

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.12.2016

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

S.A.No.914 of 2016
and CMP No.18521 of 2016

K.Ramu ... Appellant/Plaintiff

Vs.

1. Thirumalai
2. Duraikannu ... Respondents/Defendants

Second Appeal filed under Section 100 of Civil Procedure Code as against the judgment and decree dated 30.10.2014, passed in A.S.No.116 of 2013, on the file of the V Additional Judge, City Civil Court, Chennai, in confirming the judgment and decree dated 19.12.2011, passed in O.S.No.149 of 2011 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.R.Vijayaraghavan
For Respondents /
Caveators : Mr.R.G.Annamalai

JUDGMENT

The unsuccessful plaintiff, who lost before the Courts below has come forward to file the second appeal by framing the following substantial questions of law.

"1. The courts below having accepted that plaintiff is in possession of the suit property, whether the suit can be dismissed by the Courts below stating that possession of the plaintiff is not lawful.

2. The plaintiff having filed evidence of possession is not entitled for injunction to protect his possession.

3. Whether the plaintiff can be non suited for relief of injunction by misreading earlier legal proceedings.

4. The Courts below are correct in coming to the conclusion that the suit property forms part of the decreed property in O.S.No.276/1997 when the defendant himself admitted that it is the purambokku land.

5. It is not enough for the plaintiff to prove possession alone on the date of filing of the suit in the case of suit for injunction, that too when he is in occupation of Government Purampokku land."

2. The plaintiff is non other than the sister's son of the 1st defendant. The mother of the plaintiff earlier filed a suit in O.S.No.11177/1988 for permanent injunction against the 1st defendant. The said suit was dismissed as confirmed by the lower appellate court. Incidentally, a suit for partition has been filed in O.S.No.276 of 1997. In the said partition suit, a preliminary decree was granted and thereafter an advocate commissioner has been appointed to make division in pursuant to the preliminary decree. The preliminary decree also states that mother of the appellant is a co-owner. Therefore, the courts below have dismissed the suit primarily on two grounds. First ground is that the suit property in the present suit is also forming part of the suit property in the suit for partition. Secondly, the judgment and decree warranted by the mother of the petitioner, binds him. He has filed the present suit suppressing the earlier proceedings.

3. Learned counsel appearing for the appellant submits that there are no sufficient pleadings in the written statement. The suit property is a government property. Therefore, the judgment and decree of the courts below will have to be reversed.

4. The learned counsel for the 1st respondent submits that in view of the concurrent finding rendered by the court below, no finding is warranted, especially when the mother of the appellant is already a party to the partition suit.

5. The facts as narrated are not in dispute. Admittedly, there is a preliminary suit for partition, pending on the final stage and the suit filed earlier by the mother of the appellant has got dismissed and attained finality. In the subsequent criminal case, the appellant has also deposed, as seen from Ex.B29.

6. Thus, the finding rendered by the Courts below do not warrant any interference. There need not be any specific pleading for a Court to come to the decision especially when the parties have understood their own case and the case of the other side and when there is no dispute on facts. It is not as if the suit property is a government land and on the contrary, it is

grama natham land and there is a difference between grama natham and government land. At best, appellant leads his title through his mother. His mother has lost the case in a suit filed for injunction. Thus, the judgment will bind on the appellant. It is also seen that the suit filed for partition as such is pending in which a preliminary decree has been passed holding the mother of the appellant as the co-owner.

7. The finding of the both Courts, is that the suit property in the present suit also forms part of the larger extent of the suit property in the partition suit. Hence, looking from any perspective, this Court does not find any infirmity in the concurrent finding rendered by the Courts below. Such being the matter, there is no substantial questions of law involved, warranting any interference.

8. In the result, the Second Appeal is dismissed, confirming the judgment and decree dated 30.10.2014 made in A.S.No.116 of 2013, on the file of the V Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 19.12.2011, made in O.S.No.149 of 2011 on the file of the XVIII Assistant Judge, City Civil Court, Chennai. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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1.The V Additional Judge,
City Civil Court, Chennai.

2.The XVIII Assistant Judge,
City Civil Court, Chennai.

3.The Section Officer,
VR Section, High Court, Madras.

+2cc to Mr.R.G.Annamalai, Advocate Sr.73480

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srg 24/01/2014