

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Second Appeal No.876 of 2015
and
M.P.No.1 of 2015

1. Kannaiyan
2. Susindran

... Appellants/Plaintiffs

vs.

Lakshmanan

...Respondent/Defendant

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 02.02.2015 passed in A.S.No.15 of 2014 on the file of the Principal Sub-Judge, Mayiladuturai, reversing the Judgment and decree dated 29.01.2014 passed in O.S.No.227 of 2010 on the file of the Principal District Munsif, Mayiladuturai.

For Appellant : Mr.N.A.Nissar Ahmed

For Respondent : Mr.A.Muthukumar

J U D G M E N T

The plaintiffs who have lost before the lower Appellate Court are the appellants herein.

2.1 The suit in O.S.No.227 of 2010 has been laid by the plaintiffs for permanent injunction before the Principal District Munsif, Mayiladuthurai, on the premise that they have been in possession and enjoyment for quite a number of years. According to the plaintiffs, the suit property is the ancestral property and a joint patta also stands in the name of the parties viz., the plaintiffs on the one hand and the defendant on the other hand. The Court below decreed the suit by Judgment and decree dated 29.01.2014 on the ground that the plaintiffs are in possession and enjoyment of the suit property.

2.2 Aggrieved over the said Judgment and decree of the trial Court, the defendant preferred an appeal before the Principal Sub Court, Mayilathurai in A.S.No.15 of 2014. The lower Appellate Court, by Judgment and decree dated 02.02.2015, reversed the Judgment and decree of the Court below on the ground that there was a settlement between the parties, pursuant to which, the plaintiffs have vacated the suit property and put up construction elsewhere. Reliance has been placed on the report of the learned Commissioner in respect of the same. It is also to be noted that it is the case of the defendant that the plaintiffs were given permissive possession earlier and the suit property belongs to him, based upon a registered Will executed in the year 1950 by his grand mother. Aggrieved over the said Judgment and decree of the lower Appellate Authority, the present Second Appeal has been filed by the appellants/plaintiffs.

3. This Court, by order dated 06.10.2015, has framed the following substantial questions of law, while admitting the Second Appeal:-

- a) Whether the judgment of Lower Appellate Court is liable to be set aside in it's dismissing the suit for injunction when plaintiff proved his established possession over suit property?
- b) Whether the Judgment of Lower Appellate Court is vitiated by non-consideration of material evidence on record in it's ignoring the consistent admissions of DW1 to DW4 about long possession of Appellant/Plaintiff".

4. The learned counsel appearing for the appellants submits that in view of the evidence of P.Ws. 1 to 4, admission being the best form of evidence, the relief sought for in the suit ought to have been granted coupled with the fact that the trial Court has held that the plaintiffs are in possession of the suit property.

5. On the other hand, the learned counsel appearing for the respondent submits that the plaintiffs having not come with clean hands coupled with the fact that they have put up construction elsewhere, no interference is required.

6. Further, according to the learned counsel for the defendant, the defendant has complied with his part in pursuant to the Panchayat held by giving his property to the plaintiffs, over which they have put up construction. The evidence of

P.Ws.1 to 4 has been seen in the context in which it has been let in. The evidence will have to be seen to the extent that plaintiffs have locked the premises over which he was in possession earlier. This has been noted by the learned Commissioner and therefore, no interference is required.

7. Heard the learned counsel on either side and perused the materials available on record.

8. There is a serious cloud over the title. Therefore, this Court is of the view that the plaintiffs can only file a comprehensive suit for declaration, if they wish to challenge title of the defendant. Admittedly, there is a registered Will said to have been executed by the grand mother of the defendant in the year 1950. That Will has to be proved by the beneficiary. The registration will certainly attract the presumption under Section 90 of the Indian Evidence Act. Though such a presumption will not be extended to the contents and compliance of Section 68 of the Indian Evidence Act, prima-facie, it can be used for due execution.

9. It is the specific case of the defendant that the plaintiffs have been given only permissive occupation. The plaintiffs have not denied the factum of settlement arrived at between the parties, though before the Police Station. Hence, this Court does not find any perversity in the finding of the lower Appellate Court in refusing to grant a decree for injunction. Accordingly, the Second appeal stands dismissed, giving liberty to the plaintiffs to file a comprehensive suit for declaration, if they are so advised.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

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Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sub-Judge,
Mayiladuturai.

2. The Principal District Munsif,
Mayiladuturai.

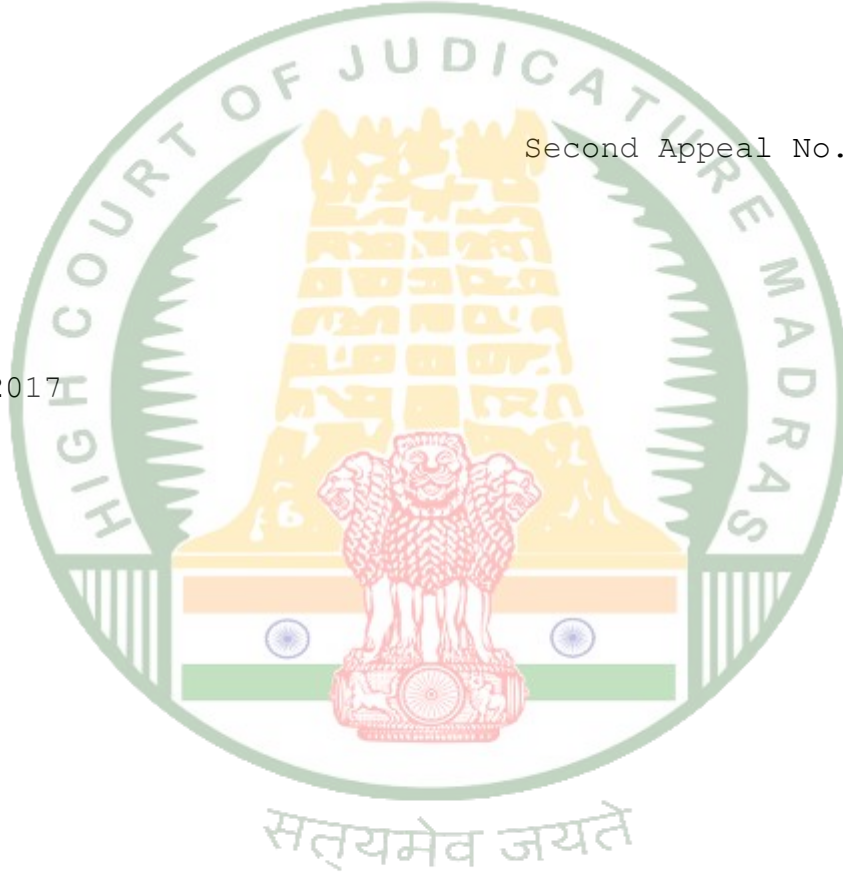
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The Section Officer,
VR Section,
High Court, Madras.

+lcc to M/S.N.A.Nissar Ahamed, Advocate sr.2398
+lcc to M/S.A.Muthukumar, Advocate sr.2753

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