



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 23.09.2016

Delivered on: 17.11.2016

WEB COPY

CORAM :

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

Second Appeal (MD) Nos.459 to 461 of 2013
and
M.P.(MD)No.1 of 2013

S.A.(MD)No.459 of 2013

1.K.Sundaram
2.Mayilammal : Appellants/Appellants/ Defendants 3 & 9

-Vs-.

- 1.Pattagasalaipathi Sriman Narayanasamicoil,
Pambankulam,
Through its Huqdar
Velsami,
Pambankulam,
Thandayarkulam Village,
Panagudi Post,
Radhapuram Taluk,
Tirunelveli District. :1st Respondent/1st Respondent/1st Plaintiff
- 2.The Executive Officer,
Town Panchayat,
Panagudi,
Radhapuram Taluk,
Tirunelveli District.
- 3.Balaji @ Paulvannanathan @ Paulvanna Perumal
4.P.Velsamy
5.C.Gopal
6.A.Balakrishnan
7.M.Vasan
8.L.Muthumani
9.L.Rajaram
10.L.Uthaman
11.L.Suganthi : Respondent No.2 to 11/ Respondents 2 to 11/
Respondent Nos.1,4 to 8, 10 to 13

dated 29.11.2011 on the file of the Subordinate Judge, Valliyoor confirming the judgment and decree passed in O.S.No.22 of 2001, dated 29.02.2008 on the file of the Principal District Munsif Court, Valliyoor.

For Appellants : M/s.Eddy and Emboss
 For Respondent 2 : Mr.Aairam K. Selvakumar
 For Respondents
 1 and 4 : Mr.S.Subbiah
 For Respondents
 6 to 11 : Dispensed with
 For Respondents
 3 and 5 : No appearance.

S.A. (MD) No.460 of 2013

K.Sundaram : Appellant / Appellant / Defendant 3

-Vs-

Pattagasalaipathi Sriman Narayanasamicoil,
 Pambankulam,
 Through its Huqdar
 Velsami, Pambankulam,
 Thandayarkulam Village,
 Panagudi Post, Radhapuram Taluk,
 Tirunelveli District. : Respondent / Respondent / Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.41 of 2008, dated 29.11.2011 on the file of the Subordinate Judge, Valliyoor confirming the judgment and decree passed in O.S.No.22 of 2001, dated 29.02.2008 on the file of the Principal District Munsif Court, Valliyoor.

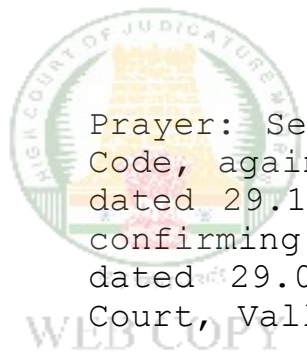
For Appellants : M/s.Eddy and Emboss
 For Respondent : Mr.S.Subbiah

S.A. (MD) No.461 of 2013

Mayilammal : Defendant 9 / Appellant / Appellant

-Vs-.

Pattagasalaipathi Sriman Narayanasamicoil,
 Pambankulam, Through its Huqdar
 Velsami, Pambankulam,
 Thandayarkulam Village,
 Panagudi Post, Radhapuram Taluk,
 Tirunelveli District. : Plaintiff / Respondent / Respondent



Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.42 of 2008, dated 29.11.2011 on the file of the Subordinate Judge, Valliyoor confirming the judgment and decree passed in O.S.No.22 of 2001, dated 29.02.2008 on the file of the Principal District Munsif Court, Valliyoor.

For Appellants : M/s.Eddy and Emboss
For Respondent : Mr.S.Subbiah

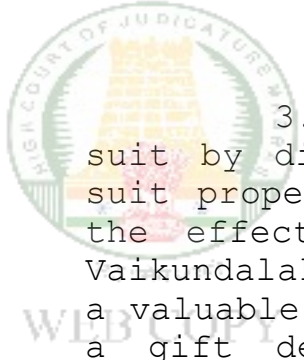
COMMON JUDGMENT

All the three appeals are filed by defendants 3 and 9 in the suit. In Second Appeal (MD) No.459 of 2013, the defendants 3 and 9 in the suit in O.S.No.22 of 2001 are the appellants. In S.A.(MD) No.460 of 2013, the third defendant is the appellant and S.A.(MD) No.461 of 2013, the 9th defendant is the appellant.

2.The first respondent in all the appeals is the plaintiff in the suit in O.S.No.22 of 2001. The plaintiff filed the suit before the Additional District Munsif Court, Valliyoor, for declaration of the plaintiff's title to the suit property and for consequential permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The suit property is an extent of 21 cents in Survey No.758/10 in Thandaiyarkulam village in Radhapuram Taluk, Tirunelveli District. The plaintiff / first respondent is a temple represented by its Huqdar.

3.The case of the plaintiff as per the plaint are as follows:

3.1.The plaintiff temple was established about 150 years ago. One Rajamani Nadar vakaiyara, one of the relatives of the present Huqdar of the temple, gave their ancestral land to the temple for constructing Sriman Narayana Swami Temple and for taking procession of temple car etc. The said Rajamani Nadar is the grand father of one Chellappa who is the third defendant in another suit i.e., O.S.No.15 of 2001. The temple is in the middle of the village and the vacant land in and around the temple which are being used for the temple activities are enjoyed by the temple. In the UDR scheme, the entire suit property was identified as a property belonged to the temple and patta was given in favour of the plaintiff for an extent of 21 cents of land. Except the plaintiff temple, no one has got any right with regard to any portion of the suit property and the trustees of the temple have put up constructions within the suit property. When this proposed construction was objected to by the defendants 2 to 8, who have no semblance of right, the plaintiff submitted that they were constrained to file the present suit for declaration of title and consequential injunction.



3.2. The 3rd defendant and 9th defendant have contested the suit by disputing the title of the plaintiff in respect of the suit property. The third defendant filed a written statement to the effect that the suit schedule properties belonged to one Vaikundalakshmi Ammal who purchased the property on 01.02.1941 for a valuable consideration. The said Vaikundalakshmi Ammal executed a gift deed in favour of her son, the third defendant on 21.02.1980 and handed over possession to the third defendant. Though there was a house that was in existence in the suit property, the same collapsed and hence, the third defendant put up a shop bearing Door No.21 in a portion of the suit property. According to the third defendant, he is in enjoyment of the property for more than the statutory period of 12 years and that he has also prescribed title by adverse possession. The third defendant is the owner of a portion of the suit property which is described as first schedule in the written statement of the third respondent. Though the compound wall put up by the third defendant was fell down during November, 1993, it was submitted that till the falling of the compound wall, the said compound wall was the southern boundary of the third defendant. It was further stated that earlier, the third defendant filed a suit in O.S.No.15 of 2001 and the then Huqdar of the temple had removed the compound wall even before the inspection of the Advocate Commissioner, high-handedly and that this fact was also brought to the notice of the Advocate Commissioner who had referred to the same in his report. The suit in O.S.No.15 of 2001 was dismissed only because the private defendants in the suit pleaded that they have no connection whatsoever in their individual capacity. It was then claimed that the third defendant is entitled to seek a counter claim, for declaration that the property shown as second schedule in the written statement belongs to third defendant and for recovery of possession of the second schedule in the written statement at the cost of plaintiff. The ninth defendant in the suit has also filed a written statement claiming title to an extent of 1 cent which was described in the schedule appended to the written statement, and made a counter claim seeking a prayer for a mandatory injunction for the removal of the compound wall.

3.3. The plaintiff in the suit has filed a detailed statement disputing the rights of the defendants 3 and 9 in their respective counter claim. The trial Court decreed the suit as prayed for and rejected the counter claim preferred by the defendants 3 and 9 respectively. Aggrieved by the decree that was passed in O.S.No.22 of 2001, defendants 3 and 9 jointly filed A.S.No.40 of 2008. Similarly the third defendant filed A.S.No.41 of 2008 and the ninth defendant filed A.S.No.42 of 2008. The lower appellate Court after framing necessary issues and considering the entire pleading and evidence both oral and documentary dismissed the appeals. Aggrieved by the judgment and decree of the Courts below, the third and ninth defendants' before the trial Court have filed the above three Second Appeals,



as indicated earlier.

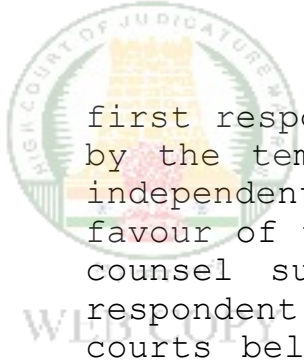
4. The lower appellate Court on the issue regarding title to the suit property confirmed the judgment of the trial Court by holding that the plaintiff / first respondent has proved their case and that the defendants 3 and 9 have failed to prove their respective case of title. The lower Appellate Court has given a finding that the third defendant had failed to prove that the plaintiff temple had encroached into his property and further held that he was also not able to identify the three cents of land that was claimed by him as his property in the counter claim.

5. Similarly, the lower appellate Court also considered the claim of 9th defendant about his title in respect of an extent of one cent as claimed by him in the counter claim and rejected his claim as one not supported by any material or documentary evidence.

6. The learned counsel appearing for the plaintiff / first respondent argued that the appellants who have preferred counter claim in the suits can succeed only on the strength of their case and that both the appellants namely defendants 3 and 9 have failed to prove their title or enjoyment by producing acceptable evidence. The learned counsel also pointed out that the appellants are not even clear in their case as to the portion of the suit property in which they claim title by way of counter claim. In this context, it is also relevant to point out the boundary description of the properties described as first item and second item in the written statement. When it is admitted by the third defendant that the second schedule in the counter claim forms part of first schedule, it is relevant to point out that the third defendant has described the second schedule in the written statement as a property on the north of Narayanaswami Temple. Strangely, the first schedule shown in the written statement was not described as a property adjacent to the property of temple. The northern boundary of second schedule is shown as the remaining property of first schedule. When it is admitted that the south of first schedule is the property of the temple, the southern boundary for first schedule as described in the counter claim cannot be true. The boundary description of the first schedule and the second schedule would establish an important fact that the third defendant is not even aware of the boundaries within which his exclusive property claimed by him lies.

7. In view of the settled principles on the scope of Section 100 C.P.C., I have no hesitation to hold that in the above Second Appeals, no substantial question of law arises and the Second Appeals are liable to be dismissed.

8. The learned counsel for the appellants relied upon some of the documents and the oral evidence of plaintiff's witnesses examined on behalf of the first respondent and submitted that the



first respondent claimed title only on the basis of patta obtained by the temple during UDR survey and that in the absence of any independent title, the lower Courts cannot decree the suit in favour of the plaintiff / first respondent. Secondly, the learned counsel submitted that in a case where the plaintiff / first respondent has failed to establish their *prima facie* case, the courts below cannot grant a decree in favour of the plaintiff / first respondent by shifting the burden on the defendants to prove their case. Even on the admitted case of the plaintiff / first respondent, the plaintiff is not entitled to an extent of 21 cents and that the Courts below ought to have given relief to the defendants at least to a portion in favour of the defendant. The learned counsel for the appellants further referred to the evidence of plaintiff witnesses and submitted that the witnesses examined by the plaintiff have admitted the fact that there was no gift by the members of defendants or their predecessor-in-interest and the plaintiff has filed the suit only on the basis of the patta issued by the Revenue Department. After sailing along with the counsel for the appellants, I get only an impression that the case of the plaintiff appears to be more probable and that the defendants have no right in any portion of the suit property as contended by them and claimed by them in their respective counter claims. The plaintiff has examined three witnesses and produced several documents namely Ex.A1 to Ex.A17. The Courts below have upheld the title and enjoyment of the plaintiff / first respondent only after considering the documents filed by both sides and the oral evidence of witnesses examined by respective parties. The findings of the Courts below are supported by material documents and the oral evidence of witnesses. The Courts below have applied their independent mind on all issues and the findings are not demonstrated to be perverse or contrary to any evidence. All the documents filed by both sides were considered and this Court do not feel it is necessary to re-appreciate the evidence which is also impermissible while exercising power under Section 100 C.P.C.

9. In view of the above circumstances, the concurrent findings of the Courts below are confirmed and these three appeals are dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar



TO

1. The Subordinate Judge,
Valliyoar.

2. The Principal District Munsif,
Valliyoar.

COPY TO:

THE RECORD KEEPER, V.R. SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+3cc to M/S EDDY AND EMBOSS, LAW FIRM, Advocate
Sr.Nos.70358,70359,70360

+3cc to Mr.S.SUBBIAH, Advocate Sr.No. 70127

JAM/ (TE) 20.02.17 /CM-MSA/7P-10C

Judgment made in
Second Appeal (MD) Nos.459 to 461 of 2013
17.11.2016