

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.02.2017

PRONOUNCED ON : 22.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.769 of 2011

and

M.P.No.1 of 2011

Ramasamy

...

Appellant

Vs.

1.Chinnathambi gounder

2.C.Chandran

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 02.07.2009 made in A.S.No.109 of 2008 on the file of the Sub Court, Rasipuram, reversing the judgment and decree dated 29.11.2005 made in O.S.No.85 of 2005 on the file of the District Munsif Court, Rasipuram.

For Appellant

: Mr.N.Manokaran

For Respondents

: Mr.C.Munusamy
for M/s.C & K.Law firm

JUDGMENT

Challenge in this second appeal is made by the plaintiff against the judgment and decree dated 02.07.2009 made in A.S.No.109 of 2008 on the file of the Sub Court, Rasipuram, reversing the judgment and decree dated 29.11.2005 made in O.S.No.85 of 2005 on the file of the District Munsif Court, Rasipuram.

2. The second appeal has been admitted and the following substantial question of law is formulated for consideration in this second appeal;-

" Whether the judgment and decree of the first appellate court in dismissing the suit land by the plaintiff are based upon the perverse findings and conclusions and misdirected against the evidence on record?"

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

4. Admittedly, the suit property is a Government Pombokku Land. As per the evidence adduced by the respective parties, it could be seen that the total extent in the suit survey No.88/1 is 1.09 acres. Now, according to the plaintiff, he is in possession and enjoyment of 50 cents in the suit survey number situated on Northern side. Further, it is also admitted by the plaintiff that the remaining extent in the suit survey number i.e. 59 cents is in the possession and enjoyment of the defendants. Inasmuch as the property belongs to the Government, it could be seen that both parties are claiming only possessory right, as such, over the extent, which is stated to be in their possession and enjoyment.

5. The defendants, in their written statement, have not disputed that the plaintiff is in possession and enjoyment of the suit property. On the other hand, the plea, in the written statement, would only go to show that they have put forth a defence alleging that they are also in possession and enjoyment of a larger extent of the suit property comprised in the suit survey number. Therefore, according to the defendants, the plaintiff is not entitled to obtain the relief sought for in the suit.

6. The trial Court has found that the plaintiff is in possession

and enjoyment of the suit property and for arriving at the above said conclusion, it is found that the trial court has placed reliance upon the documents marked on the side of the plaintiff viz. Exs.A1, 2 and 4. Therefore, it could be seen that the trial Court has, accordingly, found that the plaintiff has established his possession and enjoyment of the suit property and therefore, the defendants are not entitled to disturb his possession and accordingly, granted the relief of permanent injunction sought for by the plaintiff.

7. On appeal by the defendants, the first appellate Court has also found that the suit property, as such, is in the possession and enjoyment of the plaintiff and that the plaintiff is paying necessary charges to the Government for the enjoyment of the suit property. Having found that the plaintiff is in possession and enjoyment of the suit property and also, the remaining extent in the suit survey number is in the possession and enjoyment of the defendants, the first appellate Court still proceeds to hold that inasmuch as the plaintiff has not co related the suit property with that of the FMB sketch marked as Ex.A3 declined the relief sought for by the plaintiff. However, as rightly contended by the counsel for the plaintiff, when acceptable and reliable oral and documentary evidence has been adduced by the plaintiff to hold that he is in possession and

enjoyment of the suit property and when it is not even the case of the defendants that they are also in possession and enjoyment of the suit property and on the other hand, when the defence taken by the defendants is that they are in possession of the particular extent in the suit survey number and when the document filed on behalf of the defendants marked as Exs.B1, 2 and 6 do not point that they relate to the suit property as such, it could be seen that the first appellate Court has erred in dismissing the suit on the basis of the failure of the plaintiff to co relate the suit property with that of Ex.A3 FMB Sketch and therefore, as rightly put forth, the first appellate Court has misdirected itself against the evidence on record and thereby, upon perverse findings, negated the relief sought for by the plaintiff.

8. In the light of the above discussions, it is found that the judgment and decree of the first appellate Court cannot be sustained in law as they are based upon perverse findings and conclusions and also misdirected against the evidence on record. Accordingly, the substantial question of law formulated for consideration in this second appeal is answered in favour of the plaintiff and against the defendants.

In conclusion, the judgment and decree dated 02.07.2009 made

in A.S.No.109 of 2008 on the file of the Sub Court, Rasipuram, are set aside and the judgment and decree dated 29.11.2005 made in O.S.No.85 of 2005 on the file of the District Munsif Court, Rasipuram, are confirmed and accordingly, the second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet: Yes/No
sms

22.02.2017

To

1. The Sub Court, Rasipuram.
2. The District Munsif Court, Rasipuram.

T.RAVINDRAN,J.

sms

Pre-delivery Judgment in
S. A.No.769 of 2011
and
M.P.No.1 of 2011

22.02.2017

<http://www.judis.nic.in>