

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.Nos.207 and 208 of 2018
and C.M.P.Nos.5375 and 5376 of 2018

Manickam Chettiyar ... Appellant in both S.As/Appellant/
Defendant/Plaintiff

vs.

1. Andal
2. Arulanandan
3. Latha
4. Prakash

... Respondents in S.A.No.207 of 2018/
Respondents/Plaintiff

1. Boolaga Reddiar
2. Andal
3. Arulanandan
4. Latha
5. Prakash

... Respondents in S.A.No.208 of 2018/
Respondents/Defendants

Prayer in both S.As: These second appeal is filed under Section 100 of C.P.C against the decree and judgment passed in A.S.No.4 of 2015 and A.S.No.5 of 2015 respectively on the file of the Subordinate Judge, Maduranthagam dated 5.10.2017 confirming the decree and judgment passed in O.S.No.401 of 2007 and O.S.No.134 of 2009 respectively dated 09.01.2015 passed by the District Munsif Court, Maduranthagam.

For Appellant : Mr.V.Manisekaran
in both S.As

C O M M O N J U D G M E N T

There are two Second Appeals. In O.S.No.401 of 2007, the appellant herein is the defendant and in O.S.No.134 of 2009, the appellant is the plaintiff.

2. O.S.No.401 of 2007 is filed by the respondents/plaintiffs for permanent injunction restraining the defendant from interfering with their possession and enjoyment of the suit property. O.S.No.134 of 2009 is filed by the appellant for the very same relief.

3. The suit property is one and the same in both the suits, namely, Survey No.797/6, measuring an extent of 698 sq.ft in Koovathur Vilalge, Cheyyur Taluk. The case of the plaintiff in O.S.No.134 of 2009 is that he is the exclusive owner of the said property situated in Survey No.797/6, measuring an extent of 0.03 cents and it is "Grama Natham". It is stated that they have enjoyed ancestrally. Though it is stated that the patta was issued for Survey No. 797/4, which is another property owned by the plaintiff, there is no patta issued with respect to Survey No.797/6, which is now in dispute. It is stated that there are valuable trees raised by the plaintiff and he has been in possession and enjoyment of the suit property. As the defendants tried to interfere with the possession, the suit has been filed.

4. In support of his contentions, the appellant/defendant had filed Exs.B1 to B7 and the appellant examined himself as D.W.1 and one Sekar was examined as D.W..2. Exs.B1 and B2 are judgment copies which are not relevant to the suit. Ex.B-3 is the photographs, showing only the property and will not be taken up for consideration to go to prove the possession of the appellant. Ex.B-4 is the settlement deed, Ex.B-5 is the patta and Ex.B6 series are the House Tax Receipts, which are four in number. Each of the documents had been dealt with by the trial Court as well as the lower appellate Court. In so far as Ex.B-4-Settlement Deed is concerned, it is executed by one Andal, the second defendant in S.A.No.208 of 2018 in favour of respondents 3 and 5. The appellant had contended that the second defendant had settled more extent than what actually she is entitled to. As per Ex.B-4, the extent is 692 sq.ft, but the second defendant had settled only 666 sq.ft. Therefore, the contention of the appellant with regard to Ex.B4 was rejected by both the Courts. Ex.B4 and B6 are the patta and house receipts, which relate to Survey No.797/4 and not with respect to Survey No.797/6, which is a 'B' schedule property in O.S.No.134 of 2009. Excepting the above mentioned documents, no other documents are filed by the plaintiff to prove his possession. The evidence of D.W.2 is that the appellant is not in possession and enjoyment of the suit mentioned property. As no other clinching evidence is available to show his possession, the Courts below have rightly non-suited the plaintiff. The relief of permanent injunction, being an equitable relief, the burden is on the plaintiff to prove his possession. But, the appellant had not established his possession by any other documents. On the other hand, the respondents had produced the registered Partition Deed dated 05.01.1922, in which, their father was allotted the suit property and he had been in possession and enjoyment of the same and after the death of their father, the respondents had been in possession and enjoyment of the same. Thus, having failed to establish the possession, the appellant is not entitled to the

relief of injunction. As there is no infirmity in the findings of the Courts below and in absence of any question of law, much less substantial question of law arising out of the said facts, this Court finds no reason to interfere with the same.

5. Accordingly, both the Second Appeals are dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-vii)

//True Copy//

Sub Assistant Registrar

srn

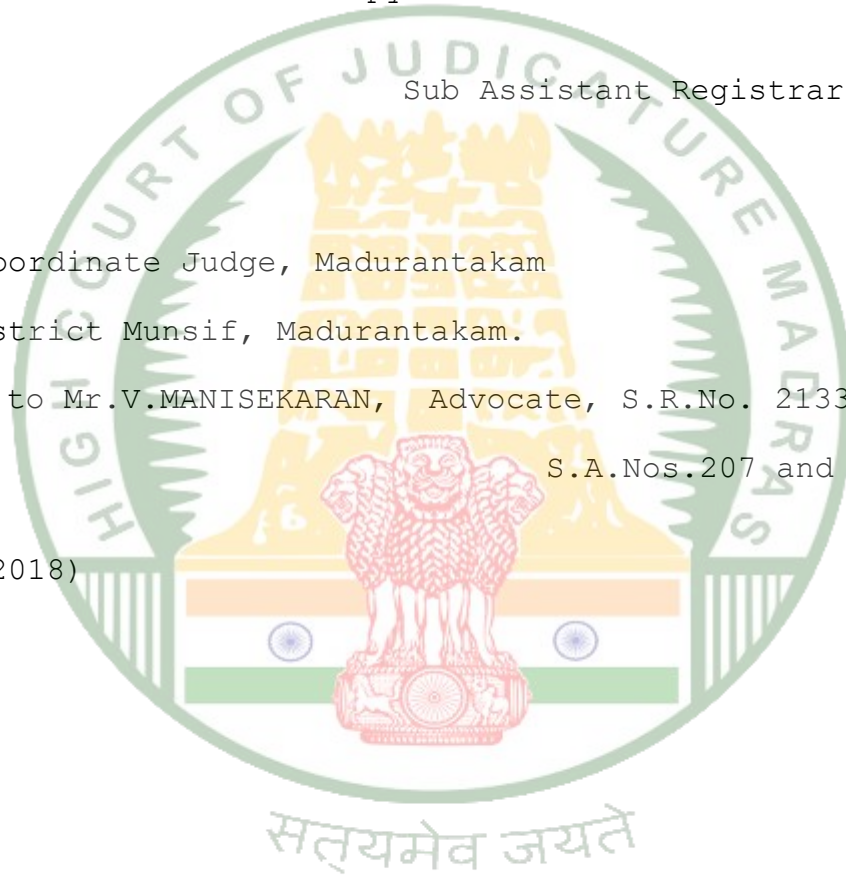
To

1. The Subordinate Judge, Madurantakam
2. The District Munsif, Madurantakam.

+1cc to Mr.V.MANISEKARAN, Advocate, S.R.No. 21339

S.A.Nos.207 and 208 of 2018

GJ II(CO)
TR(13/04/2018)



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