



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2016

CORAM :

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

WEB COPY

Second Appeal (MD)No.529 fo 2013

and

M.P.(MD)No.1 of 2013

Devaraj @ Devasagayam ... Appellant/Appellant/Plaintiff

-Vs-

Samuvel @ Vyakulasamy ...Respondent/Respondent/ Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, praying to set aside the judgment and decree passed in A.S.No.90 of 2012, dated 08.03.2013 on the file of the Principal Subordinate Judge, Tiruchirappalli, and confirming the judgment and decree passed in O.S.No.1585 of 2006, dated 24.06.2011 on the file of the First Additional District Munsif, Tiruchirappalli.

For Appellant : Mr.N.Vallinayagam
For Respondent : Mrs.J.Maria Roseline

JUDGMENT

The plaintiff in the suit in O.S.No.1585 of 2006 is the appellant before this Court. The plaintiff / appellant has filed the suit in O.S.No.1585 of 2006 on the file of the First Additional District Munsif Court, Tiruchirappalli, for declaration that the plaintiff / appellant is the absolute owner of suit 'A' and 'B' schedule properties and consequently directing the defendant / respondent to deliver possession of the suit 'B' schedule property. The suit is also for the relief of permanent injunction restraining the defendant / respondent from interfering with the peaceful possession of the plaintiff / appellant over the plaint 'A' and 'B' schedule property.

2.The case of the plaintiff / appellant is that the plaintiff / appellant is the absolute owner of the suit 'A' and 'B' schedule properties. According to the plaintiff / appellant, he took possession of the suit property from the year 1967 and that he has been in continuous possession and enjoyment of the same for more than 39 years. Since the plaintiff / appellant is in possession for more than the statutory period, it was his case that except himself no one has got any right or title over the suit property. It is the case of the plaintiff / appellant that notice was issued by the Government and that the



assessment of property tax in the name of the plaintiff / appellant from 1973 would prove his continuous possession. The plaintiff / appellant also claimed that he has constructed a pucca house in the suit 'A' schedule property and obtained electricity service connection for the suit property in his name. It is the specific case of the plaintiff / appellant that the plaintiff / appellant permitted the defendant / respondent to occupy the suit 'B' schedule in the year 1998. Such permission was granted to the defendant / respondent, according to the plaintiff / respondent, only to help him. Since the possession of defendant / respondent over the plaint 'B' schedule is only permissive, it is contended by the plaintiff that the defendant / respondent has no right and that he is estopped from disputing the title of the plaintiff / appellant.

3. The suit was contested by the defendant / respondent. It is the case of the defendant / respondent that the parents of the plaintiff / appellant and defendant / respondent has three sons and four daughters and the entire family came into possession and they started residing in the suit property which is only a *natham poramboke*. According to defendant / respondent, the plaintiff / appellant and the defendant / respondent lived together in the house which was constructed in the suit property even after their marriages in 1974 and 1981 respectively. Hence, the defendant / respondent claimed exclusive possession in respect of the property described as 'B' schedule from the year 1986 in his own right. Since the suit properties belonged to Government, the defendant / respondent also raised an objection as to the maintainability of the suit without impleading the Government. The trial Court framed necessary issues and found that the plaintiff / appellant is not the owner of plaint 'A' and 'B' schedule properties. The trial Court taking into consideration the admission of the plaintiff / appellant himself that the suit properties belong to Government and classified as *natham poramboke*, held that the plaintiff / appellant is not entitled to declaration of title in respect of the suit properties by prescription. The trial Court also gave a finding that the plaintiff / appellant has not proved his title over the plaint 'A' and 'B' schedule properties. The permissive possession pleaded by the plaintiff / appellant was negatived by the trial Court in respect of plaintiff 'B' schedule property. Since the appellant has not proved his title over suit 'B' schedule property, the trial Court further held that the plaintiff / appellant is not entitled to the decree for recovery of possession. As against the suit 'A' schedule property, the trial Court held that there is no cause of action for the plaintiff / appellant to file a suit as the defendant / respondent does not claim any right over the plaint 'A' schedule property. The findings of the trial Court were confirmed by the lower Appellate Court after considering the documents, both oral and documentary filed by both sides. As against the concurrent findings of the Courts below, the present



appeal has been filed by the plaintiff.

4. Having regard to the specific factual findings of the Courts below that the plaintiff / appellant is not entitled to title and the admission of the plaintiff / appellant that the suit properties are only the properties of Government, the plaintiff / appellant is not entitled to a declaration of title in respect of plaint 'A' and 'B' schedule properties. As regard the permissive possession in respect of 'B' schedule property, the claim of the plaintiff / appellant that the defendant / respondent was permitted by the plaintiff / appellant to be in enjoyment of 'B' schedule property was rejected by the trial Court as well as appellate Court on appreciation of evidence. Since the Courts below have specifically found that the plaintiff / appellant has not proved his case of title or enjoyment to put the defendant in possession, I find, no reason to interfere with the findings on facts. There is no question of law that arise for consideration in this Second Appeal. Hence, this Second Appeal is 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

SRM

TO

1 THE PRINCIPAL SUBORDINATE JUDGE,
TIRUCHIRAPPALLI.

2 THE FIRST ADDITIONAL DISTRICT MUNSIF,
TIRUCHIRAPPALLI.

+1cc to Mr.N.Vallinayagam Advocate Sr.No. 65204

+1cc to Mr.J.MARIA ROSELINE Advocate Sr.No. 65968

JAM/29.11.16/KM/3P-5C

Judgment made in
Second Appeal (MD) No.529 of 2013

02.11.2016