

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.12.2016

PRONOUNCED ON : 16.12.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.513 of 2011

and

M.P.No.1 of 2011

Somasundaram

...

Appellant

Vs.

Kathalingam

...

Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree of Sub Court, Nagapattinam, dated 27.08.2010 made in A.S.No.21/2010 confirming the judgment and decree of the District Munsif Court, Nagapattinam dated 18.02.2010 made in O.S.No.193 of 2005.

For Appellant : Mr.S.Sounthar

Respondent : No appearance

JUDGMENT

The plaintiff in this second appeal has challenged the judgment and decree dated 27.08.2010 made in A.S.No.21 of 2010 on the file of the Subordinate Court, Nagapattinam, confirming the judgment and decree dated 18.02.2010 made in O.S.No.193 of 2005 on the file of the District Munsif Court, Nagapattinam.

2. The suit has been laid by the plaintiff for permanent injunction.

3. Claiming to be in the possession of the suit property on the basis of the transfer of Paguthi rights from the Sub lessee Padmavathi on 20.11.1997, the plaintiff alleging that the defendant, without any authority or right, attempted to interfere with the plaintiff's possession and enjoyment of the suit property and thereby, trespass into the same and hence, the plaintiff has come forward with the suit seeking the relief of permanent injunction.

4. Per contra, it is the specific case of the defendant that the plaintiff is not in possession and enjoyment of the suit property as described in the plaint and in the guise of filing the suit by wrongly describing the suit property both survey wise and boundary wise, according to the defendant, the plaintiff is attempting to annex and grab the property in the possession and enjoyment of the defendant situated in T.S.No.2871/1.

5. Originally, the plaintiff has levelled the suit stating that the

suit property is situated in T.S.No.2865 within the specific boundaries consisting of a total extent of 22500 sq.ft. On the filing of the written statement, it appears that the plaintiff has amended the suit and has included that at present, the suit property is situated in T.S.No.2871/1 and according to the plaintiff, the old survey number for the suit property is T.S.No.2865 and the present survey number for the suit property is T.S.No.2871/1.

6. In view of the above stand of the plaintiff, as rightly argued, it could be seen that the plaintiff has to establish that the suit property is in his possession and enjoyment as put forth by him and further, the old survey number of the suit property is T.S.No.2865 and the present survey number of the suit property is T.S.No.2871/1.

7. To substantiate the case, the plaintiff has filed Exs.A1 to 5. Exs.A1 to 4 are Manai Paguthi receipts, which bear only the survey T.S.No.2865. As far as Ex.A5 is concerned, which is also a Manai Paguthi receipt, and the same coming into existence after the filing of the suit and which bears T.S.No.2871/1, accordingly, it could be seen that the courts below have rightly not taken the same into consideration. Even in Ex.A5, it is stated that survey number is T.S.No.2871/1 without prejudice.

8. Inasmuch as according to the plaintiff, the present survey for the suit property is T.S.No.2871/1, it could be seen that the plaintiff has to place acceptable material to hold that T.S.No.2865 corresponds to T.S.No.2871/1. However, as regards the above fact, there is nil material on the part of the plaintiff. The plaintiff has not summoned any document pertaining to the same from the Municipality or the Government. On the other hand, as seen from Ex.B2 document obtained by the defendant on a query made under the Right to Information Act, we could gather that T.S.No.2865/1, 2865/2 and T.S.No.2871/1 are three different T.S. numbers and they have no connection whatsoever. Therefore, it could be seen that the plaintiff case that the survey number of the suit property has been changed from T.S.No.2865 to 2871/1 has no basis or foundation.

9. As found earlier, it is the specific case of the defendant that by giving wrong boundaries and also wrong survey number, the plaintiff by way of the suit is attempting to grab the property in the possession and enjoyment of the defendant in T.S.No.2871 /1. In this case, the commissioner along with the surveyor had inspected and measured the suit property and from their reports, as rightly found by the courts below, it could be seen that there is no such

property as described in the plaint in T.S.No.2865 and further, it is also made known that in so far as T.S.No.2865 is concerned, the godown belonging to the Tamil Nadu Civil Supplies Corporation is situated. Therefore, it could be seen that even the reports of the Commissioner and Surveyor do not advance the plaintiff case to come to the conclusion that T.S.No.2865 corresponds to T.S.No.2871/1.

10. That apart, the documents filed on behalf of the plaintiff as Exs.A1 to 5 do not indicate that the plaintiff is in possession and enjoyment of the suit property as described in the plaint. Further, as seen earlier, the plaintiff claims to be in possession and enjoyment of the suit property based on the transfer of Paguthi right from one of the sub lessee viz., Padmavathi. It is also pleaded that Padmavathi had taken sublease from another sub lessee viz. Sathyanarayanan. It is also further pleaded that Sathyanarayanan had taken sublease from the lessee Ammasi, after the transfer of the Paguthi rights in favour of several persons. If really as claimed by the plaintiff, he is in possession and enjoyment of the suit property as put forth by him, the plaintiff would have endeavoured to examine his predecessors in right to establish that they were in possession and enjoyment of the suit property and as such, they had transferred the paguthi rights to various persons as pleaded by the plaintiff, finally to the plaintiff.

However, other than the *ipse dixit* self serving testimony of PW1, there is no other evidence on the side of the plaintiff to buttress his case. As already seen, the documents filed on behalf of the plaintiff marked as Exs.A1 to 5 do not in any manner support the plaintiff's case. Therefore, it could be seen that as rightly argued by the defendant's counsel, the plaintiff, with the aim of grabbing the property situated in T.S.No.2871/1 in the possession and enjoyment of the defendant, has laid the suit falsely without any basis.

In conclusion, I do not find the involvement of any substantial question of law in this second appeal. Hence, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.12.2016

Index : Yes/No
Internet: Yes/No
sms

To

1. The Sub Court, Nagapattinam.
2. The District Munsif Court, Nagapattinam.

T.RAVINDRAN,J.

sms

Pre-delivery order in
S. A.No.513 of 2011
and
M.P.No.1 of 2011

16.12.2016