

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.02.2017

PRONOUNCED ON : 13.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.756 of 2011

and

M.P.No.1 of 2011

Ganesa Achari

...

Appellant

Vs.

Sakunthala Ammal

...

Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned Additional Subordinate Judge of Chengalpattu, dated 3.11.2010 in A.S.No.54 of 2002 reversing the judgment and decree of the learned District Munsif of Chengalpattu, dated 11.12.2001 in O.S.No.663 of 1993.

For Appellant : Mr.J.Hariharan
for M/s.V.Nicholas

For Respondent : Mr. K.V.Babu

JUDGMENT

In this second appeal, the defendant has impugned the judgment and decree dated 03.11.2010 made in A.S.No.54 of 2002 on the file of the Additional Sub Court, Chengalpattu, reversing the judgment and decree dated 11.12.2001 made in O.S.No.663 of 1993 on the file of

the District Munsif Court, Chengalpattu.

2. The suit has been laid by the plaintiff for declaration, possession, permanent injunction in respect of the "B" schedule property described in the plaint and shown as "CDEF" in the plaint plan and also for damages.

3. It is admitted that the "B" schedule property forms part of the "A" schedule property and further, it is stated that the suit property, as such, is Grama Natham Porambokku. As regards the above character of the suit property, there is no dispute. Now, according to the plaintiff, her husband has been granted assignment in respect of the suit property, which has been marked as Ex.A1. It is the further case of the plaintiff that when her husband had left to Chengalpattu Town due to the family circumstances, permitted the defendant, his close friend, to reside in the "B" schedule property temporarily by putting up hut and accordingly, it is stated that the defendant is in the permissive possession of the "B" schedule property and after the death of the plaintiff's husband, the plaintiff demanded the defendant to hand over the possession of the "B" schedule property and inasmuch as the defendant refuted the request of the plaintiff, the suit has come to be

laid.

4. On the other hand, according to the defendant, he has been in possession and enjoyment of the suit property for more than 25 years in his own right and has denied the plea of permissive possession projected by the plaintiff and also contended that the plaintiff or her husband has never been in possession and enjoyment of the "B" schedule property as such and also not having any right over the same and hence, the suit is liable to be dismissed. The defendant has also taken the plea of adverse possession.

5. As it is admitted on both sides that the suit property as such is Grama Natham Porambokku, it is found that the Government is the owner of the suit property and according to the plaintiff, her husband has been granted assignment in respect of the suit property. The same could be seen from the assignment marked as Ex.A1. The same has come to be issued on 07.11.1978. According to the plaintiff, on her husband proceeding to Chengalpattu due to family circumstances, he has permitted the defendant to reside in the "B" schedule property. To establish that the plaintiff has also been in possession and enjoyment of the suit property, the documents Exs.A2 & 3 have been

placed.

6. As adverted to earlier, the defendant has claimed that he has been in possession and enjoyment of the "B" schedule property in his own right and accordingly, he has put up a construction on the same and by paying house tax and EB Charges, he has been residing in the said property. However, the documents marked as Exs.B1 to 5 on the side of the defendant do not indicate that they pertain to the "B" schedule property. Admittedly, there is no reference in the above said documents that the same relate to the "B" schedule property. The defendant claims to be in possession of the "B" schedule property for more than 25 years. If really, the defendant had been in possession and enjoyment of the "B" schedule property in his own right one way or the other, as rightly contended by the plaintiff's counsel, recognizing his possession, the Government would have granted the assignment in favour of the defendant. However, till date, the defendant has not obtained any assignment or patta in respect of the suit property. In the written statement, the defendant would only make a claim that the Government is likely to grant patta, considering his long possession and enjoyment of the "B" schedule property. However, as to what steps had been taken by the defendant, so far to get patta or assignment in respect of the "B" schedule property,

nothing has been established. Further, during the course of evidence, it is found that the defendant has admitted that he has not been granted patta so far and also not placed any document to show that he had taken any steps with reference to the same. It is also found that even the trial court has held that no document whatsoever has been placed by the defendant to show that he has been in possession and enjoyment of the "B" schedule property on the basis of some right or otherwise. Accordingly, it could be seen that no scrap of paper worth has been placed by the defendant to show that he is holding the "B" schedule property legally.

7. However, on the side of the plaintiff, prima facie the assignment granted in favour of the plaintiff's husband in respect of the suit property has been marked. So, prima facie, there is evidence on the part of the plaintiff that recognizing the possession of the plaintiff's husband, the Government had granted assignment in his favour. The plaintiff has also marked Exs.A2 & 3 to show that she has also been in possession and enjoyment of the suit property. As seen earlier, it is the specific case of the plaintiff that during 1987, when her husband left to Chengalpattu for eking out their livelihood, he had permitted the defendant, his close friend to reside in the "B" schedule

property. There is no document placed by the defendant to show that prior to 1987, he has been in possession and enjoyment of the "B" schedule property. Even thereafter to show that he is in possession and enjoyment of the "B" schedule property, no acceptable document is forthcoming. Therefore, as rightly found by the first appellate Court, considering the evidence of PWs1 to 3 and also the documents marked as Exs.A1 to 6 cumulatively, it is found that the defendant has been in possession and enjoyment of the "B" schedule property only the permission granted by the plaintiff's husband and accordingly, the plaintiff is entitled to obtain the reliefs sought for.

8. The first appellate court has also found that the trial court has erred in non suiting the plaintiff on the basis that the measurements of the suit property vary from the commissioner's report and plan. However, as rightly held by the first appellate court, the commissioner's report and plan could not be basis for declaring the title of a party in respect to the suit property. Further, it is also found that the defendant has miserably failed to establish that he has perfected his title to the suit property by way of adverse possession. The above plea itself would go to show that the defendant has indirectly admitted the title of the plaintiff in respect of the suit

property.

9. In the light of the above discussions, I do not see any reason to interfere with the well considered judgment of the first appellate Court giving acceptable reasons for accepting the plaintiff's case. Therefore, no interference is needed as regards the same.

At the end, no substantial question of law is found to be involved in the second appeal. Accordingly, the second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet: Yes/No
sms

13.02.2017

To

1. The Additional Sub Court, Chengalpattu.
2. The District Munsif Court, Chengalpattu.

T.RAVINDRAN,J.

sms

Pre-delivery Judgment in
S. A.No.756 of 2011
and
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