

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2016

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

Second Appeal No.538 of 2016

1.Sasikumar
2.Ravikumar

... Appellants/Plaintiff

Vs.

1.Govindasami Kounder
2.Senkottaiyan

.... Respondents/Defendants

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree of the learned Subordinate Judge, Kallakurichi dated 07.07.2014 made in A.S.No.19 of 2013 thereby confirming the judgment and decree of the learned Principal District Munsif, Kallakurichi in O.S.No.382 of 2009 dated 04.12.2012.

For Appellant : Mr.Sriram
for M/s.A.S.Kailasam & Associates

For Respondents : Mr.P.Valliappan

J U D G M E N T

The unsuccessful plaintiffs before the courts below are the appellants. The suit is one for bare injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property which they claimed to have title based on a settlement deed dated 02.07.2009 executed by one Pitchamuthu. Thus, they contended that in pursuant to such settlement, they are in possession and enjoyment of the suit property as the lawful owners with which the defendants have no right or title and however, they sought to interfere with their possession and enjoyment of the same.

2.The defendants contested the said suit and denied the plaintiffs' title to the suit property. It is their contention that they purchased the property by way of sale deed dated 12.02.1976 from one Ayyasamy Konar and others and got patta in their favour. Therefore, it is contended by the defendants that

they alone are in possession and enjoyment of the suit property and not the plaintiffs as claimed in the suit. The trial court after considering the pleadings of the rival parties and the evidence let in by them, dismissed the suit by holding that the plaintiffs are not in possession and enjoyment of the suit property. The appeal preferred by the plaintiffs before the lower Appellate Court came to be rejected by confirming the findings rendered by the trial court both with regard to the title and possession.

3. Heard Mr. Sriram, learned counsel for the appellant and Mr. P. Valliappan, learned counsel for the respondents 1 and 2.

4. This matter is listed before this court under the adjourned admission caption. Therefore, this court has to see as to whether any substantial question of law arises for consideration for entertaining the appeal for further hearing of the same on such substantial question of law.

5. Upon considering the submissions made by the learned counsel for the appellant and on perusal of the concurrent decisions rendered by the courts below, I am of the view that there is no substantial question of law arises for consideration in this matter, as I found that both the courts below have concurrently found based on the evidence let in by the parties that the plaintiffs are not in possession of the suit property and on the other hand, the defendants have proved that they are in possession of the suit property by marking the relevant documents showing their possession viz., sale deed and patta. It is specifically pointed out by the lower Appellate Court that the patta granted in favour of the plaintiffs originally in respect of the suit property by the revenue officials has been subsequently cancelled based on the objection raised by the defendants before such authorities and the plaintiffs have not challenged such proceedings before the Appellate Forum. Therefore, it is evident from the above said proceedings of the revenue officials granting patta in favour of the defendants by cancelling patta already granted in favour of the plaintiffs that the possession of the property is with the defendant. Needless to say that finding with regard to possession in a suit for injunction is the core consideration for the court to see as to whether the plaintiffs have proved his possession of the suit property on the date of filing of the suit. When both the courts have found and held that the plaintiffs are not in possession and enjoyment of the suit property by factual appraisal of the matter without there being any perversity, dismissal of the suit for bare injunction cannot be found fault with. I find no substantial question of law arises for

consideration based on the above stated facts and circumstances for entertaining the second appeal. Accordingly, the second appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vri

To

1.The Subordinate Judge,
Kallakurichi.

2.The Principal District Munsif,
Kallakurichi.

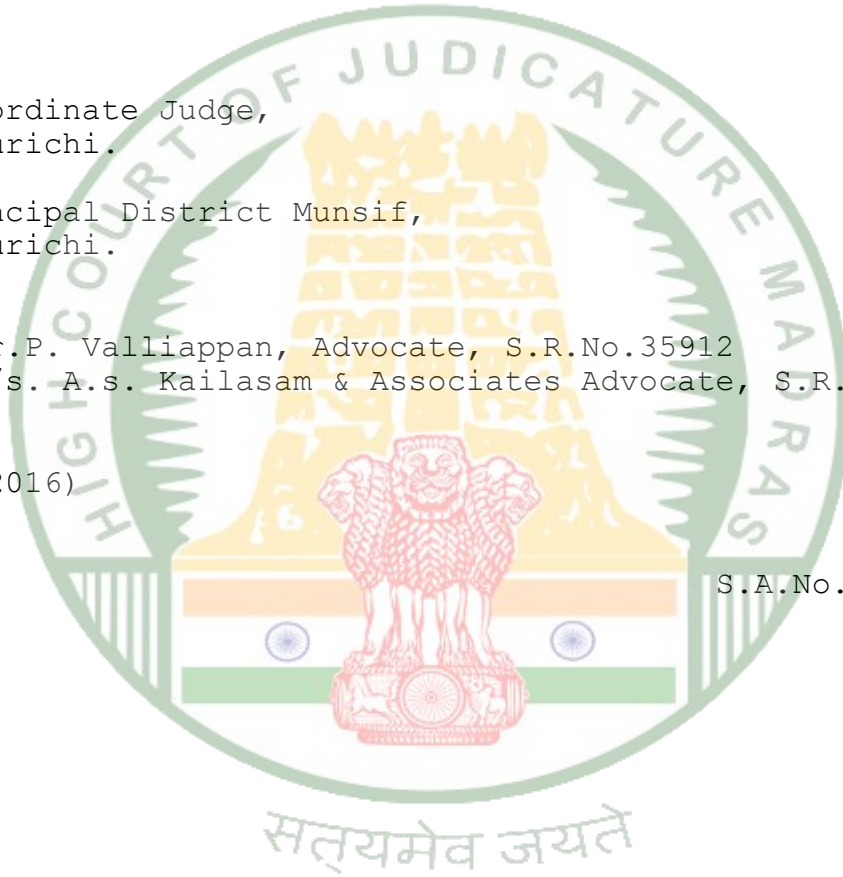
+1cc to Mr.P. Valliappan, Advocate, S.R.No.35912

+1cc to M/s. A.s. Kailasam & Associates Advocate, S.R.No.35792

MG(CO)

EU(27/07/2016)

S.A.No.538 of 2016



WEB COPY