

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.49 of 2016

and

C.M.P.No.1384 of 2016

1.R.Sakthivel

2.G.Murugesan

... Appellants/Defendants

Vs.

A.Babu

... Respondent/Plaintiff

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 24.06.2014 and made in the appeal in A.S.No.40 of 2013 on the file of the Subordinate Court, Kallakurichi, reversing the judgment and decree dated 26.07.2013 and made in the suit in O.S.No.431 of 2009 on the file of the Principal District Munsif Court at Kallakurichi.

For Appellants : Mr.P.Valliappan

For Respondent : Mr.N.A.Nissar Ahmed

J U D G M E N T

This Memorandum of Second Appeal has been directed against the Judgment and decree dated 24.06.2014 and made in the appeal in A.S.No.40 of 2013 on the file of the Subordinate Court, Kallakurichi, reversing the judgment and decree dated 26.07.2013 and made in the suit in O.S.No.431 of 2009 on the file of the Principal District Munsif Court at Kallakurichi.

2. The appellants herein are the defendants in the suit, whereas the respondent is the plaintiff.

3. The respondent appears to have been filed the above suit in O.S.No.431 of 2009 on the file of the Principal District Munsif Court at Kallakurichi, as against the appellants seeking the relief of permanent injunction in respect of the suit property.

4. The appellants have contested the suit by filing their written statements. Based on the evidences available on record, the learned trial Judge, viz., the learned Principal District Munsif, Kallakurichi, has proceeded to dismiss the

suit on 26.07.2013. Having been aggrieved by the judgment of the trial Court dated 26.07.2013, the respondent has preferred an appeal in A.S.No.40 of 2013, on the file of the learned Subordinate Judge, Kallakurichi.

5. After hearing both sides, the learned First appellate Judge has allowed the appeal, reversing the judgment of the trial Court granting status quo, thereby directing both the parties to maintain status quo till the request of both the parties made before the Revenue Divisional Officer for granting Patta, is finally disposed of.

6. It is pertinent to note here that when the matter is taken up for admission today, Mr.P.Valliappan, learned counsel appearing for the appellants has argued that the appeal has to be admitted based on the following substantial questions of law:

(a) Whether the lower Appellate Court is correct in law in granting decree directing the parties to maintain status-quo, until the request for grant for Patta is considered by the Revenue Department, after having found that the appellants are in possession of a portion of the suit property?

(b) Whether the lower Appellate Court is correct in law in directing the parties to maintain status-quo as though the respondent is in possession of the suit property, especially when there are no documents to prove his lawful possession of the suit property?

(c) Whether the respondent is entitled to maintain the suit on behalf of Amsakulam Pallivasal, especially when he does not have any authorization from the Wakf Board, to do so?

7. Heard Mr.P.Valliappan, learned counsel appearing for the appellants and Mr.N.A.Nissar Ahmed, learned counsel appearing for the sole respondent.

8. As pointed out already, this suit is filed by the respondent/plaintiff seeking a decree of permanent injunction in respect of the suit property. According to the respondent/plaintiff, this suit has been filed on behalf of Amsakulam Pallivasal claiming that Amsakulam Pallivasal has been in possession and enjoyment of the suit property even from the date of presentation of the suit. This fact is denied by the appellants/defendants saying that no justifiable and acceptable documents were produced on behalf of the respondent to substantiate his claim over the suit property, which has been in possession and enjoyment of the Panchayat.

9. However, the suit was dismissed by the trial Court. The First Appellate Court has observed that since both the appellants and the respondent have filed petitions before the Revenue Divisional Officer for granting Patta, considering

their possession, and since their request has been pending on the file of the Revenue Divisional Officer, they were directed to maintain status-quo, till their representation is disposed of.

10. The learned counsel appearing for the appellants has submitted that since the judgment has been passed without attempting to discuss the evidences on record as well as documents exhibited, this suit itself might be remitted back to the first Appellate Court as it is the final Court to discuss about facts. On a perusal of the judgment of the First Appellate Court, this Court finds that the judgment and decree granted by the First Appellate Court seems to be against the relief sought for by the respondent/plaintiff.

11. Therefore, this Court finds that it may be expedient to remit back the matter to the first Appellant Court for fresh disposal based on the evidences available on record.

12. In view of the above fact, this appeal is allowed. The judgment and decree of the First Appellate Court is set aside and the appeal in A.S.No.40 of 2013 is remitted back to the First Appellate Court for disposing of the appeal on merits based on the evidences available on record. The First Appellate Court shall not be influenced with the observation made by this Court in this Judgment. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dn  
To

- 1.The Subordinate Court, Kallakurichi.
- 2.The Principal District Munsif, Kallakurichi.

+1cc to Mr.N.A.Nissar Ahmed, Advocate, S.R.No.7013  
+1cc to Mr.P. Valliappan, Advocate, S.R.No.6808

TEJ(CO)  
EU(01/04/2016)

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