

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2017

CORAM

THE HONOURABLE MS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.764 of 2017 and
C.M.P.No.19013 of 2017

State of Tamil Nadu

Rep. by District Collector,
Namakkal.

... Appellant/Respondent/Defendant

...vs...

S.K.Muthusamy

... Respondent/Appellant/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree dated 30.03.2010 made in A.S.No.114 of 2006 on the file of Subordinate Judge, Namakkal, reversing the Judgment and Decree made in O.S.No.517 of 2002 dated 23.01.2006 on the file of Principal District Munsif's Court, Namakkal.

For Appellant : Mr.M.Venugopal
Special Government Pleader

For Respondent : Mr.T.Dhanyakumar

J U D G M E N T

This Second Appeal has been filed against the Judgment and Decree dated 30.03.2010 made in A.S.No.114 of 2006 on the file of Subordinate Judge, Namakkal, reversing the Judgment and Decree made in O.S.No.517 of 2002 dated 23.01.2006 on the file of Principal District Munsif's Court, Namakkal.

2. The defendant who is the State of Tamil Nadu represented by District Collector is the appellant herein. The suit is filed by the Plaintiff for declaration that he is absolute owner in S.No.243/2 of Bodinaickenpatty Village, Namakkal Taluk and for a direction to the defendant by mandatory injunction to correct all revenue records in conformity with the declaration.

3. The case of the Plaintiff is that the property was purchased by him from the family of one late Krishnaraju Reddiar to whom the properties were allotted in the family partition

between himself and his elder brother. The land which is classified as Poromboke is brought in Survey No.243.2. Though it is not a lane, it was used as a common pathway for the benefit of said Krishnaraju Reddiar and his brother N.Ponnusamy Reddiar for reaching their lands. It is an exclusive common pathway of the said persons to reach the land owned by them. No other person had right or interest over the same. Whiles, the Plaintiff purchased the suit schedule properties including the said pathway in the year 1997. However, the Plaintiff came to know only in September 2001, that the said pathway is entered as Poromboke in the revenue records, including the field map book. Though the Plaintiff is owner from the year 1997, he was not given any notice before the reclassification or sub division was done. The suit property being the pathway cannot be classified as Poromboke. Hence, the suit is filed.

4. The suit was contested by the defendants by filing the written statement contending that it was already classified as Government Poromboke. Being the Poromboke land, the Plaintiff cannot have any right or title over the same.

5. The trial Court had dismissed the suit holding that the reclassification was done even prior to the purchase of the property by the Plaintiff. However, on appeal by the Plaintiff, the Lower Appellate court had reversed the Judgment of the trial Court and granted decree in favour of the Plaintiff. Aggrieved by the same, the above appeal is filed.

6. Though the learned Government Pleader appearing for the appellant categorically contended that the suit properties have been classified as poromboke land, admittedly no documents were produced before the Trial Court to substantiate the same. Even before the Lower Appellate Court the appellant who is in possession of the field map book or the revenue records could have easily produced the same to defeat the right of the plaintiff to show that the suit properties are only Poromboke lands. However, the same has not been done. In the absence of any revenue records to show that the suit properties were classified as Government Poromboke, the Appellate Court has rightly reversed the Judgment of the trial Court and granted the decree in favour of the Plaintiff. The suit property being the pathway, the same cannot be declared as poromboke land. Even presuming that it was declared, there is no evidence to show that such classification was done prior to the purchase by the Plaintiff or after that and notice was issued either to the Plaintiff or his predecessor before doing reclassification. In the absence of any such exercise, the case of the defendant was rightly disbelieved by the Appellate Court. Infact, the Trial Court also held that the property is not a Government Poromboke or a common pathway. The appellant also had not preferred any

cross appeal with respect to the same. That being a case, the Government is infact estopped from arguing the same point as the said issue has already reached finality.

7. In the light of the above facts, this appeal deserves to be dismissed, as no substantial question of law arising out of the same.

8. In the result, this Second Appeal is dismissed, confirming the Judgment and Decree of the Lower Appellate Court dated 30.03.2010. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

arr

To

1. The Subordinate Judge,
Subordinate Court, Namakkal.
2. The District Munsif,
Namakkal.

+lcc to Mr.T.Dhanyakumar, Advocate, S.R.No.87151
+lcc to the Government Pleader, S.R.No.87115

S.A.No.764 of 2017

gj(co)
CS/05/02/18

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