



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2016

CORAM:

THE HONOURABLE Ms.JUSTICE R.MALA

Second Appeal (MD) No.315 of 2016

Kasamuthu

..Appellant/Appellant/Plaintiff

versus.

Boothapandi Thevar (Died)

1.Rajanga Thevar @ Madasamy Thevar

2.Pazhanimurugan

3.Vellapandi

..Respondents 1 to 3/Respondents 2 to 4/
Defendants 2 to 4

(Cause title accepted vide order dated
03.09.2012 and made in M.P.(MD) No.
1 of 2012 in SA(MD) SR.32743/12

4.Lakshmi

5.Murugan

6.Sivabalan

7.Sankaran

8.Piramanayagam

9.Mariammal

10.Mariappan

11.Nagarajan

..Respondents 4 to 9

Prayer: Second Appeal is filed under Section 100 of CPC., against the judgment and decree dated 28.02.2011 in A.S.No.47 of 2010 on the file of the Court of the Subordinate Judge, Ambasamudram confirming the judgment and decree dated 18.03.2010 in O.S.No.117 of 2006 on the file of the Court of the District Munsif/Judicial Magistrate Court, Cheranmahadevi.

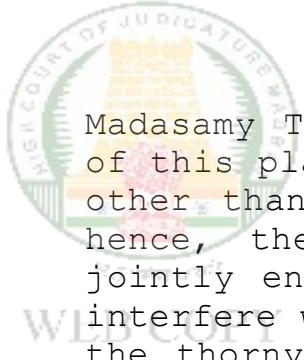
For Appellant : Mr.A.Arumugam

For respondents : Mr.H.Arumugam

JUDGMENT

The plaintiff, who lost the legal battle before both the Courts below, has come forward with this second appeal, against the judgment and decree dated 28.02.2011 in A.S.No.47 of 2010 on the file of the Court of the Subordinate Judge, Ambasamudram confirming the judgment and decree dated 18.03.2010 in O.S.No.117 of 2006 on the file of the Court of the District Munsif/Judicial Magistrate Court, Cheranmahadevi.

2.The appellant, as plaintiff has filed a suit for injunction stating that the suit property is originally belonging to one



Madasamy Thevar, who is none other than the paternal grandfather of this plaintiff. He had only one son Esakki Thevar, who is none other than the father of the plaintiff. He died intestate and hence, the plaintiff's brother and Sister and his mother are jointly enjoying the property. Now, the defendants attempted to interfere with the possession and attempted to cut and carried out the thorny trees and they are attempted to alienate the property and hence, he was constrained to file the suit for bare injunction restraining the defendants not to interfere with the peaceful possession and enjoyment.

3. Resisting the same, the respondents/defendants filed a detailed written statement stating that the property in S.No.167/1 to an extent of 1 acre 85 cents is originally owned by Papanasa Thevar and Esakki Thevar and they are entitled each $\frac{1}{2}$ share of the property. Papanasa Thevar had three sons viz., Madasamy, Vellakannu and Subbiah and they are entitled 93 cents. The plaintiff is the grandson of Madasamy. On the death of the plaintiff's father Esakki Thevar, he is entitled 31 cents. The brothers of Esakki Thevar viz., Vellakannu and Subbiah are each entitled to 31 cents and after their death, their legal heirs are entitled their share. Esakki Thevar has a son viz., Rajagopal @ Nallakannu Thevar and he is entitled 93 cents and that has been inherited by his three sons Esakki Thevar, Vellaiya Thevar and Subbiah. The genealogy has been given and they have stated that the plaintiff is not entitled any share and hence, he prayed for a decree.

4. The trial Court, after hearing both sides and perusing the pleadings, framed necessary issues and after considering the oral and documentary evidence, came to the conclusion that the plaintiff is not entitled the suit property and it is ancestral property and his father is entitled 31 cents only and the plaintiff is not entitled for injunction against the co-owners and dismissed the suit. Against the said judgment and decree, the plaintiff preferred an appeal, wherein, the judgment and decree of the trial Court has been confirmed and Ex.B1 has been marked, which shows that there was partition between the plaintiff and his family members. Therefore, the appellate Court has confirmed the judgment and decree passed by the trial Court and dismissed the appeal and held that the plaintiff is entitled only in respect of 0.62 cents in S.No.167/1B. Against which, the present second appeal has been preferred.

5. At the time of admission, the learned counsel for the appellant would submit that to prove the possession of appellant, the appellant filed patta, kist receipt and adangal receipt and that factum has not been considered by the trial Court and hence, he prayed for a decree.



6. Since the suit is filed for bare injunction, the appellant/plaintiff has to prove his prima facie title, possession that too legal possession, and balance of convenience, and he has to prove that he would be put into irreparable loss, if the injunction is not granted. But, here, as per the evidence, even though in Ex.B1, it is stated that the plaintiff is entitled for 0.62 cents, there is no evidence to show that the plaintiff is in possession of 1 acre 85 cents. That factum was rightly considered by both the Courts below and came to the correct conclusion and possession is not a question of law and it is a question of fact. So, I am of the view that there is no substantial question of law arise for consideration in this second appeal, the second appeal is liable to be dismissed.

7. Accordingly, this second appeal is dismissed at the stage of admission. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

1. The Subordinate Judge, Ambasamudram.

2. The District Munsif/Judicial Magistrate Court, Cheranmahadevi.

Copy to : The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.A.Arumugam, Advocate in SR.40394

+1cc to M/s.H.Arumugam Advocate in SR.39941

Second Appeal (MD) No.315 of 2016
26.07.2016

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