marked as Ex.C.1 and Ex.C.2 respectively and the Surveyor's Report and Sketch were marked as Ex.C.3 and Ex.C.4 respectively. Having considered all the above, the trial court dismissed the suit which was confirmed by the lower appellate court. Hence, the legal heirs of the plaintiff are before this Court with this Second Appeal.

6. In this Second Appeal, the learned Counsel for the appellants would submit that assuming that the plaintiff has got title only for 4 cents and not for 9 cents, according to the Surveyor's Report, there is an encroachment to the tune of 11.8 x 0.20 mts. of land. The learned Counsel would further submit that at least to that extent, decree should have been passed for recovery of possession.

7. I have considered the above submission.

8. At the outset, I should say that there is no question of law much less a substantial question of law involved in this Second Appeal warranting admission. I do not find any perversity in the concurrent findings of the courts below that the plaintiff claims that she has got title for 9 cents out of which 'B' Schedule property is a portion. Under Ex.A.6, the husband of the plaintiff has been given patta under the Tamil Nadu Occupants of Kudiyiruppu Act only to an extent of 4 cents. Therefore, it is not explained to the Court as to how she could claim title for 9 cents. Originally, he was in possession and enjoyment of the suit property as a lessee under the Thiruvavaduthurai Aatheenam. Only after ascertaining the portion which was leased out to her husband where he had constructed a building, the plaintiff's husband was issued patta under the Tamil Nadu Occupants of Kudiyiruppu Act. Therefore, she can claim title and right of possession only in respect of 4 cents. But strangely, the plaintiff has claimed title and also right of possession to an extent of 9 cents. The courts below were right in holding that the plaintiff can claim title only in respect of 4 cents in the suit survey number.

9. So far as the recovery of possession is concerned, the 'B' schedule property is a larger extent whereas according to the surveyor's report, a negligible portion appears to have been encroached upon. The courts below have given the finding that allowance could be given while measuring and the trivial extent of land which is said to have been encroached upon by the defendant is to be ignored because the measurement cannot be meticulously precise. Further, the breadth of the land said to have been encroached upon, according to the Surveyor, is only 20 cms. All these facts have been rightly appreciated by the courts below and accordingly, they have dismissed the suit. I do not find any error in this factual findings. I also do not find any question of law much less a substantial question of law warranting admission of the Second Appeal.

10. In the result, the Second Appeal fails and the same is accordingly dismissed. The decree and judgment of the lower appellate court is confirmed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

tsi

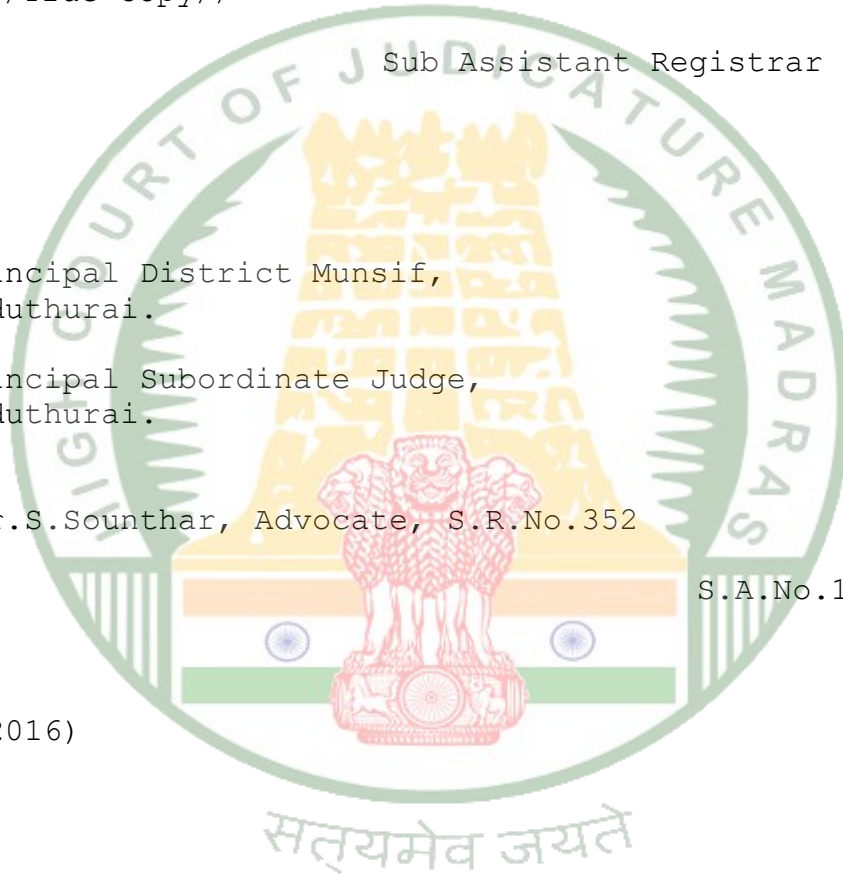
To

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

+1cc to Mr.S.Sounthar, Advocate, S.R.No.352

S.A.No.1087 of 2015

PUR(CO)
CA(04/02/2016)



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