

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.Nos.319/2017 and 320/2017 & CMP.No.5207/2017

Ramachandran (Died)

1. Rajakumari
2. Kolanji
3. Kasthuri
4. Thailammai
5. Nandhagopal
6. Naranarayanan

..Appellants/Respondents/
LRs of Plaintiff in S.A.No.319/2017

Ramachandran (Died)

7. Rajakumari
8. Kasthuri
9. Kolanji
10. Thailammai
11. Nandhagopal
12. Naranarayanan

..Appellants /Respondents/
LRs of Plaintiff in S.A.No.320/2017

Versus

Sivasankaran

..Respondent /Appellant/
Defendant in both the appeals

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure to set aside the Common Judgment and Decree passed in A.S.No.26 of 2012 on the file of the Subordinate Judge, Panruti dated 27.07.2016 by reversing the judgment and Decree passed in O.S.No.641 of 1995, on the file of the District Munsif, Panruti dated 23.02.2012, in so far as the 2nd item of the 'B' Schedule Suit property.

For Appellants : Mr.S.Kadarkarai

COMMON JUDGMENT

By consent, the second appeals are taken up for final disposal.

2 The legal representatives of the deceased plaintiff aggrieved by the reversal of the judgment and decree passed by the Trial Court, insofar as negating the prayer for permanent injunction in respect of 2nd item of the B schedule property, had filed the Second Appeal.

3 The facts leading to the filing of the second appeal briefly narrated are as follows :-

4 The plaintiff while he was alive, filed O.S.No.641 of 1995 on the file of the District Munsif, Panruti, against the respondent / defendant praying for judgment and decree for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the 'A' and 'B' schedule properties. It is the case of the plaintiff that the suit 'A' Schedule properties have been purchased by his mother from the mother of the 1st defendant through a registered sale deed dated 29.02.1968 (Ex.A3) and the 2nd item have been purchased through a registered sale deed dated 31.07.1969 (Ex.A4) and right from the date of purchase, he was in possession and enjoyment of the A schedule property. Insofar as the B schedule properties are concerned, it is a claim of the plaintiff that on the northern side of the suit 'A' schedule properties, 'B' schedule properties are situated and he was in possession and enjoyment of the same for over 25 years and though the said lands were belonged to the Government, he was in possession and the concerned authorities of the Government did not disturb his possession and whereas, the defendant started interfering with the peaceful possession by putting up a ridge and therefore, came forward to file the said suit. The defendant filed a written statement refuting the allegations and took a stand that insofar as the 'B' Scheduled properties are concerned in order to soil erosion due to stagnation of rain water, the wife of the defendant has put up a ridge running North, South in the eastern portion and north of the said 20 cents leaving a small place/space wherein seven Cashew trees have been planted and therefore, the plaintiff came forward to file with the false case and further contended the suit property is classified as "Vandipathai Promboke" and as such, he has no right, title and possession of the same and prays for dismissal of the suit.

5 The Trial Court based on pleadings, had framed the following issues :-

- Whether the plaintiff is entitled for the decree

- for Permanent injunction?
- Whether the wife of the defendant is in possession of the same?
 - Whether the plaintiff is having cause of action to prosecute the suit?
 - To what other relief the plaintiff is entitled to?

6 During the pendency of the suit, the plaintiff took out an application for appointment of Advocate Commissioner to find out as to whether the 'B' schedule properties are the properties belong to the Government. The learned Advocate Commissioner has inspected the property and filed a report.

7 During the course of trial, the plaintiff examined himself as PW1 and marked Exs.A.1 to A.9. The 1st defendant examined himself as DW1 and Mr.Perumal was examined as DW2 and Exs.B1 to B6 were marked.

8 The Trial Court on consideration of oral and documentary evidence has found that the plaintiff had proved his right, title and possession in respect of 'A' Schedule properties and insofar as the 1st item of the 'B' Schedule properties is concerned, his possession has not been seriously disputed by the defendant. Insofar as the 2nd item of the 'B' Schedule properties is concerned, though the Trial Court has recorded the findings, the plaintiff did not file any documentary evidence to show that he is in possession of the same. In the light of the Commissioner's report coupled with the fact that except the Government, nobody is entitled to interfere with the possession of the plaintiff in respect of the said property, had decreed the suit vide Judgment and decree dated 23.02.2012. The defendant aggrieved by the partly decreeing of the suit by the Trial Court filed an appeal in A.S.No.26 of 2012 and the plaintiff has also filed an cross appeal in A.S. No.26 of 2012.

9 The Lower Appellate Court by taking into consideration the grounds of appeal had formulated the following points for determination :

- Whether the Judgment and decree passed in O.S.No.641 of 1995 dated 23.02.2012 is set aside or not?
- Whether this appeal is to be allowed or not?
- Whether the cross appeal is to be allowed or not?

10 The Lower Appellant Court has concurred with the findings rendered by the Trial Court, insofar as the 'A' Schedule properties as well as 1st item of the 'B' Schedule properties. As regard the 2nd item of the 'B' Scheduled properties, the Lower Appellate Court has recorded the finding

that since, the plaintiff did not filed any document to prove his possession in respect of the said property and coupled with the fact that the Ex.B6 is disclosed the fact that it has been classified as "Vandipathi Promboke (Cart track)" no interim injunction granted in respect of the said property and therefore, allowed the appeal suit. Insofar as the 'B' Schedule properties are concerned, the trial Court has dismissed the suit in respect of the said item and also dismissed the cross appeal and challenging the legality of the same, the plaintiff has came forward to file these appeals.

11 In the grounds of appeals in SA Nos.319 and 320 of 2017, preferred against partly allowing of the appeal suit and dismissal of the cross appeal, the following Substantial questions of law are raised :-

[1] Is it not an error apparent in law, committed by the Lower Appellate Court, in partly allowing the appeal in A.S.No.26/2012, by reversing the Judgment & Decree of the Trial Court, which are against the evidence on record?

[2] Is it not an error apparent in law, committed by the Lower Appellate Court, in partly allowing the appeal without relying upon the findings rendered by the Trial Court and without considering the Documents and material evidence available, especially the report of the Advocate Commissioner?

[3] Is it no an error apparent in law, committed by the Lower Appellate Court, in modifying the Judgment and Decree of the Trial Court, when the respondent herein has admitted the possession of the 2nd item of 'B' Schedule property with the Appellant herein?

[4] Is it not an error apparent in law committed by the Lower Appellate Court in not appreciating the rule of law enunciated that even with respect to Government Poramboke, except the Government, no 3rd party, like the Respondent herein can question the possessory right of the Appellant?

12 Mr.S.Kadarkarai, learned counsel appearing for the Appellant/LRs of the plaintiff would contend that the Trial Court has taken into consideration of the fact that the Commissioner's report and the written statement filed by the defendant as well as his oral evidence wherein, held that in respect of the 2nd item of the 'B' Schedule properties, defendant

had no right to what so ever and till such time, the Government takes action to recover possession in respect of the 2nd item of 'B' Schedule properties, the plaintiff is entitled to decree for permanent injunction and the Lower Appellate Court has failed to take note of the said admission on the part of the defendant, in respect of the 2nd item of the 'B' Schedule properties, has erroneously reached the conclusion that in the absence of any documentary evidence filed by the plaintiff with regard to the possession of the said item. Therefore, decree for permanent injunction in respect of the said portion of the suit property, is to be reversed and the said findings is per se erroneous without appreciation of oral and documentary evidence and prays for interference.

13 This Court paid it's best attention to the submissions made by the learned counsel appearing for the appellant / LRs of the plaintiff and also perused the judgments passed by the Courts below.

14 The Trial Court has recorded the findings that the defendant in his written statement as well as his oral evidence has conceded that he has no right in respect of the 2nd item of the 'B' Schedule properties and insofar as the said item of the property is concerned, the plaintiff did not file any documentary evidence to show that he is in possession of the property and however, granted the decree in respect of the said item for the reason that since, it has been classified "Vandipathi Promboke (Cart track)", except the Government, nobody can taken action to recover the possession of the same and as such, granted the decree. However, the Lower Appellant Court found that the plaintiff did not file any documentary evidence as to his possession and in the absence of the proof, he is not entitled for decree for permanent injunction.

15 In the light of the fact that the DW1 in the course of his oral evidence has conceded the fact that he has no interest in respect of the 2nd item of the 'B' Schedule property, this Court is of the view that the apprehension on the part of the LRs of the plaintiff, that the defendant may likely to interfere with the possession in respect of the said item, is wholly unfounded. Even assuming for the sake of arguments, that there may be possibility on the part of defendant to interfere with the alleged possession of the plaintiff. In respect of the said item, it is always open to the LRs of the plaintiff to draw the attention of the concerned authorities as to the findings recorded by the Trial Court regarding the said aspect.

16 Insofar as the finding rendered by the Courts below as to the non filing of the documents regarding the

possession of the 2nd item of the B schedule properties, it is factual in nature and in the considered opinion of this Court, there are no Substantial Questions of law arise for consideration in these Second Appeals.

17 In the result, the Second appeals are dismissed at the admission stage itself. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

rka/sk

To

1.The District Munsif, Panruti.

2.The Sub Judge, Panruti.

Copy to:

The Section Officer
VR Section, High Court,
Madras.

+1cc to Mr.S.Kadarkarai, Advocate Sr. 40685

SA.Nos.319 & 320/2017

KS (CO)
VR(18/07/2017)

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