

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2017

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

S.A.No.346 of 2000
and
C.M.P.No.2910 of 2000

1. Gopal (Died)
2. Dhanapal
3. Gnanaprakasam
4. Dhanapal
5. Kanniappan
6. Kasthuri
7. Viswanathan
8. Alamelu
9. Chitra
10. Vimala
11. Anjalai

.. Appellants/Plaintiffs

(Appellants 6 to 11 are brought on record as LRs of the deceased first appellant vide order of this Court dated 29.01.2009 made in C.M.P.Nos.13 to 15 of 2009 in S.A.No.346 of 2000

.. Vs ..

1. Eswari
2. Venkatesan
3. Geetha
4. Ramanathan
5. Vellu
6. K.M.Munuswamy
7. Thanigaimani
8. Ganapathy Naicker
9. Ganesan

.. Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of CPC, against the decree and judgment of the Appellate Court dated 30.08.1999 made in A.S.No.94 of 1997 on the file of the Principal Sub Court, Chengalputtu filed against the judgment and decree dated 19.11.1997 made in O.S.No.169 of 1996 on the file of the District Munsif-cum-Judicial Magistrate, Thirukalukundram.

For Appellants : M/s.C.R.Rukmani
For Respondents: Mr.V.Raghavachari

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JUDGMENT

The plaintiffs, who are in possession at least at the time of filing the suit, filed a suit for permanent injunction restraining the respondents/defendants from interfering with their respective possession.

2. The suit property is an Anadheenam poramboke as admitted by the parties, evidenced by the earlier judgment and decree came into being at the instance of the respondents. The Trial Court finding the possession in favour of the plaintiffs decreed the suit. The Lower Appellate Court reversed it on the premise that such a possession being a recent one, discretionary relief of injunction is not required to be granted. Challenging the same, the present Second Appeal is filed.

3. At the time of admission, the following substantial questions of law were framed:-

"1. Whether the findings of the appellate Court which is mainly based on the issues that have been already decided by civil and other Courts are not erroneous?

2. Whether the appellate Court is right in discussing the issue that has been already decided by the Settlement authorities and which has become final and binding on the parties thereto?

3. Whether appellate Court is justified in ignoring the principle of res judicata?

4. Whether the finding of the appellate Court which is not based upon proper appreciation of legal evidence, oral and documentary, is correct?"

4. Learned counsel appearing for the appellants submits that once possession is found in favour of the appellants by not only the Trial Court but also the Lower Appellate Court, an order of injunction would follow. This coupled with the fact that the suit property is Anadheenam poramboke, the decree ought to have been granted.

5. Learned counsel appearing for the respondents submits that the possession was very recent to the filing of the suit and there were materials to show that the defendants were in possession earlier. Hence, the Lower Appellate Court rightly exercised its discretionary power. Hence, no interference is required.

6. Admittedly, the suit property is an Anadheenam poramboke. The contesting defendants have filed the suit earlier which was negatived upto the Court. The present suit

has been filed without making the Revenue Authorities as party defendants. While the plaintiffs can claim the relief against the defendants, declining such a relief will not entitle to the defendants to get possession as admittedly, the suit property is an Anadheenam poramboke. Accordingly, while dismissing the Second Appeal, as this Court does not find any substantial question of law, it is hereby clarified that it is open to the parties to approach the Revenue Authorities for appropriate orders.

7. Learned counsel appearing for the appellants submits that the appellants have already approached the Revenue Authorities. If that is the case, the concerned Revenue Authorities, while deciding the issuance of patta, will have to hear not only the appellants but also the defendants as well. While doing so, the Revenue Authorities shall decide the issuance of patta on its own merits without being influenced by any of the observations made in this proceedings.

8. With the above said observation, the Second Appeal stands dismissed. Consequently, the connected miscellaneous petition is also dismissed. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1. The Principal Sub Court,
Chengalputtu.
2. The District Munsif-cum-Judicial Magistrate,
Thirukalukundram.
- 3.The Section Officer,
V.R.Section,
High Court,Chennai.

+1 cc to M/s.C.R.Rukmani,advocate,sr.9276

+1 cc to Mr.V.Raghavachari,advocate,sr.9400

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