



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12.09.2017

Coram

The HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

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S.A(MD)No.402 of 2017

Palanisamy Bakthar

.. Appellant/Appellant/Plaintiff

Vs.

The Muneeswaraswamy Temple (Private),

By its Trustee,

Arunakiri

.. Respondent/Respondent/Defendant

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 15.02.2016 made in A.S.No.32 of 2015 on the file of the Additional Sub Court, Kumbakonam, confirming the Judgment and Decree, dated 03.12.2014 made in C.F.R.No.8691 of 2014, on the file of the Principal District Munsif Court, Kumbakonam.

For Appellant : Mr.G.Gomathi Sankar

JUDGMENT

The second appeal arises against the Judgment and Decree, dated 15.02.2016 passed in A.S.No.32 of 2015, on the file of the Additional Sub-Court, Kumbakonam, confirming the Judgment and Decree, dated 03.12.2014 passed in C.F.R.No.8691 of 2014, on the file of the Principal District Munsif Court, Kumbakonam.

2.The plaintiff, aggrieved by the rejection of his plaint for a suit for permanent injunction and for recovery of possession, has filed the above Second Appeal.

3.It is the case of the plaintiff that the land belonged to the Government of Tamil Nadu, being a 'channel poramboke', which is under the control of Kumbakonam Municipality. It is stated that the plaintiff has constructed a house in the year 1962 and he has been living there. Later, he removed the temporary structure and again put up a construction. At that point of time, the trustee of the defendant-Temple objected to, stating that the land belonged to the Temple. Accordingly, the plaintiff also had signed a lease agreement. Thereafter, the Temple had filed a suit in O.S.No.456 of 1985 for recovery of possession and obtained a decree, which was appealed against by the plaintiff in A.S.No.68 of 1993 and the said appeal was dismissed and S.A.No.1582 of 1995 is also dismissed by this Court. Pursuant to the same, Execution Petition was filed and delivery was also taken by the defendant/Temple.



4.It is now stated by the plaintiff/appellant that the land did not belong to the Temple and it only belonged to the Government. Therefore, he wanted to take possession of the land by removing the superstructures put up therein. Hence, the suit.

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5.The Courts below had concurrently held that already the previous suit, in which the plaintiff and the defendant were a party, was decided against this plaintiff and confirmed upto this Court. The plaintiff, admittedly, has got no right or title either in the land or in the superstructure. It is the only contention of the plaintiff that the plaintiff earlier believed that the Temple was the owner and it was now known that the Government is the owner, as the said land is a channel poramboke.

6.As the suit property and the parties are substantially the same in the earlier suit also, there is no cause of action for this suit. Hence, the trial Court had rejected the plaint and the learned counsel for the appellant/plaintiff could not demonstrate that there is a cause of action for the suit. No question of law has been made out by the plaintiff for consideration in the Second Appeal. Hence, the Second Appeal fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Additional Sub Judge,
Kumbakonam.
2. The Principal District Munsif,
Kumbakonam.

+1cc to Mr.G.Gomathi Sankar, Advocate Sr.No.78088

PS

VB/MR/KKR/SAR4/04/10/2017/2P/4C

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