



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2016

CORAM:

THE HONOURABLE Mr.JUSTICE S.S.SUNDAR

S.A.(MD)No.443 of 2016

and

C.M.P.(MD)No.4746 of 2016

WEB COPY

K.Arputhasamy ... Appellant / Respondent / Defendant

Vs.

K.G.Palanivel ... Respondent / Appellant / Plaintiff

Prayer: The Second Appeal is filed under Section 100 of C.P.C., against the decree and judgment dated 16.12.2014 passed in A.S.No.31 of 2014 on the file of the Additional Subordinate Judge (II), Thanjavur reversing the decree and judgment dated 25.04.2014 passed in O.S.No.174 of 2012 on the file of the District Munsif, Thiruvaiaru.

For Appellant : Mr.T.A.Ebenezer
For Respondent : Mr.M.R.S.Prabhu

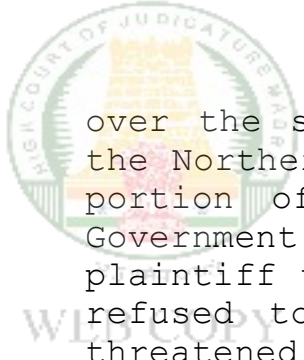
JUDGMENT

The Second Appeal is filed against the decree and judgment dated 16.12.2014 passed in A.S.No.31 of 2014 on the file of the learned II Additional Subordinate Judge, Thanjavur, reversing the decree and judgment dated 25.04.2014 passed in O.S.No.174 of 2012 on the file of the learned District Munsif, Thiruvaiaru.

2.The defendant in O.S.No.174 of 2012 on the file of the learned District Munsif, Thiruvaiaru, is the appellant in this Second Appeal.

3.The respondent / plaintiff filed a Suit in O.S.No.174 of 2012, for permanent injunction, restraining the appellant/defendant herein, in any way interfering with his peaceful possession and enjoyment of the suit property.

4.It is the case of the respondent / plaintiff that the suit property measuring an extent of 78 cents in R.S.No.59/2A2 in Thiruvalampozhil Village, Thiruvaiyaru Taluk, Thanjavur District, belonged to his mother namely, Gnanapoongothaiammal, by virtue of a sale deed dated 02.06.1971. After the death of the plaintiff's mother and father, as a legal heir, the plaintiff claimed to have succeeded to the property. According to the plaintiff, the suit property was mortgaged and discharged later and the land was under active cultivation. Though the defendant had no title or right

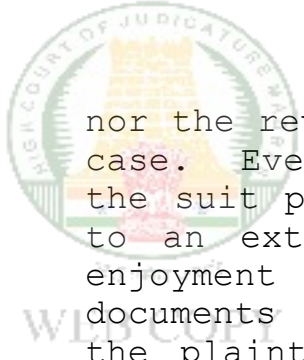


over the suit property, he was having a small extent of land on the Northern side of the suit property. After loosing substantial portion of his property by land acquisition initiated by the Government for widening of road, the defendant made offer to the plaintiff to take the suit property on lease. Since the plaintiff refused to accept the request of the defendant, the defendant threatened forcible dispossession and hence, he was constrained to file the present suit.

5.The suit was resisted by the appellant / defendant on the ground that his father purchased an extent of 61 cents in Survey No.59/1A with distinct four boundaries and the property in Survey No.59/1A was in the exclusive possession and enjoyment of his predecessor and also by the defendant for a long period. Though a small extent (13 cents) of land belonged to the defendant was taken for formation of road, it is the specific case of the defendant that Government had acquired more extent of land from the plaintiff / respondent for formation of the road. It was the further case of defendant that by mistake, more extent of land was excluded from the holding of plaintiff / respondent without conducting survey and measurement, as per the revenue records and the enjoyment of the property by respective parties.

6.Though the Trial Court dismissed the suit, on appeal by the plaintiff / respondent in A.S.No.31 of 2014, the Appellate Court reversed the judgment and decree of the Trial Court and granted the decree in favour of the plaintiff / respondent, as prayed for. The Appellate Court was of the view that the defendant, who does not claim any right over the suit Survey No.59/2A2 in Thiruvallampozhil Village, Thiruvaiyaru Taluk, Thanjavur District and admit the same in the course of evidence has no right to resist the suit. Though the defendant pleaded that a substantial portion of the plaintiff's land was acquired by the Government, the defendant did not produce any evidence to show that major portion of the land belonged to the plaintiff was also acquired by the Government.

7.It is not in dispute that the plaintiff is entitled to an extent of 78 cents in R.S.No.59/2A2. It is also not in dispute that the acquisition was of the year 1974 and in all the revenue records, including the revenue records updated under UDR scheme, patta has been granted to the plaintiff in respect of the entire extent in R.S.No.59/2A2. Though the defendant contends that he owns an extent of 48 cents, even after acquisition of land by the Government for forming road, he has not produced any document to show that he still holds ownership and possession over an extent of 48 cents. Neither the records of land acquisition proceedings



nor the revenue records are produced by the defendant to prove his case. Even the recent computer patta, adangal and FMB sketch for the suit property clearly indicate that the plaintiff is entitled to an extent 78 cents in Survey No.59/2A2 and that he is in enjoyment of the said land. After careful consideration of the documents and oral evidence the lower Appellate Court held that the plaintiff is in lawful possession of the suit property and that he is entitled to succeed in the suit for permanent injunction.

8. After arguing the matter for a considerable time, the learned counsel for the appellant only made a request before this Court that this appeal may be dismissed with liberty to the plaintiff to seek a declaration and consequential prayer in respect of his property in Survey No.59/1A1. To the said course, the learned counsel for the respondent Mr.M.R.S.Prabhu has no serious objection. The learned counsel for the appellant drew the attention of this Court that the dispute is only regarding extent and boundary and that his right in Survey No.59/1A cannot be taken away by virtue of the judgment and decree of the courts below. This Court feels that the apprehension of the appellant is justifiable. This Second Appeal is dismissed by confirming the judgment and decree of the lower appellate Court. However, it is made clear that this judgment will not stand in the way of respondent / defendant establishing his title to his own property in Survey No.59/1A by approaching civil court for appropriate relief.

No costs. Consequently, connected C.M.P.is closed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

1.The Additional Subordinate Judge (II), Thanjavur .

2.The District Munsif, Thiruvaiaru.

+One cc to Mr.T.A.Ebenezer, Advocate, SR.No.50973

nbj

RL/4C/2P/SKS/RR/30.11.2016

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