

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.285 of 2015
and
M.P.No.1 of 2015

1.G.Arumugam
2.P.Perumal

...Appellants/Plaintiffs

Vs

1.K.R.Subramanian
2.K.R.Durai Venkataraja
3.K.R.Ramakrishna Raja

...Respondents/Defendants

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 12.09.2014 passed in A.S.No.483 of 2010 on the file of the XVII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 06.01.2009 made in O.S.No.2044 of 2000 on the file of the XIII Assistant Judge, City Civil Court, Chennai.

For Appellants ... Mr.K.P.Chandrasekaran

For Respondents .. Mr.V.Prabhakaran

JUDGMENT

The first plaintiff, who filed a suit for injunction and the second plaintiff, who was impleaded subsequently, are the appellants before this Court and they have filed the present second appeal, challenging the concurrent finding rendered by the Courts below.

2.At the time of admission, the following substantial questions of law have been framed:

(a)Whether the Courts below erred in holding that the present suit of the appellants is barred by the provisions of Order 9 Rule 9 of Civil Procedure Code, while the admitted facts remain that the earlier suit

for bare injunction against the predecessor in title was dismissed for default without reaching the stage of trial and that the present suit arise out of fresh cause of action as against the disturbance caused by different entities?

(b)Whether the Courts below having observed that the principle of res judicata does not apply to the case on hand erroneously concluded that prohibition of filing fresh suit under Order 9 Rule 9 of Civil Procedure Code could be applied to the case on hand?

3.It is the specific case of the plaintiffs that the suit property is the Government poramboke land situated in Survey No.89/4. As the defendants are interfering with the possession and enjoyment, the suit has been laid. It is the case of the defendants that the suit property situated in New T.S.No.46, which is corresponding to Old Survey No.89/4, belongs to the defendants absolutely. Learned Advocate Commissioner inspected the suit property along with the Taluk Surveyor. He found that the suit property is actually situated in Survey No.45 and therefore, it is not in Old Survey No.89/4, which is corresponding to New T.S.No.46. Based upon the documents filed by the defendants, a factual finding has been given to the effect that Survey No.46 corresponding to Old Survey No.89/4 belongs to the defendants absolutely.

4.A counter claim has also been laid on the premise that the plaintiffs have encroached upon the land of the defendants. The Courts below found various inconsistencies in the case of the plaintiffs. While the second plaintiff claims that the suit property belongs to the Tamil Nadu Slum Clearance Board, a contra statement has been made that it is a Government poramboke land. A contention has been taken that the second plaintiff has sold it in favour of the first plaintiff and thus, the second plaintiff is not in possession. There is absolutely no material to substantiate the same. Accordingly, the trial Court declined to grant the relief in favour of the plaintiffs.

5.The lower appellate Court inturn concurred with the findings of the trial Court by dismissing the appeal. A finding is given to the effect that the appellants/plaintiffs have not proved the factum of the suit property being any poramboke land. Unfortunately, neither the Tamil Nadu Slum Clearance Board nor the Revenue authorities were made as parties.

6.A factual finding has also been given on the nature of encroachment with respect to the protruding portion into the

land of the defendants. The said finding being one of fact does not warrant interference.

7.In such view of the matter, this Court does not find any substantial question of law, warranting interference. It is made clear that it is well open to the plaintiffs to work out their remedy in the manner known to law on the premise that the house situated in Survey No.46 belonging to the Government is sought to be interfered by the defendants.

8.In the result, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The XVII Additional Judge,
City Civil Court, Chennai.
2. The XIII Assistant Judge,
City Civil Court, Chennai.

+lcc to Mr.Prabakaran, Advocate, S.R.No.3643
+lcc to Mr.Chandrasekaran, Advocate, S.R.No.4115

VD(CO)
RS(16/02/2017)

S.A.No.285 of 2015

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