



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:27.07.2017

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.172 of 2017

and

C.M.P. (MD) .No.3047 of 2017

The Executive Officer,
Alwarkurichi 1st Grade Town Panchayat,
Alwarkurichi Village,
Ambasamudram Taluk.

... Appellant /
Appellant / Defendant

Vs.

Sivasuryan

... Respondent /
Respondent/Plaintiff

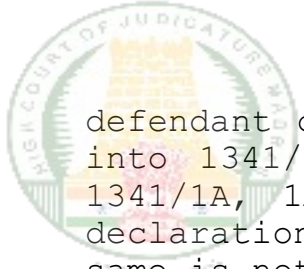
PRAYER: Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 22.07.2015, made in A.S.No.27 of 2014 on the file of the Sub-Court, Ambasamudram, confirming the judgment and decree, dated 26.03.2014, made in O.S.No.93 of 2008 on the file of the Principal District Munsif Court, Ambasamudram.

For appellant ... Mr.Aayiram K.Selvakumar,
For respondent ... Mr.N.GA.Natraj

JUDGMENT

The unsuccessful defendant in a suit for permanent injunction is the appellant. The plaintiff had claimed that the suit property originally belonged to his father by virtue of the sale deed dated 30.08.1974. The Patta for the same was also obtained and the revenue records have been mutated in his name. After the death of the plaintiff's father, the legal heirs have been in possession of the property. The plaintiff's father also had executed a Will in favour of the plaintiff in respect of 0.08 acre in the suit property and other properties. Whiles, the defendant had made an attempt to lay road on the suit property. A suit notice was issued on 30.12.2007, for which a reply was sent by the defendant on 22.05.2008. A surveyor, who had measured the property also, had given a report stating that the property belonged only to the plaintiff. Despite the same, the defendant attempted to lay road on the suit property constraining the plaintiff to file the suit for injunction.

2. According to the defendant, there is no such property as claimed by the plaintiff as it is stated that the suit properties were converted into natham and several persons are residing there and it is for their benefit, the defendant tried to lay road. The suit property is situated in Survey No.1341/1A, whereas the



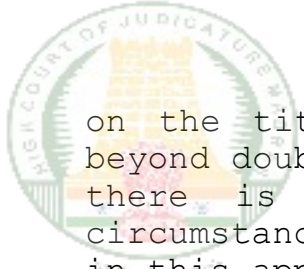
defendant contended that the said survey number had been subdivided into 1341/1A, 1B and 1C and further S.No.1341/1A subdivided into 1341/1A, 1A2 and 1A3. The plaintiff, without filing a suit for declaration of title, has filed the suit for bare injunction and the same is not maintainable.

3. Before the trial Court, on the side of the plaintiff, P.Ws.1 to 3 were examined and Exs.A.1 to P.15 were marked, and on the side of the defendant, DW.1 was examined and Exs.B.1 to B.4 were marked. The Courts below have concurrently held that the plaintiff had established his possession over the suit property. The aggrieved defendant, who is the Alwarkurichi Town Panchayat, has filed the above appeal.

4. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the records carefully.

5. The plaintiff has filed Ex.A1 - Sale Deed standing in the name of his father and Exs.A2 and A3 are the Patta issued in the name of his father. The Property Tax Receipt is also marked by the plaintiff to prove his possession. As per the sale deed, the survey number was 1341/1. In the old patta - Ex.A14, the survey number is shown as 1341/1A which belongs to the plaintiff's father. The said documents were not disputed by the defendant. It is also proved by the plaintiff that he has been in occupation of the suit property even during the life time of his father. Though the defendant had contended that the said survey No.1341/1A was subsequently subdivided and there is no such property as claimed by the plaintiff is in existence, there is no records produced for the subdivision. As stated earlier, the title deed as well as the patta produced by the plaintiff reflects the name of the plaintiff's father. The plaintiff also has produced Ex.A13 which is a survey plan of the year 2008 and the same does not reflect anything about the resurvey. Though the defendant had produced Exs.B3 and B4, the fact that there was a road formed by the defendant / Panchayat has not been proved.

6. Even assuming for a moment that there was a sub division, when the plaintiff has categorically proved his title and possession, the sub division should have been done only after issuing appropriate notice to the plaintiff. The defendant has not produced any evidence to show that there was an enquiry conducted before sub-division by issuing due notice to all the original owners or pattadhars. The claim of the defendant that it has been subdivided for the purpose of converting the lands into natham scheme has also not been substantiated by evidence. In the absence of any evidence that there was a road and that it was occupied by the plaintiff, the case of the defendant cannot be believed. On the other hand, the plaintiff, who has come to the Court seeking an injunction against the defendant not to disturb his possession, has categorically established his case through Exs.A1, A2 and A14 to prove that the land in survey No.1341/1A belonged to him and they are in continuous possession of the same. As there is no cloud cast



on the title of the plaintiff and the possession is established beyond doubt, which has been concurrently found by the Courts below, there is no reason to interfere with the same. In such circumstances, there is no question of law arising for consideration in this appeal.

7. In the result, the second appeal fails and accordingly, the same is dismissed, confirming the judgment and decree passed by the Courts below. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The Suordinate Judge, Ambasamudram.

2.The Principal District Munsif Court, Ambasamudram.

+1cc to Mr.N.Ga.NATRAJ Advocate in SR. NO.68019

GCG

JS/SKN.RSK/SAR.2/11.08.2017/3P-4C

S.A.(MD) No.172 of 2017

27.07.2017