

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2016

Coram

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

Second Appeal No.986 of 2016
and C.M.P.No.20257 of 2016

Mariappan

...Appellant/Appellant/
Plaintiff

Vs

1. The District Collector,
Sampath Nagar,
Erode Town, Erode District.
2. The Revenue Divisional Officer,
Main Road, Gobi Town,
Gobichettipalayam Taluk,
Erode District.
3. The Tahsildar,
Sathyamangalam Taluk Office,
Mysore Trunk Road,
Sathyamangalam, Erode District.
4. The Village Administrative Officer,
Pattavarthi Ayyampalayam,
now at Chikkasampalayam Village,
Sathyamangalam Taluk,
Erode District.
5. The Taluk Surveyor,
Taluk Office, Mysore Trunk Road,
Sathyamangalam, Erode District.
6. Kanagaraj
7. Subbiah Gowder

...Respondents/ Respondents/
Defendants

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 26.07.2016 passed in A.S.No.29 of 2015 on the file of the Subordinate Judge, Sathyamangalam,

confirming the judgment and decree dated 08.01.2014 made in O.S.No.321 of 2009 on the file of the District Munsif, Sathyamangalam.

For Appellant .. Mr.R.T.Doraisamy

JUDGMENT

The unsuccessful plaintiff is the appellant herein. He has filed the suit for declaration and permanent injunction over the Government property claiming adverse possession on the premise that he has been in enjoyment beyond the statutory period of 30 years.

2.The Courts below dismissed the suit holding that the suit property is a cart track, placing substantial reliance on the evidence of P.Ws.1 and 3 coupled with the report of the learned Advocate Commissioner. Incidentally, it was held that the notice issued under Section 5 of Act 3 of 1905 also would show the objection on the part of the Government. A further finding has been given that the appellant has not proved the factum of possession beyond the statutory period. Challenging the same, the present appeal has been filed.

3.Learned counsel appearing for the appellant submits that the appellant has been in possession for more than 30 years and therefore, a case of adverse possession has been made out. It has been further submitted that the evidence of P.Ws.1 and 3 will have to be seen in the context of the relief sought for.

4.At this length of time, law of adverse possession has been quite settled. In no case, the plaintiff has a right to take the plea of adverse possession against the true owner. At best, it can be a plea that can be taken by the defendant. The law is also quite settled that for raising the plea of adverse possession against the Government property, substantial evidence is required. Both the Courts below concurrently found that there is no evidence to show that the appellant has been in possession for quite a number of years even presuming the plea of adverse possession qua the plaintiff is maintainable. On the contrary, reliance has been made on the evidence of P.Ws.1 and 3 in which tacit admission has been made that the suit property is a common pathway/cart track.

5.Thus this Court does not find any substantial question of law involved in this appeal. Accordingly, the second appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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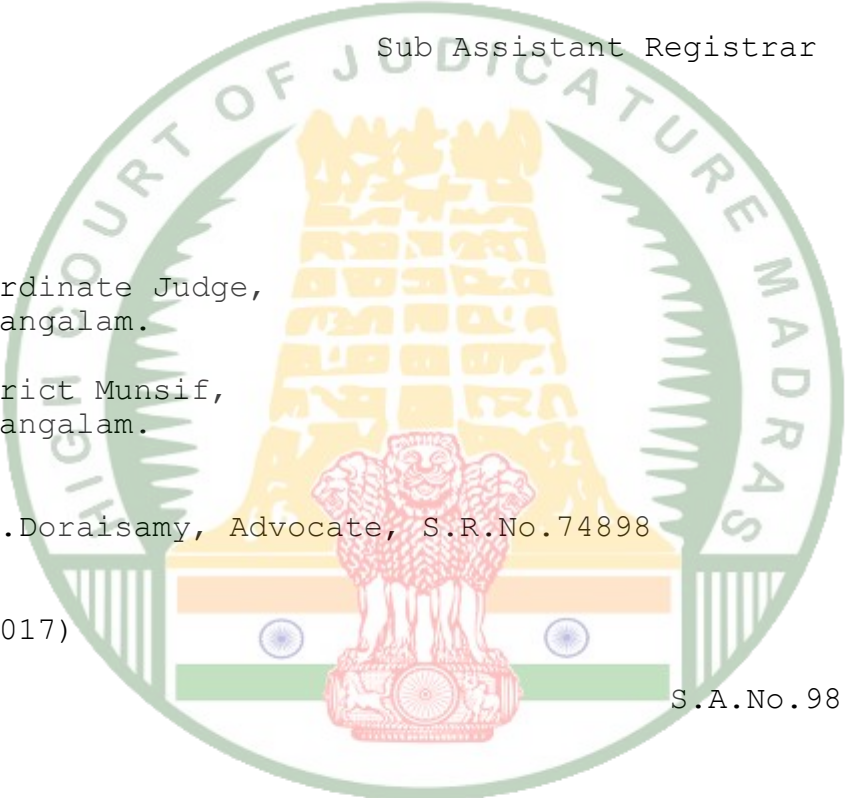
1.The Subordinate Judge,
Sathyamangalam.

2.The District Munsif,
Sathyamangalam.

+1cc to Mr.Doraisamy, Advocate, S.R.No.74898

SCD(CO)
RS(30/10/2017)

S.A.No.986 of 2016



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