



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2016

CORAM:

THE HONOURABLE Ms.JUSTICE R.MALA

Second Appeal (MD) No.417 of 2016

and

C.M.P. (MD) No.4536 of 2016

1.Raju

President,
Perunchilampu Oor Vakai Mutharamman
Temple Committee,
Lakshmi Bhavan, Perunchilampu,
Velimalai Post, Velimalai Village,
Kalkulam Taluk, Kanyakumari District.

2.Santhoshkumar,

Secretary,
Perunchilampu Oor Vakai Mutharamman
Temple Committee,
Panchiyadivilai, Perunchilampu,
Velimalai Post, Velimalai Village,
Kalkulam Taluk, Kanyakumari District.

3.M.Gopakumar,

Vice President,
Perunchilampu Oor Vakai Mutharamman
Temple Committee,
Karumparai, Perunchilampu,
Velimalai Post, Velimalai Village,
Kalkulam Taluk, Kanyakumari District.

...Appellants

versus.

1.Viswakumar

2.Padmanaban Nair

3.Clyetus Raj,

4.Glory

...Respondents

Prayer: Second Appeal is filed under Section 100 of CPC., to call for the records relating to the Judgment and Decree passed by the Subordinate Judge, Padmanabapuram dated 08.01.2013 in A.S.No.46 of 2011 reversing the Judgment and decree passed by the Principal District Munsif, Padmanabapuram dated 09.03.2011 in O.S.No.91 of 2006 and set aside the same.

For Appellants : Mr.N.Dilip Kumar

For Respondents No.1 : Mr.V.M.Balamohan Thambi

JUDGMENT

The appellants, as plaintiffs, filed a suit in O.S.No.91 of 2006 for declaration of title and injunction in respect of suit property on the basis of the patta dated 21.03.2005. But, the respondents/defendants have raised a defence that the property is originally owned by the first defendant's father. The first defendant has executed the sale deed in favour of the second defendant under Ex.A3 = Ex.B1 on 18.03.2005 and the second defendant sold the same to the third defendant on 10.03.2006 under Ex.A4 = Ex.B6.

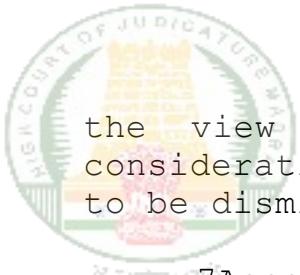
2.The trial Court, after hearing both sides and perusing the pleadings, framed necessary issues and after considering the oral and documentary evidence, dismissed the suit in respect of declaration of title and decreed the suit in respect of decree of injunction. Against the dismissal of declaration of title, no appeal has been preferred by the plaintiffs. Per contra, the respondents/defendants have preferred an appeal in respect of injunction. The first appellate Court has allowed the appeal and dismissed the suit entirety. Against the said judgment and decree, the plaintiffs have come forward with this second appeal.

3.I have heard the submissions of the learned counsel for the appellants.

4.Once the appellants have not preferred any appeal against the denial of declaration of title, it is hit by Section 11 of C.P.C. i.e. Resjudicata. Now, the appeal has been preferred against the dismissal of the decree in respect of injunction.

5.The learned counsel for the appellants submitted that the trial Court has held that the appellants are in possession of the property and hence, they are entitled for possession, till the person, who is having better title to dispossess him. He has relied on the decision in *Rame Gowda (D) by Lrs. V. M.Varadappa Naidy (D) by Lrs. and Another* reported in 2004-3-L.W.143, paras 4,5,9 and 10. But, the above said citation is not applicable to the facts of the present case, for the reason that there is no dispossession in this case. Therefore, the plaintiffs cannot take shelter under the lacunas in the case of the defence raised by the defendants and sought for a relief.

6.It is well settled that once the plaintiffs filed a suit for declaration of title and injunction, they ought to have proved their title to the property and then only, they are entitled for injunction. But, the trial Court has not considered the same and granted injunction and that has been considered by the first appellate Court and by relying upon the decisions, came to the correct conclusion that the plaintiffs are not entitled any relief as sought for by them and dismissed the suit. Therefore, I am of



the view that no substantial question of law arises for consideration in this second appeal, the second appeal is liable to be dismissed.

7Accordingly, this second appeal is dismissed at the stage of admission. Consequently, connected Miscellaneous petition is also dismissed. 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, Padmanabapuram.

2.The Principal District Munsif, Padmanabapuram.

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

+1. C.C. to M/S.N.DILIP KUMAR Advocate SR.No.29136
+1cc to M/s.V.M.Balamohan Thampi, Advocate in SR.28832

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