

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2017

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.842 of 2017
and
C.M.P.No.21143 of 2017

R.Murthy ... Appellant /Defendant

Versus

Sri Lakshmi Narasimma Swami Devasthanam,
Rep by its Assistant Commissioner/Executive Officer,
Sholinghur Town,
Walaja Taluk, Vellore District ... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree of the learned Subordinate Judge, Ranipet dated 10.08.2011 made in A.S.No.73 of 2010 confirming the judgment and decree of the learned District Munsif, Sholinghur dated 27.11.2008 made in O.S.No.15 of 2003.

For Appellant : Mr.G.Jeremiah

For Respondent : Mr.Suchindra Bali
for M/s.A.S.Kailasam & Associates

J U D G M E N T
सत्यमेव जयते

The unsuccessful defendant, aggrieved by the unanimous decisions of the Courts below, has preferred the above Second Appeal.

2. Earlier, the respondent-temple had filed the suit for declaration of its right over the suit property; for recovery of possession of 'B' schedule property after removing the superstructure standing thereon; and for permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the rest of 'A' schedule property.

3. An extent of 0.25.5 ares in Survey No.194/2 in Kondapalayam Village belonged to one Srimaan Nambillai Ramanuja Egangi Swamigal. The said Srimaan Nambillai Ramanuja Egangi Swamigal got the suit property from one Munusamy Naidu and he has been in enjoyment of the suit property. He had bequeathed the said property through a registered sale deed dated 02.05.1994 to the plaintiff-temple. Even before that, he was cultivating flowers in the said land and offering it to the deities of Sri Bakthositha Swami, Sri Yoga Narasimma Swami and other deities.

The appellant / defendant had encroached upon the 'A' schedule property in the year 1988 to the extent indicated in the 'B' schedule property. Despite the request made by the staff of the plaintiff-temple, the defendant refused to remove the encroachment. Hence, the temple had filed the suit for recovery of possession.

5. Though the defendant contended that he has perfected the title to the suit property by adverse possession, he had not produced any evidence to substantiate his contentions. Excepting the said defence, the defendant had no other case. The Courts below had concurrently found that the defendant had not produced any evidence to show that he was in possession and enjoyment of the suit property prior to the date of the Will. In fact, it is the specific finding of the appellate Court that the defendant had encroached the suit property only after the execution of the Will. As the plaintiff did not have any right or title over the suit property, his possession of the 'B' schedule property is only an encroachment. Hence, the Courts below had concurrently found that the defendant is liable to vacate and handover the possession of the suit property to the plaintiff after removing the superstructure put up by him thereon, within a period of three months. There is no reason to interfere with the above findings of the Courts below in the absence of any infirmity or any substantial question of law arising for consideration in the above said facts.

6. Learned counsel for the appellant sought for time to remove the superstructure put up on the suit property and hand over the possession to the plaintiff.

7. Considering the long possession of the defendant and as consented by the learned counsel for the respondent-temple, six months time is granted to the defendant to vacate and hand over the possession of the suit property to the plaintiff. The appellant is also directed to file an Affidavit of Undertaking to that effect on or before 20.12.2017.

7. In view of the above, the Second appeal is dismissed, confirming the judgments and decrees of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

srn

To

1. The Subordinate Judge, Ranipet

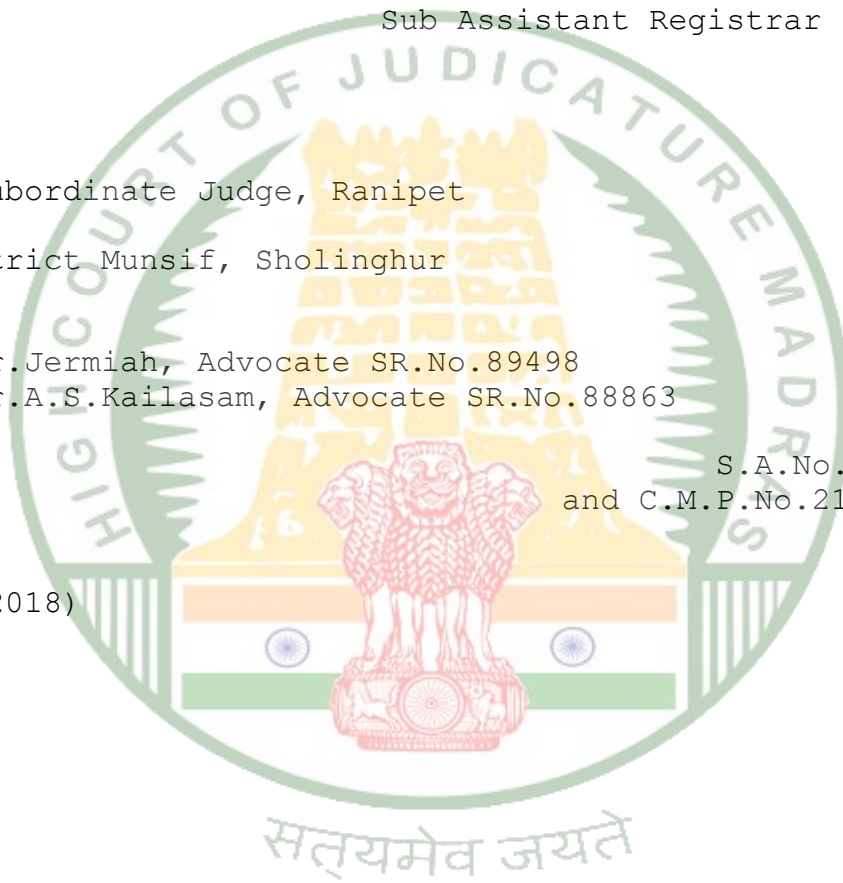
2.The District Munsif, Sholinghur

+1cc to Mr.Jermiah, Advocate SR.No.89498

+1cc to Mr.A.S.Kailasam, Advocate SR.No.88863

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NMI (CO)
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