

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 04.01.2017
PRONOUNCED ON:
CORAM :
THE HONOURABLE MR.JUSTICE T.RAVINDRAN
S.A.No.686 of 2011
&
M.P.No.1 of 2011

Ayyasamy

... Appellant/Defendant

Vs.

1.Gopal
2.C.Raji
3.Periasamy

... Respondents/Plaintiffs

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 11.04.2011 passed in A.S.No.27 of 2009 on the file of the Subordinate Court, Harur, confirming the judgment and decree dated 21.02.2003 passed in O.S.No.28 of 1998 on the file of the District Munsif Court, Harur.

For Appellant : Mr.P.Valliappan
For Respondents : Ms.R.Poornima

J U D G M E N T

Challenge in this second appeal is made by the defendant against the Judgment and decree dated 11.04.2011 passed in A.S.No.27 of 2009 on the file of the Subordinate Court, Harur, confirming the judgment and decree dated 21.02.2003 passed in O.S.No.28 of 1998 on the file of the District Munsif Court, Harur.

2.The second appeal has been admitted and the following substantial questions of law are formulated for consideration.

(a)Whether the courts below are justified in law in not dismissing the present suit on the ground of resjudicata, especially since, the parties had fought over the same property and the matter had been finally decided?

(b)Whether the courts below are correct in law in granting decree for permanent injunction merely on the basis of the plaint averments and in the absence of any oral or documentary evidence?

3.The suit has been laid by the plaintiffs for permanent injunction.

4.The suit property is stated to be Mandaiveli land situated at Mottankurichi village to the east of the property purchased by the defendant in S.No.249/5. Now according to the plaintiffs, the suit property being the Mandaiveli land, it is used by the plaintiffs and the villagers for taking drinking water from the common well and motor, for transport and also used for the public purposes at festival times. Further, according to the plaintiffs inasmuch as the defendant without any authority attempted to put up a construction in the suit property, the same being the Mandaiveli land, the plaintiffs have been necessitated to lay the suit for permanent injunction. The defendant has disputed the case of the plaintiffs and contended that the plaintiffs cannot prevent the defendant from putting up the construction in his land and further according to the defendant, the suit filed by the plaintiffs in O.S.No.55 of 1995 as against the defendant come to be dismissed and therefore, according to the defendant without any cause of action, the suit has been laid by the plaintiffs. Further, according to the defendant, the suit property has not been properly described and if according to the plaintiffs, the suit property belongs to the Government, the Government should have been added as a party to the suit and hence the suit is bad for non joinder of the necessary parties.

5.As regards the contention of the defendant that the suit property has not been properly described, both the courts below have found from the evidence adduced on the side of the defendant that the suit property is only the Mandaiveli land belonging to the Government and the same is situated to the east of the defendant's property situated in S.No.249/5. In this connection, it is found that the defendant examined as DW1 has admitted that Mandaiveli land is situated in Mottankurichi village and the same is situated in S.No.253/9 and the defendant has also deposed that he has no objection to the plaintiffs using the Mandaiveli land situated to the east of his land in S.No.249/5 and also further admitted that the Mandaiveli land is used by the village people for the common purposes and accordingly, it is stated by the defendant that he is also using the Mandaiveli land. Further the Village Administrative Officer, examined as DW2 has also testified that the land situated in S.No.253/9 is the Grama Natham and the same is situated to the east of S.No.249/5, the land situated in S.No.253/9 i.e., the Grama Natham stands in the name of Commissioner, Mottankurichi Panchayat Union. It could therefore seen from the evidence of DW1 & 2 that the suit property Mandaiveli land is situated to the east of the defendant's property in S.No.249/5 and the same is used by the plaintiffs

and the others in the village for various purposes. It is also found that the suit property belongs to the Government. In such circumstances, the plea put forth by the defendant that the suit property has not been properly described and identified, as such, cannot be accepted.

6. The defendant has taken a plea that the plaintiffs having failed to implead the Government as a party to the suit proceedings, the suit should fail for not impleading the necessary party. The suit has been laid by the plaintiffs only for seeking the relief of permanent injunction. It is not the case of the plaintiffs that the Government has caused any obstruction to their use and enjoyment of the suit property. On the other hand, it is their specific case that it is only the defendant, who has attempted to put a construction in the suit property belonging to the Government. Accordingly, the plaintiffs have laid the suit claiming the relief of permanent injunction. In such view of the matter, when it is found that the suit property belongs to the Government and when the enjoyment of the suit property by the plaintiffs and the others is not interfered with or obstructed to by the Government in any manner and according to the plaintiffs it is only the defendant, who is interfering with their possession and enjoyment in respect of the suit property, in such view of the matter, the Government need not be added as a party to the suit proceedings for adjudicating the issues involved in the suit. The plaintiffs have not claimed any title over the suit property as such.

7. The defendant has also taken a plea that inasmuch as the suit laid by the plaintiffs in O.S.No.55 of 1995 against the defendant has been dismissed, the present suit laid by the plaintiffs is hit by the principle of resjudicata. The similar plea is also taken in the appeal that the suit laid by the plaintiffs is hit by the principle of resjudicata, on account of the decree passed in favour of the defendant's vendor in O.S.No.156 of 1993. However, as rightly put forth by the plaintiffs counsel, a perusal of the suit properties involved in O.S.Nos.55 of 1995 and 156 of 1993 would go to disclose that they are not laid pertaining to the present suit property i.e., the Mandaiveli land. O.S.No.55 of 1995 is found to be laid in respect of the common lane between the defendant's property and the plaintiffs property. It is therefore seen the said suit is not connected to the present suit property. Similarly, O.S.No.156 of 1993 is also not in respect of the present suit property i.e., the Mandaiveli land. In such view of the matter, the contention of the defendant's counsel that the courts below have erred in not dismissing the suit laid by the plaintiffs on the principle of resjudicata, as such cannot be countenanced. That apart, the defendant has also not specifically pleaded that in view of the decree passed in

O.S.Nos.55 of 1995 and 156 of 1993, the present suit laid by the plaintiffs is hit by the principle of resjudicata.

8.As rightly found by the courts below based upon the evidence adduced by the defendant, it could be seen that the suit property is only the Mandaiveli land belonging to the Government. No material as such has been placed by the defendant that he has any title over the suit property. On the other hand, as adverted to earlier, the defendant himself has admitted that the Mandaiveli land i.e., the suit property situated to the east of his property is being used by the plaintiffs and the villagers for various purposes ordinarily and also during the festival seasons. It could therefore be seen that the defendant is not entitled to prevent or obstruct the usage of the suit property by the plaintiffs and the others. Now according to the plaintiffs, taking advantage of the location of the suit property situated adjacent to the east of the defendant's property, the defendant took steps to put up the construction and hence the plaintiffs have been necessitated to lay the suit. When it is found that the defendant has no claim or title over the suit property and the same is belonging to the Government, the Mandaiveli land being intended for the public usage, the defendant is not entitled to put up any construction over the same and there by cause obstruction to the enjoyment of the same by the plaintiffs and the others. Therefore, the courts below have rightly found that the plaintiffs had a cause of action to lay the suit and accordingly, granted the relief sought for in favour of the plaintiffs.

9.The defendant's counsel contended that the plaintiffs have not produced any oral or documentary evidence, in support of their case and despite the same, the courts below have erred in upholding the plaintiffs case. No doubt, the plaintiffs have not adduced any documentary evidence to sustain their case. However, when the case of the plaintiffs had been admitted by the defendant himself and also the Village Administrative Officer, DW2, the defendant not showing to be having any title over the suit property, the same being found to be belonging to the Government, it could be seen that non production of documentary evidence on the part of the plaintiffs would not in any manner under mine the plaintiffs case.

10.As rightly putforth by the plaintiffs counsel, the plaintiffs have established their case based on the clear admissions made by the defendant during the course of trial.

11.In the light of the above discussions, the substantial questions of law formulated in this second appeal are answered against the defendant and in favour of the plaintiffs.

12.At the end, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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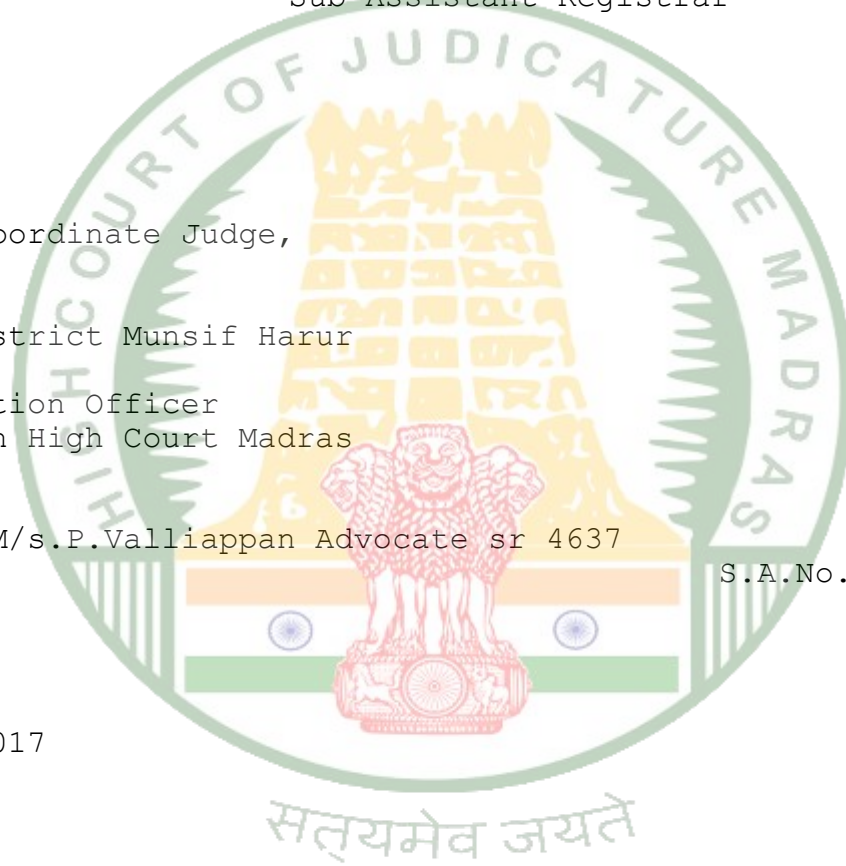
To

1. The Subordinate Judge,
Harur.
2. The District Munsif Harur
- 3.The Section Officer
VR Section High Court Madras

+1 cc to M/s.P.Valliappan Advocate sr 4637

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