



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2016

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

Second Appeal (MD) No.300 of 2016

and

C.M.P.(MD)No.3735 of 2016

Kuppatchi @ Suppammal (Died)

Maruthai (Died)

Veerapathran

... Appellants/Appellants/Plaintiffs

-Vs-.

Maruthai

... Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, praying to set aside the decree and judgment dated 16.07.2010 passed by the first Additional Subordinate Judge, Trichy, in A.S.No.210 of 2008 by confirming the decree and judgment dated 24.06.2008 passed by the Principal District Munsif Cum Judicial Magistrate Court, Lalkudi, made in O.S.No.122 of 1995 and thus allow the appeal with costs.

For Appellant : Mr.T.Vadivelan

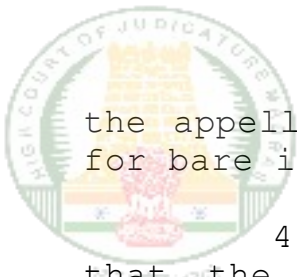
For Respondent : Mr.V.Ilanchezhian

JUDGMENT

The plaintiff in the suit in O.S.No.122 of 1995 on the file of the Principal District Munsif Court, Lalkudi, is the appellant before this Court in this Second Appeal.

2.The appellant / plaintiff filed a suit for bare injunction restraining the respondent / defendant from interfering with the peaceful possession and enjoyment of the suit property. The suit property is described as a property measuring an extent of ten cents in New Survey No.295/28 corresponding to the Old Survey No.212/3B. The suit property is also described with reference to boundaries.

3.The case of the appellant / plaintiff is that the appellant / plaintiff's father one Palaniyandi purchased the property from one Vellachi Ammal, wife of Suriya Muthirian by a sale deed dated 21.04.1945. According to the appellant / plaintiff, the respondent / defendant, who has no manner of right <https://hsemdes.vbns.gov.in/bcsenfiles/> in his attempt to purchase the suit property from the appellant / plaintiff, started interfering with the possession of the appellant / plaintiff. Hence, it was alleged by



the appellant / plaintiff that he was constrained to file a suit for bare injunction against the respondent / defendant.

4.It was the specific case of the respondent / defendant that the suit property which is located in S.F.No.295 / 28 consists of land measuring an extent of ten cents along with two thatched houses and vacant site and kal pattarai belonging to the respondent / defendant and that the predecessors in interest of the respondent / defendant were enjoying the property as a joint family ancestral property. In one of the houses, the respondent / defendant's father and and the respondent / defendant's step mother one Palani Ammal were residing and the respondent / defendant was in enjoyment of the other house bearing Door No.51. Though it is admitted by the respondent / defendant that the land in Survey No.295 / 28 is part of the land in Survey No.211 / 31. The respondent / defendant relied upon the house patta granted pursuant to UDR survey.

5.During trial, the appellant / plaintiff as PW-1 filed several documents which are in the nature of kist receipts, water tax. The respondent / defendant examined himself as a witness and filed Ex.B1 to B20. The documents filed by the respondent / defendant are pertaining to the period from 1991 to 2007. The trial Court as well as the appellate Court on the basis of the material document and oral evidence, came to the conclusion that the appellant / plaintiff has not proved his title nor his case that he is in lawful possession as claimed by him. Aggrieved by judgment of lower appellate Court, confirming the dismissal of the suit by the trial Court, the plaintiff has preferred the above Second Appeal.

6.Heard the learned counsel for the appellant / plaintiff and the judgments of Courts below are perused.

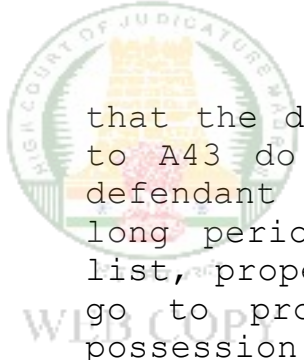
7.I have considered the submission of the learned counsel for the appellant / plaintiff and the findings of the Courts below and in particular, the findings of the appellate Court which are to the following effect:

(a) Though the suit property was claimed to have been purchased by the appellant / plaintiff under Ex.A1 the property referred to under Ex.A1 is only the property in Survey No.230. It is not proved by the appellant / plaintiff that the property in Survey No.230 is corresponding to Old Survey No.212/3B or New Survey No.295/28 (suit property).

(b) It is also admitted that patta has been given to the defendant in respect of an extent of ten cents in Survey No.295 / 28.

<https://hcservices.courts.gov.in/hcservices/>

8.The Commissioner's report filed in this case clearly prove that Old Survey No.230 falls outside the suit property and



that the documents filed by the appellant / plaintiff under Ex.A3 to A43 do not pertain to the suit property. The respondent / defendant has produced documents to prove his possession for a long period of time and the documents like ration card, voter list, property tax receipts and electricity consumption card would go to prove that the respondent / defendant is in lawful possession of the suit property under valid title as recognised by the Government by issuing patta in favour of the respondent / defendant. When the appellant / plaintiff is not able to establish the fact that the title deed namely Ex.A1 is pertaining to the suit property, the appellant / plaintiff cannot be granted any relief by the Courts below.

9.Since the Courts below have held against the appellant / plaintiff on all the factual issues particularly with regard to the title and enjoyment of the suit property, this Court is not inclined to interfere with the findings of fact which have become final. The questions of law raised by the appellant / plaintiff do not stand for a moment's scrutiny and none of them is supported by the factual background. No substantial question of law arises for consideration in this case.

10.In the above circumstances, there is no merit in the Second Appeal and hence, it is dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

- 1 The 1st Additional Subordinate Judge, Trichy.
- 2 The Principal District Munsif -Cum- Judicial Magistrate, Lalgudi.

+1 CC to Mr.T.VADIVELAN, Advocate, SR No.51212

+1 CC to Mr.V.ILLANCHEZIAN, Advocate, SR No.51236

Judgment made in
Second Appeal (MD) No.300 of 2016
08.09.2016

srm

SH/EM-MPA:02.11.2016:3P/5C