

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

S.A.No.1641 of 2000

1.Panchavarnam
2.Vedavalli

... Appellants (Defendants)

Vs.

Ramakrishna High School,
Kodandapuram, rep. by its
Secretary and Correspondent,
Venkataparthasarathy,
Alangudi Village,
Sirkali Taluk and Munsif.

... Respondent (Plaintiff)

Second Appeal filed under Section 100 of the Code of Civil Procedure as against the judgment and decree dated 16.08.1999 in A.S.No.29 of 1999 and Cross Appeal, on the file of the Principal Sub-Judge, Mayiladuthurai, against the judgment and decree dated 28.01.1999 in O.S.No.186 of 1990 on the file of the District Munsif Court, Sirkali.

For Appellants : Mr.S.Sounthar
For Respondent : Mr.S.Sridhar

JUDGMENT

It is represented by the learned counsel for the appellants that the first appellant is no more and that one of the legal representatives of the deceased first appellant is already on record as second appellant, apart from two other legal representatives who have to be brought on record and he has filed a memo, dated 18.04.2017 before the Registry to record the second appellant herein as the legal representative of the deceased first appellant. Even though it has been stated that there are other legal representatives who have to be brought on record, since the respondent's counsel could not be traced, the learned counsel for the appellants could not serve a copy of the application seeking impleadment of the other legal representatives of the deceased first appellant on record.

2. The Second Appeal was admitted on 19.10.2000 on the following substantial questions of law:

"1. Whether the respondent can claim right over the suit property which is a natham fasli land

in possession of appellant in the absence of evidence to show that his right was recognised by the Government ?

2. Whether the appellant is deemed to be owner of the suit property in view of his possession over the suit natham joint property?"

3. Admittedly, the Second Appeal has been preferred against the finding with regard to adverse possession against the appellants, though the trial Court dismissed the suit, which was confirmed by the first appellate Court. The appellants are the defendants in the suit. It is contended that the appellants were in possession from 1973. According to the appellants, going by the findings of the Courts below, the appellants are entitled to the possession of the suit property. It is further contended that the respondent/plaintiff has failed to prove the title and that there is no evidence to prove the title based on Ex.A-1, which is only a self-serving document. It is further contended that the suit property was put up by the appellants and based on the principle of acquiescence and estoppel, the Courts below dismissed the suit and that even though there is a patta in favour of the plaintiff, the same will not confer any title on the plaintiff.

4. On a cursory glance of the judgments of the Courts below, it is seen that based on oral and documentary evidence, the trial Court has rendered a finding and the finding regarding adverse possession alone is sought to be challenged in this Second Appeal. This Court is of the view that no appeal would lie against such finding relating to adverse possession and that one of the legal heirs is also representing the estate of the deceased first appellant and even though the other legal heirs will have to be brought on record, it is suffice to dispose of the appeal based on one of the legal heirs of the deceased first appellant in the second appeal, i.e. the second appellant who is representing the estate of the deceased first appellant.

5. Therefore, without going into the merits of above said contentions of the appellants, this Court dismisses the Second Appeal, by answering the questions of law against the appellants, coupled with the fact that no appeal would lie against the finding regarding adverse possession against the appellants. No Costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

cs/sts

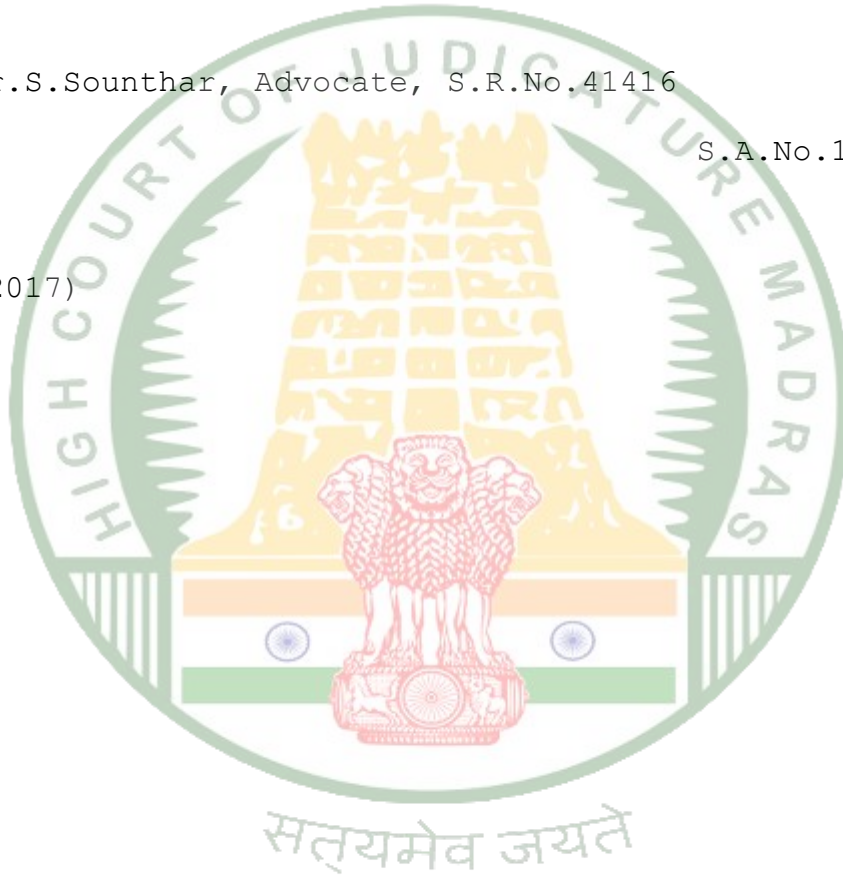
To

1. The Principal Subordinate Judge,
Mayiladuthurai.
2. The District Munsif,
Sirkali.
3. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.S.Sounthar, Advocate, S.R.No.41416

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SV(CO)
CA(14/07/2017)



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