

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

Coram

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

Second Appeal No.692 of 2016

Chokkalingam

..Appellant/Respondent/
Plaintiff

Vs

Manivannan

..Respondent/Appellant/
Defendent

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 10.07.2015 made in A.S.No.50 of 2014 on the file of the Principal District Judge, Ariyalur, modifying the judgment and decree passed in O.S.No.5 of 2007 dated 29.01.2013 by the District Munsif, Jayankondam.

For Appellant ... Mr.P.Elango

For Respondent ... Mr.S.Parthasarathy

JUDGMENT

The plaintiff is the appellant. Seeking to reverse a portion of the decree of the lower appellate Court qua the mandatory injunction, the present appeal has been filed, by framing the following substantial questions of law:

1.Whether the appellant who had acquired title by prescription is entitled to the relief of mandatory injunction under Section 39 of Specific Relief Act, 1963?

2.Whether the judgment and decree of the first appellate Court was perverse and right in allowing the appeal that the encroachers without having any title over the suit property can be permitted to deprive prescriptive title and possession of the appellant?

3. Whether the first appellate Court is right in not assigning specific reasoning for not accepting the findings of the trial Court?

2. The suit has been laid by the plaintiff for permanent injunction and mandatory injunction. Admittedly, the suit property is a Government property. Based upon the revenue records stated to be evidencing the possession of the plaintiff and seeking to protect it, the suit has been laid with the further averment that the defendant is putting up construction encroaching the possession. The trial Court decreed the suit as prayed for but the lower appellate Court reversed it on the premise that the suit for mandatory injunction can be sought for only by a person having title and therefore, such a prayer cannot be granted, especially in the absence of original owner.

3. Learned counsel appearing for the appellant submits that even as per the report of the Advocate Commissioner, the encroachment appears to be a recent one. Thus the lower appellate Court is wrong in not decreeing the suit as prayed for.

4. Learned counsel appearing for the respondent submits that when the suit property is a Government land, the plaintiff cannot seek a relief as a matter of right.

5. It is a case of one encroacher against another. The fact that the suit property is a Government land is not in dispute. The suit has not been filed for declaration of title. The report of the Advocate Commissioner can at best be a piece of evidence to be considered. Such a report cannot be looked into for the purpose of evidencing possession inter se parties. Therefore, this Court is of the view that there is no error in the judgment and decree granted by the lower appellate Court insofar as the decree sought for qua mandatory injunction is concerned.

6. In such view of the matter, this Court does not find any substantial question of law, warranting interference. Accordingly, the second appeal is dismissed. No costs.

Sd/-
Asst. Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1.The Principal District Judge,
Ariyalur.

2.The District Munsif,
Jayankondam.

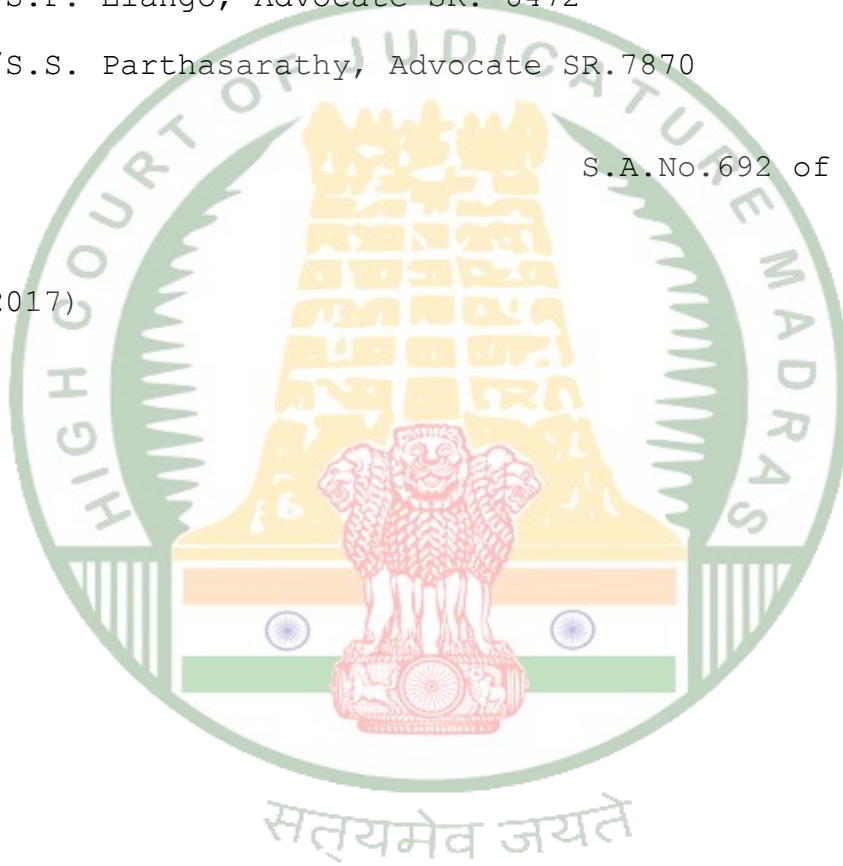
3.The Section Officer, V.R. Section,
High Court, Madras.

+1cc to M/S.P. Elango, Advocate SR. 8472

+1cc to M/S.S. Parthasarathy, Advocate SR.7870

S.A.No.692 of 2016

CP (CO)
VR(27/02/2017)



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