

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2017

Coram

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

Second Appeal No.562 of 2015

and

M.P.No.1 of 2015

1.Malathi @ Mala

2.N.Kanagaraj

... Appellants/Appellants/Plaintiffs

Vs

1.Velusamy

2.Marammal

3.Veerappan @ Selvan

... Respondents/Respondents/Defendants

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 28.03.2014 passed in A.S.No.27 of 2013 on the file of the Subordinate Judge, Sathyamangalam, confirming the judgment and decree dated 11.09.2012 passed in O.S.No.18 of 2009 on the file of the District Munsif, Sathyamangalam.

For Appellants ... Mr.MA.P.Thangavel

For Respondents ... Mr.S.Parthasarathy

JUDGMENT

The second appeal is directed against the judgment and decree dated 28.03.2014 passed in A.S.No.27 of 2013 on the file of the Subordinate Judge, Sathyamangalam, confirming the judgment and decree dated 11.09.2012 passed in O.S.No.18 of 2009 on the file of the District Munsif, Sathyamangalam.

2.The plaintiffs in the suit filed for permanent injunction are the appellants herein. It is the case of the plaintiffs that the suit property is situated in Door No.1/94 A1 whereas it is the case of the defendants/respondents, it is situated in Survey No.94/67. The trial Court dismissed the suit on the premise that the plaintiffs have not established that the suit property is situated in Door No.1/94 A1. Incidentally, it was held that under Ex.B2, the first plaintiff has been given a separate property by the Government. The second plaintiff has

deposed that he has got two acres of land of his own. P.W.1 has further stated that he has left the village 10 years ago. P.W.1 is the second plaintiff and also the husband of the first plaintiff. Thus the trial Court has held that when the second plaintiff is not in the village in which the suit property is situated, it is not possible for the first plaintiff to reside therein. The documents relied upon by the appellants/plaintiffs were rejected, being not connected to the suit property.

3.The lower appellate Court also concurred with the reasoning of the trial Court. It was further held that the documents filed by the plaintiffs are contradictory to each other with respect to the door number of the thatched hut said to have been in the occupation of the plaintiffs. The plaintiffs have not furnished the survey number and sub division of the suit property. Accordingly, the judgment and decree rendered by the trial Court was confirmed. Aggrieved by the same, the plaintiffs are before this Court with the present second appeal, by raising the following substantial questions of law:

(i)Whether the Courts below are right in dismissing the suit simpliciter for protecting possession after the possession of the appellants had been proved with sufficient documentary evidence?

(ii)Whether the Courts below are right in dismissing the suit, when the defendants admitted the possession of the plaintiffs in the suit property, which is against Section 58 of the Indian Evidence Act, 1872?

(iii)Whether the Courts below are right in disbelieving the documents issued by the revenue authorities without any contra evidence or rebuttal, which goes against the presumption under Section 114 of the Indian Evidence Act, 1872?

(iv)Whether the Courts below are right in dismissing the suit without referring the pleadings with regard to suit property classified as Natham Poramboke by the second plaintiff is in enjoyment and possession of the suit property ever since 1990?

4.Learned counsel appearing for the appellants/plaintiffs submits that there is an admission with respect to the possession of the appellants/plaintiffs in the evidence of the respondents/defendants. Though the respondents/defendants have contended that the appellants/plaintiffs have been given permissive possession, as the said factum is accepted, the Court below ought to have decreed the suit as prayed for.

5.Learned counsel appearing for the respondents/defendants submits that the appellants/plaintiffs have not proved the settled possession. The documents relied upon by the appellants/plaintiffs have been rejected by the Courts below. Thus the appellants/plaintiffs are not in enjoyment and possession from the year 1988 onwards. There is a contradiction between the documents produced by the appellants/plaintiffs. Thus no interference is required.

6.In the evidence, the respondents/defendants have stated that the appellants/plaintiffs have been given permission to tie their cattle in the vacant site for a period of two years. Therefore, based upon the said statement alone, decree cannot be granted since it is for the appellants/plaintiffs to prove and establish their case. Ex.B2, which is a patta granted in favour of the first plaintiff by the Government is not in dispute. Even the evidence of P.W.1 is to the effect that he has not been residing in the village for 10 years. There are material contradictions between the documents produced by the appellants/plaintiffs apart from the report of the Advocate Commissioner. Thus the appellants/plaintiffs have not proved that they have been in possession and enjoyment from the year 1988 onwards.

7.In such view of the matter, this Court is of the view that neither any substantial question of law nor any question of law is involved, warranting interference under Section 100 C.P.C. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
सत्यमेव जयते

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1.The Subordinate Judge,
Sathyamangalam.

2.The District Munsif,
Sathyamangalam.

Copy to

The Record Clerk,
VR Section,
High Court,
Madras.

+1cc to M/S.Ma.P.Thangavel, Advocate Sr.4685

+1cc to Mr.S.Parthasarathy, Advocate Sr.4396

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