

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

Coram

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

Second Appeal No.987 of 2016
and C.M.P.No.20309 of 2016

Vasantha @ Parameswari ...Appellant/Defendant

Vs

Rajamanickam ...Respondent/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 19.09.2016 passed in A.S.No.8 of 2016 on the file of the Additional Sub Court, Mayiladuthurai, Nagapattinam District, confirming the judgment and decree dated 28.01.2016 passed in O.S.No.138 of 2013 on the file of the Additional District Munsif, Mayiladuthurai, Nagapattinam District.

For Appellant : Mr.C.Prakasam

JUDGMENT

The defendant, who lost before the Courts below, is the appellant herein and she filed the present appeal by framing the following substantial questions of law:

(1)Whether the Courts below passed orders in favour of the respondent on the basis of the tax receipts without production of any documentary evidence?

(2)Whether the Courts below can come to conclusion without any title in favour of the respondent and passed decree in favour of the respondent herein?

2.The suit has been laid by the plaintiff based upon the possession supported by Exs.A1 to a12. The trial Court decreed the suit based upon the above said documents and also considering the evidence of the appellant, who accepted the factum of possession. The lower appellate Court has also concurred with the same.

3.Learned counsel appearing for the appellant submits that a blanket decree for injunction has been granted by the trial Court. This Court is afraid that the said contention is not correct. What has been granted is only a decree for injunction. Therefore, the nature of possession and the title to the suit property has never been the subject matter of the suit. Thus the decree granted by the Courts below would not prevent the appellant from filing a comprehensive suit for declaration and possession, if she is so advised.

4.With the above said observation, the second appeal stands dismissed. It is made clear that as and when such a comprehensive suit is filed, the jurisdictional Court will have to decide the suit on its own merits, without being influenced by any one of the findings given by the Courts below with respect to the status of the parties and the title. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Additional Subordinate Judge,
Mayiladuthurai..
2. The Additional District Munsif,
Mayiladuthurai.

+1cc to Mr.Prakasam, Advocate, S.R.No.1568

UG(CO)
RS(07/02/2017)

S.A.No.987 of 2016