

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2017

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH

Second Appeal No.984 of 2016
and
C.M.P.Nos.20207 and 20208 of 2016

Saroja ... Appellant/Respondent/
Plaintiff

Vs

1.Indirani
2.Mangayarkarasi
3.Sarojini
4.Jaganathan ... Respondents/Appellants/
Defendants

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 09.04.2014 passed in A.S.No.17 of 2013 on the file of the Subordinate Judge, Poonamallee, reversing the judgment and decree dated 31.01.2013 passed in O.S.No.359 of 2008 on the file of the Principal District Munsif, Poonamallee.

For Appellant : Mr.V.Manisekaran

For Respondents : No appearance

JUDGMENT

The unsuccessful plaintiff, who suffered a decree insofar as the C Schedule property is concerned, is the appellant herein. At the time of admission, the following substantial questions of law have been framed:

1. Whether the Court below considered the boundaries of the property prevails over linear measurement over the property situated in two different survey numbers is valid in the eye of law?
2. Whether the principles of possession followed on title applies to the present case, wherein the plaintiff/appellant has been in possession of title of the suit schedule mentioned property?

3. Whether the lower appellate Court was right in holding that the respondents herein have not proved possession quite contrary to the overwhelming evidence available on record?

2. Though the appellant being the third plaintiff represented by the power agent sought the relief insofar as C Schedule property is concerned, the lower appellate Court, while granting the relief insofar as A and B Schedule properties, which are concerned with plaintiffs 1 and 2, was pleased to reverse the judgment and decree of the trial Court on the premise that there is a dispute with respect to the identification of the C Schedule property with reference to Survey No. 605 or 607 as the case may be, the nature of the property - whether the private land or poramboke land and thirdly, the issue pertaining to the possession.

3. Learned counsel appearing for the appellant submits that there is a reference with respect to possession in the parent document of the appellant. This Court is afraid that the said contention alone may not be sufficient. The appellant was represented by the powerholder. The foundation of the appellant's case is the title deed in her favour. Unfortunately, the said title deed has not been produced before the Court. There is no explanation for non-production of the title deed viz., the sale deed in favour of the appellant dated 02.11.1972. Further more, the power agent of the appellant has settled the C Schedule property pursuant to Ex.A9 - power of attorney in favour of his wife and children, who are not before this Court. There is a serious dispute over the concerned survey number. The dispute also extends to the nature of the property - as to whether it is a private land or poramboke land. Thus the lower appellate Court has rightly observed that since a serious cloud is created over the title, a mere suit for permanent injunction, that too, filed through the power agent, without the appellant coming before the Court and deposing, is not maintainable. Hence this Court is of the view that there is no substantial question of law involved, warranting any interference. However, inasmuch as the lower appellate Court has not gone into the merits of the case, it is well open to the appellant or the subsequent purchasers as the case may be to file a comprehensive suit for declaration and permanent injunction by marking the relevant documents including the sale deed dated 02.11.1972 and the subsequent one effected by the power agent of the appellant in favour of his wife and children. As and when such a comprehensive suit is filed, the appellant or anyone claiming through her shall necessarily make the Government also as party defendant as the issue also pertains to the nature of the land.

4. With the above said observation, the second appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

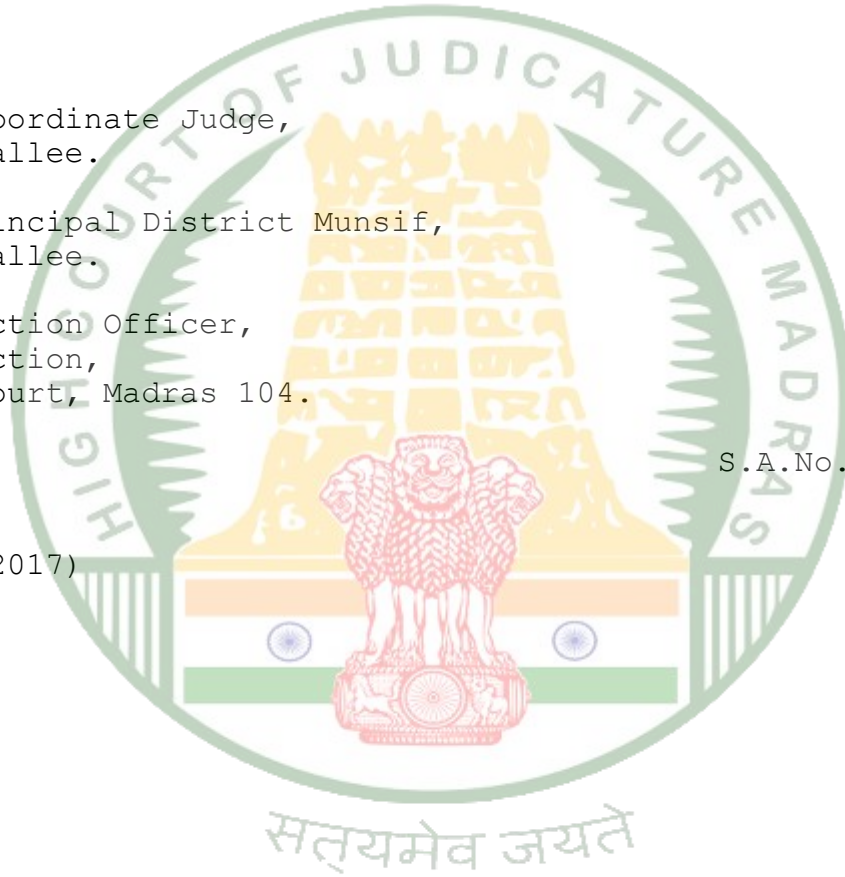
mmi

To

1. The Subordinate Judge,
Poonamallee.
2. The Principal District Munsif,
Poonamallee.
3. The Section Officer,
V.R. Section,
High Court, Madras 104.

S.A.No.984 of 2016

RSK(CO)
CA(09/02/2017)



WEB COPY