

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.11.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.889 of 2016

Rajamani

..Appellant/Plaintiff

-Vs-

1. Kondur Panchayat
Rep. by its President,
Having Office at
Kondur,
Cuddalore Taluk.

2. Commissioner/ Block Development Officer,
Cuddalore Panchayat Union,
Cuddalore.

..Respondents/Defendants

Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 08.03.2016 in A.S.No.65 of 2014 on the file of Principal Subordinate Judge, Cuddalore confirming the judgment and decree dated 09.09.2014 passed in O.S.No.386 of 2007 on the file of Additional District Munsif, Cuddalore.

For Appellant : Mr.R.Muralidharan

J U D G M E N T

The appellant is the plaintiff in a suit for bare injunction.

2. The case of the plaintiff is as follows:

The plaintiff is the owner of the suit B- Schedule property which forms part of the suit A-Schedule property and he is in peaceful possession and enjoyment of the same. He was also the owner of A-schedule property, in which, he formed a lay out, obtained approval from the local bodies and sold the same to various persons by leaving the B-schedule property for public purpose. However, the defendants did not take possession of the B-Schedule property and the plaintiff has also not executed any gift deed. Therefore, the plaintiff who is in continuous possession and enjoyment of the B-Schedule property is entitled for the relief of permanent injunction restraining the

interference by the defendant. The purchasers of the plots from the plaintiff filed O.S.No.34 of 1999 seeking for declaration to declare the B-Schedule property herein as the property left out for public purpose and however, the said suit was not pressed by the said purchasers.

3. The defendants who are the local panchayat and the Commissioner of Cuddalore Panchayat Union contested the suit and their case is as follows:

The B-Schedule properties were taken possession by the first defendant long ago and the same is in enjoyment of the first defendant for more than 15 years and a overhead tank with motor shed was constructed apart from establishing the children park in the suit B-Schedule property. They are in use for more than 15 years and the said property is being utilised by the public during several festival occasions. The defendants herein were not the parties in the other suit in O.S.No.34 of 1999 filed by the purchasers of the plots in O.S.No.34 of 1999 and therefore, such withdrawal of the suit has got nothing to do with the contention of the defendants or their right in the present suit.

4. Both the Courts below, on appreciation of the respective pleadings of the parties and the evidence let in by them found that the suit B-Schedule property was taken possession by the 1st defendant panchayat long back and the same is put into use for the benefit of the public by constructing the overhead tank and also establishing the children park. It is also found by the Courts below that the rest of the property in B-Schedule are left open for the use of the public for the pathway. No doubt, it is contended by the learned counsel for the appellant that the plaintiff has not executed any gift deed, without which, the defendants cannot enjoy the suit B-schedule property. Needless to say that it is the duty of the plaintiff to execute such gift deed in favour of the local body when such act was imposed as one of the condition for grant of approval. Failure on the part of the plaintiff, cannot be taken advantage by himself to seek for the relief of injunction, that too, when the fact remains that the plaintiff is not at all in possession and enjoyment of the B-Schedule property, as he himself as P.W.1, has admitted the establishment of the children park and also the construction of the over head tank in the suit B-Schedule which shows that the possession of the B Schedule was taken long ago and therefore, the plaintiff is not in possession and enjoyment of the same.

5. When such being the factual finding rendered by both the Courts below based on appreciation of the pleadings and evidence let in by the parties, I do not find any ground to interfere with such concurrent finding, more particularly, when I do not find any substantial question of law arises for consideration in this Appeal. Accordingly, the Second Appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Principal Subordinate Judge, Cuddalore.
2. The Additional Distrit Munsif, Cuddalore.

+ 1 cc to M/s. R. Muralidharan, Advocate SR. 65739

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MV(CO)
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