



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **M.DURAI SWAMY**

S.A.(MD).No.550 of 2011

1.Paulian
Branch Secretary,
Thingal Nager Dmk party Branch
Thingal Nager, Thalakulam Road,
Thalakulam Village, Kalkulam Taluk,
Kanyakumari District.

2.F.M.Rajarethnam
S/o.Francis
Union Secretary
Kurunthancodu Union Dmk party,
Cekkaravilai, Kurunthencode Village,
Kalkulam Taluk,
Kanyakumari District.

.. Appellants/Appellants/Defendants
Vs.

Kumaraswamy Pillai
S/o.Krishnapillai
Krishna Bhavan
Chettiyarmadam, Neyyoor Post,
Thalakulam Village, Kalkulam Taluk,
Kanyakumari District. .. Respondent/Respondent/Plaintiff

Prayer:-Second Appeal is filed under Section 100 of CPC against the judgment and decree passed in A.S.No.34 of 2008, dated 23.11.2010 by the Subordinate Judge, Padmanabhapuram confirming the judgment and decree passed in O.S.No.59 of 2006, dated 27.04.2007 by the Additional District Munsif Court, Eraniel.

For Appellants :Mr.S.C.Herlod Singh
For Respondent :Mr.N.S.Rama Krishna Dass

JUDGMENT

Challenging the judgment and decree passed in A.S.No.34 of 2008 on the file of Sub Judge, Padmanabhapuram confirming the judgment and decree passed in O.S.No.59 of 2006 on the file of Additional District Munsif, Eraniel, the defendants have filed the above second appeal.



2. Heard Mr.S.C.Herold Singh, learned counsel for the appellants and Mr.N.S.Ramakrishna Dass, learned counsel for the respondent.

3. It is the case of the plaintiff that he is the absolute owner of 2.250 cents lands in Re-survey No.116 at Thalakulam Village and he is in possession and enjoyment of the same and also paying revenue tax to the Panchayat authorities. It is also the case of the plaintiff that he constructed a room in the suit property in the year 1969 and name it as "Anna Library". The room constructed by the plaintiff was also assessed by the Panchayat authorities and door number was also allotted. Since the date of assessment, plaintiff has been paying property tax and electricity service charges. While so, since the defendants attempted to trespass into the suit property, the plaintiff lodged a police complaint on 25.10.2005. In these circumstances, the plaintiff filed the suit.

4. The defendants filed their written statement disputing the averments stated in the plaint. Though the defendants have filed their written statement, they have neither entered the box to let in evidence nor produced any document to support their case.

5. Taking into consideration the oral and documentary evidences let in by the plaintiff, the Trial Court decreed the suit, which was also confirmed by the lower appellate Court. Against the concurrent finding of the Courts below, the defendants have filed the above second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law arose for consideration:-

"(i) Whether the Courts below are correct in law in upholding the case of the plaintiff with regard to his claim of title in respect of the suit property though Ex.A.1 Patta passbook stands in the name of "Chettiamadam Anna Memorial Library Secretary"?

(ii) Whether the suit for injunction is maintainable without any prayer for declaration in view of the stand taken by the defendants in the written statement? "

7. It is not in dispute that the plaintiff started the library in the year 1969 and named as 'Anna Library'. Ex.A1 patta pass book stands in the name of 'Chettiarmadam Anna Memorial Library Secretary. The plaintiff also produced the land tax receipts, letter written by the Panchayat, electricity bills, police complaint and encumbrance certificate to support the case that he is running the library for long number of years.

8. The learned counsel appearing for the appellants fairly submitted that the defendants used to visit the library for reading books and magazines. Since the library is not run by the Government for the Public, the defendants cannot trespass and cause inconvenience to the plaintiff. When the plaintiff has been running the library for long number of years, the defendants have no right



to trespass the suit property. That apart, except the written statement, the defendants have not let in evidence to prove their case.

9. Taking note of all these aspects, the Courts below have rightly decreed the suit. In these circumstances, I do not find any ground much less any substantial question of law to interfere with the findings of the Courts below. The second appeal is liable to be dismissed. Accordingly, the second appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

- 1.The Subordinate Judge, Padmanabhapuram.
- 2.The Additional District Munsif, Eraniel.
- 3.The Section Officer, VR Records,

Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.N.S.RAMADRISHNA DASS Advocate in SR. No.5818

JIKR

JS/JM/09.02.2017/3P-5C

Judgment made in
S.A.(MD).No.550 of 2011
02.02.2017