



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19.07.2017

Coram

WEB COPY

The HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A(MD)No.122 of 2016

and

C.M.P(MD)Nos.2399 of 2016 & 5883 of 2017

Mary Gracy Gnanselvam

.. Appellant/Appellant/Defendant

Vs.

Antony Benjamin

.. Respondent/Respondent/Plaintiff

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 12.11.2013 made in A.S.No.97 of 2011 on the file of the Principal Sub Court, Nagercoil, confirming the Judgment and Decree, dated 10.12.2010 made in O.S.No.51 of 2000 on the file of the Principal District Munsif Court, Nagercoil.

For Appellant : Mr.G.S.Asok Adhithyan

For Respondent : Mr.C.Godwin

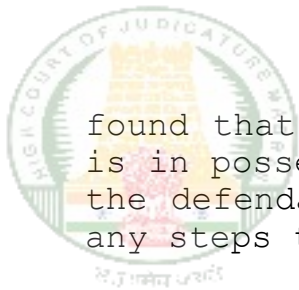
JUDGMENT

The above second appeal arises against the Judgment and Decree, dated 12.11.2013 passed in A.S.No.97 of 2011, on the file of the Principal Sub Court, Nagercoil, confirming the Judgment and Decree, dated 10.12.2010 passed in O.S.No.51 of 2000, on the file of the Principal District Munsif Court, Nagercoil.

2.The defendant, in a suit for bare injunction, who has lost before the Courts below, has filed the above Second Appeal.

3.The plaintiff filed a suit in O.S.No.51 of 2000, on the file of the Principal District Munsif Court, Nagercoil, claiming a right over 2-1/2 cents of land and house bearing Door No.12. The property is claimed by the plaintiff based on a partition deed, which is marked as Ex.A.1. The defendant did not disputed that Door No.12 belonged to the plaintiff. The plaintiff also produced a patta pass book and the property tax receipts.

4.Based on the above evidence, the Courts below have concurrently held that the plaintiff is in possession of the suit property and it has also pointed out that the defendant had admitted the possession of the plaintiff over the suit property. It has also



found that the evidence of D.W.1 clearly reveals that the plaintiff is in possession of the suit property from 1971 onwards. Even though the defendant claims right over the suit property, he has not taken any steps to evict the plaintiff from the suit property.

5. Even on the question of maintainability of a suit for bare injunction, if there is only a cloud cast on the title, the plaintiff has to ask for declaration. Here the suit for permanent injunction is maintainable, as the defendant herself has admitted the possession of the plaintiff. The plaintiff is also entitled to protect his possession by a decree of injunction.

6. As the Courts below have concurrently held that the plaintiff is in possession of the suit property, this Court is not inclined to go into the factual aspects, as there is no question of law arising out of the facts. Hence, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Nagercoil.
2. The Principal District Munsif,
Nagercoil.

+ 1 CC TO Mr.G.S.ASHOK ADHITHYAN, ADVOCATE IN SR No. 66543
+ 1 CC TO Mr.C.GODWIN, ADVOCATE IN SR No. 66350

PS

TE/MR-KKR/SAR-II : 04/08/2017 : 2P/5C

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