

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2016

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.423 of 2016
and
C.M.P.No.7389 of 2016

1.G.Kandasamy
2.U.Selvam
3.Jeevanandam @ Amboke ..Appellants/Defendants

Vs

1.Rathinam
2.Balasundaram
3.Chidambaranathan ...Respondents/Plaintiffs

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 01.02.2016 made in A.S.No.8 of 2014 on the file of the Additional Subordinate Judge, Mayiladuthurai, confirming the judgment and decree passed in O.S.No.92 of 2010 dated 28.11.2013 by the Additional District Munsif, Mayiladuthurai.

For Appellants .. Mr.A.Ilangovan

For Respondents .. Ms.P.Srividhya
for Mr.A.Muthukumar
for R1 to R3

JUDGMENT

This second appeal is preferred against the judgment and decree dated 01.02.2016 made in A.S.No.8 of 2014 on the file of the Subordinate Judge, Mayiladuthurai.

2.The respondents, being the plaintiffs, filed a suit for permanent injunction on the basis of title and placing reliance upon Ex.A1 - patta and Ex.A2 - kist receipt.

3.The defence of the appellants/defendants before the Trial Court was two fold. Firstly, it was contended that they are the cultivating tenants of the respondents/plaintiffs. Secondly, they being the erstwhile Thalayaris, they have been in possession and enjoyment and reliance has also been made on Ex.B2 - encumbrance certificate. The Courts below decreed the suit as prayed for, by placing reliance upon Exs.A1 and A2 and disbelieving Ex.B2. Ex.B2 is a document pertaining to co-operative society. This document makes reference to one Muthukumar and Rani with respect to the suit property, though according to the appellants/defendants, it is for lesser extent. Ex.B2 also says that the suit property has been mortgaged by the appellants/defendants as cultivating tenants and thereafter, discharged. The Courts below therefore held that the appellants/defendants have not proved Ex.B2 and in the light of the contrary stand taken by them, especially by the first defendant, not only with respect to the nature of title sought to be established by them but also the property in question, the suit was decreed.

4.Challenging the concurrent finding rendered by the Courts below, the appellants/defendants have come forward to file the present second appeal, framing the following substantial questions of law:

1.Whether the lower Courts are correct in law in deciding the non-joinder of the other pattadars as plaintiffs will not affect the suit prayer?

2.Whether the lower courts are correct in law in deciding the title of the property in favour of the plaintiffs and allowed the injunction suit to sustain?

3.Whether the Courts below are correct in law in travelling beyond the scope of injunction suit and give a finding with regard to the title which resulted in miscarriage of justice?

4.Whether the Courts below are right in rejecting the documents Ex.B1 and Ex.B2 which clearly shows that the defendants are in possession and enjoyment of the suit property and obtained agriculture loan in respect of the suit property on the basis of the Tahalaiyaris Maniyam?

5.Whether the Courts below are right in discarding the evidence of D.W.1 and D.W.2 with regard to the 1st defendant's possession over the suit property?

6.Whether the Courts below are correct in law in relying Exs.A1 and A2 by which the plaintiffs cannot

prove the possession and enjoyment of the suit property?

5.Learned counsel appearing for the appellants submits that Ex.B2 has not been considered in proper perspective. Since there is a cloud over the title of the respondents/plaintiffs, suit for declaration ought to have been filed. Exs.A1 and A2 ought not to have been relied upon by the respondents/plaintiffs to prove their possession. Thus it is submitted that the second appeal will have to be allowed.

6.Learned counsel appearing for the respondents/plaintiffs submits that the finding being concurrent and the decision having been made, placing reliance upon the documents as well as the evidence adduced by the parties, no interference is required.

7.The Courts below have correctly held that as against Exs.A1 and A2, there is no contra evidence to substantiate the case of the appellants/defendants. Once the appellants/defendants have taken the plea that they are the cultivating tenants, it is for them to substantiate the same. The claim made by them are mutually contradictory and thus it is destructive in nature. D.W.1 in his evidence has stated that the suit property has undergone substantial changes. In fact, he has stated that the suit property has been plotted out now. Therefore, the Courts below have rightly held that the appellants/defendants have not proved the factum that they are the cultivating tenants and reliance was also made on Exs.A1 and A2. It is further to be seen that the appellants/defendants have not explained Ex.B2 especially the fact that the earlier encumbrance was made through one Muthukumar and Rani though for lesser extent. The evidence of D.W.1 also shows that he has obtained the loan viz., "Thalayari Maniyam" based upon the certificate of Village Administrative Officer. There is no attempt to examine any official from the bank nor relevant records were produced to substantiate the case.

8.In view of the same, this Court does not find any question of law much less substantial question of law. The substantial questions of law framed are nothing but questions of fact. It is not as if in all cases, a declaration need to be sought for, especially when the appellants/defendants themselves did not question the title seriously. The appellants have not proved as to how they are entitled to title and possession. Merely because they acted as Thalayaris at one point of time, it does not mean, they are entitled to title. Ultimately, the Courts below have considered the rival contentions of the parties and arrived at the concurrent finding.

9.For the foregoing reasons, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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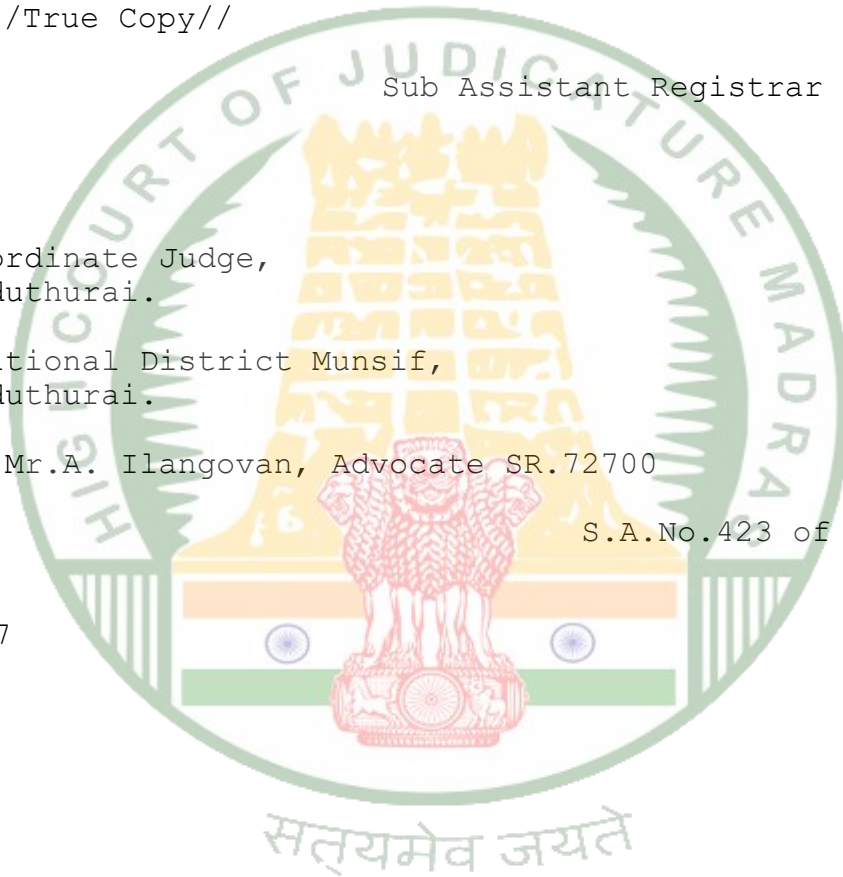
1.The Subordinate Judge,
Mayiladuthurai.

2.The Additional District Munsif,
Mayiladuthurai.

+ 1 cc to Mr.A. Ilangovan, Advocate SR.72700

S.A.No.423 of 2016

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