

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

S.A.No.1431 of 1999
and
C.M.P.No.15381 of 1999

1. Mohamed Haneefa
2. Jagabar Nachiar
3. Jubaitha Begam
4. Noorul John
5. Ahamed Nachair
6. Mohamed Elias

... Appellants/Plaintiffs 3 - 7
& Defendant 6

Vs.

1. Manikkam (died)
2. Santhanam (died)
3. Arumugham
4. Padma
5. Mohamed Sulaiman
6. Kannan
7. Mrs.M.Kalaichelvi
8. Mr.M.Balu
9. Mrs.S.Senthamarai
- 10.Mr.Ratinavel
- 11.Ms.Kanimozhi

(Respondents 7 and 8 brought on record as Legal representatives of the deceased first respondent and Respondents 9 to 11 brought on record as Legal representatives of the deceased second respondent--
(both vide Court Order dated 12.06.2017 in C.M.P.Nos.7469 to 7474 of 2017 in S.A.No1431 of 1999)

... Respondents/Defendants 3,
4, 5, 9/2nd Plaintiff and 7th Defendant

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 12.04.1999 in A.S.No.39 of 1997 and Cross Appeal in A.S.No.39 of 1997 on the file of the Additional District Court, Nagapattinam, against the judgment and decree dated 18.09.1996 in O.S.No.154 of 1990 on the file of the District Munsif Court, Nagapattinam.

For Appellants : Mr.Srinath Sridevan

For Respondents : Appeal dismissed against
RR 4 and 6
Vide Court Order dated 07.12.2009

Mr.V.Raghupathi for RR-2 and 3
No appearance for RR-5
(served with notice)

JUDGMENT

The Second Appeal arises out of the judgment and decree in A.S.No.39 of 1997 on the file of the lower appellate Court, reversing the judgment and decree made in O.S.No.154 of 1990 on the file of the trial Court.

2. The learned counsel for the appellants has raised the following substantial questions of law in the Memorandum of Grounds of Second Appeal:

(i) Whether the lower appellate Court is right in dismissing the suit on the ground that the plaintiffs have not established their title and the suit property was only a Natham Poramboke ?

(ii) Whether the admission made by the defendants that they were tenants under the appellants and handed over the possession, will not show that the appellants were the owners of the property ? and

(iii) When the case of the defendants itself is based upon adverse possession, whether the appellate Court was right in not giving any finding to that effect stating that the plaintiffs have not established their title ?

3. The plaintiffs are the appellants herein. The plaintiffs have filed the suit for eviction on the basis of the tenancy between the plaintiffs and three independent tenants. The plaintiffs claimed their right on the basis of Ex.A-3 partition deed, dated 10.12.1967 and that there was a lease deed executed for a period of one year in favour of the first defendant from 09.07.1982, vide Ex.A-4 and that all the house-sites were situated in S.No.191/1B of an extent of 0.10 acres and that the subject matter of the property is in D.Nos.4/68-A, 4/69 and 4/70. The defendants contended about the adverse possession with regard to the property in D.No.4/69. The trial Court accepted the evidence and granted judgment and decree with regard to the property by dismissing the suit in respect of D.No.4/69 and

insofar as D.Nos.4/68-A and 4/70 are concerned, the trial Court decreed the suit. The unsuccessful defendants filed First Appeal before the District Court, Nagapattinam and the appellants herein have preferred Cross Objection insofar as the judgment and decree with regard to D.No.4/69 that has gone against them. The lower appellate Court, taking note of Ex-B.6--'A' Register, came to the conclusion that the suit property is a Natham Poramboke land and that Exs.B-13 to B-16 had been proved in respect of D.No.4/70, while concurring with the judgment and decree of the trial Court insofar as the adverse possession is concerned, and reversed the judgment and decree of the trial Court insofar as D.Nos.4/68-A and 4/70 are concerned. The entire suit relief has gone against the appellants/plaintiffs.

4. Admittedly, the finding insofar as D.No.4/69 is concerned, it is a concurrent finding and that the lower appellate Court, while taking note of the exhibits mentioned supra, came to the conclusion that the appellants/plaintiffs are not entitled to the relief sought for, since the relief sought for in the suit is only with regard to the eviction and vacant possession and damages.

5. I find that there is no error apparent on the face of the record to interfere with the judgment and decree of the lower appellate Court that had confirmed the judgment and decree of the trial Court insofar as D.No.4/69 is concerned and reversed the finding of the trial Court insofar as D.Nos.4/68-A and 4/70 are concerned. This Court finds no perversity in the said findings of the lower appellate Court.

6. No question of law, much less substantial question of law is involved in the Second Appeal and hence, this Court is not inclined to grant the relief sought for in this Second Appeal, which is accordingly dismissed, confirming the judgment and decree of the lower appellate Court. However, the dismissal of the Second Appeal is not a bar for the appellants/plaintiffs to question the title of the property, if they are otherwise entitled to, in the manner known to law. No costs. C.M.P. is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cs

To

1.The Additional District Judge,
Nagapattinam.

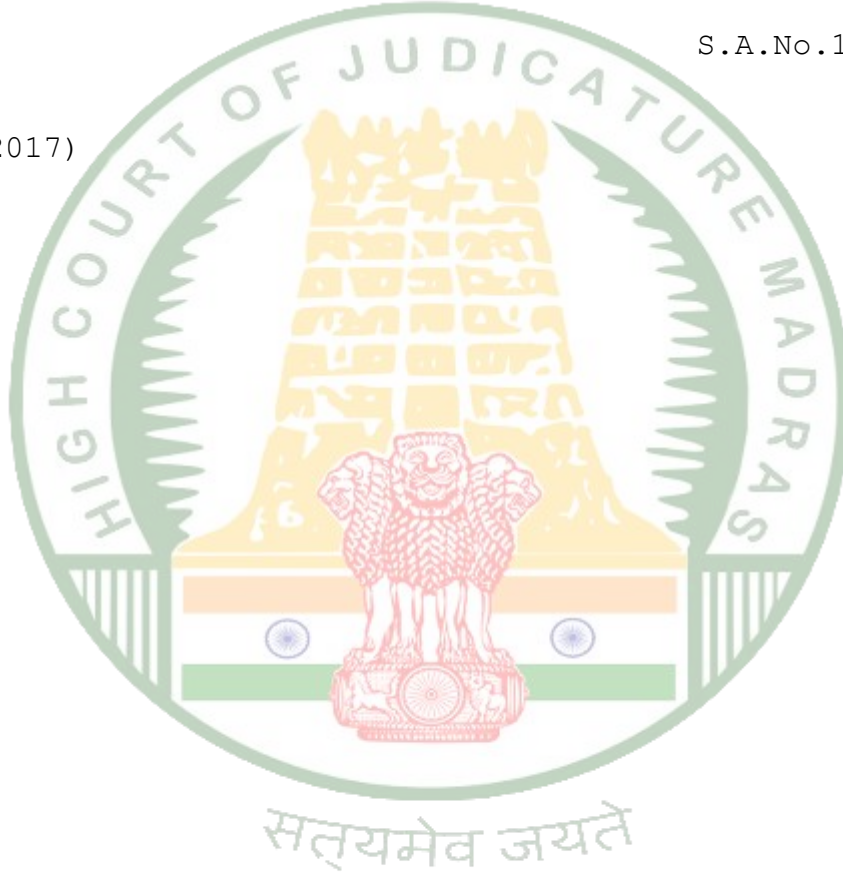
2.The District Munsif,
Nagapattinam.

+lcc to Mr.Srinath Sridevan, Advocate, S.R.No.42168

+lcc to Mr.V.Raghupathi, Advocate, S.R.No.42339

S.A.No.1431 of 1999

GJ(CO)
CA(11/07/2017)



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