

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.330 of 2018
and C.M.P.No.9161 of 2018

Veeraraghava Chettiar

.. Appellant

Vs.

1.Pownkasi
2.Basker
3.Balakumar
4.Sivakumar

.. Respondents

PRAYER:

Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 03.01.2017 made in A.S.No.2 of 2015 on the file of the Sub Court, Madurantakam, confirming the judgment and decree dated 03.09.2014 made in O.S.No.209 of 2009 on the file of the District Munsif, Madurantakam.

For Appellant : Mr.J.R.K.Bhavanantham

J U D G M E N T

Second Appeal is filed against the judgment and decree dated 03.01.2017 made in A.S.No.2 of 2015 on the file of the Sub Court, Madurantakam, confirming the judgment and decree dated 03.09.2014 made in O.S.No.209 of 2009 on the file of the District Munsif, Madurantakam.

2.The defendant who lost in both the Courts below is the appellant and respondents are the plaintiffs 2 to 5 in O.S.No.209 of 2009 on the file of the District Munsif, Madurantakam. Originally one P.Murugesan/deceased first plaintiff filed the said suit for declaration, declaring the 'B' Schedule property as a Narasam and the said P.Murugesan is having right of enjoyment on it, consequential injunction restraining the appellant from interfering or obstructing or blocking the 'B' schedule Narasam and thereby restricting P.Murugesan's right of enjoyment in any manner. Subsequently, the plaint was amended to include the decree of mandatory injunction to direct the appellant to remove the illegal

construction over the suit 'B' Schedule property within the time stipulated by this Court, failing which the same may be removed through process of law.

3. Pending suit, the said P. Murugesan died. The respondents were brought on record as his legal heirs vide order dated 10.12.2013 made in I.A.No.1547 of 2013.

4. According to the deceased plaintiff, he purchased the 'A' Schedule property by the deed of sale dated 25.09.1985 from K. Nadarajan. The said K. Nadarajan purchased 'A' Schedule property from the appellant by the deed of sale dated 12.06.1984. The said K. Nadarajan was in possession and enjoyment of the 'A' Schedule property till he sold the property to the deceased plaintiff. The appellant after selling 'A' Schedule property started giving trouble and disturbance to the plaintiff and started interfering with the peaceful possession and enjoyment of the 'A' Schedule property. The plaintiff filed O.S.No.125 of 1989 on the file of the District Munsif, Madurantakam and the same was decreed. After the decree, the appellant did not interfere with the peaceful possession and enjoyment of the deceased plaintiff with 'A' Schedule property.

4(a). There is a Narasam situated on the south of 'A' Schedule property and the same is in existence for more than five decades. The appellant, when sold 'A' Schedule property to K. Nadarajan executed an agreement in favour of K. Nadarajan regarding existence of Narasam and permitted him to enjoy the same in common. The said K. Nadarajan purchased 'A' Schedule property with house from the appellant and sold the same with superstructure to the plaintiff. The country tiled roof of 'A' Schedule property is projecting towards Narasam about 1 ½ feet in breadth. Drain water from 'A' Schedule property is passing through 'B' Schedule property Narasam. The appellant tried to obstruct the plaintiff from enjoying the 'B' Schedule property Narasam on 17.08.2009. The plaintiff prevented the same. The appellant is storing materials near Narasam on 22.08.2009 to restrict the use of Narasam by plaintiff. The plaintiff has right to use the 'B' Schedule property Narasam and appellant has no right to obstruct or block Narasam. If Narasam is blocked, the plaintiff would be put to irreparable loss and hardship and the balance of convenience is in favour of the plaintiff.

5. The appellant filed written statement and denied all the averments in the plaint. According to the appellant, 'A' Schedule property and property on the southern side of the said property originally belonged to appellant. He sold 'A' Schedule property. He did not sell 'B' Schedule property Narasam situated in 'A' Schedule property and the property was retained by the appellant. The appellant did not enter into any agreement with

K.Nadarajan with regard to usage of 'B' Schedule property. The said agreement is a fabricated one. 'B' Schedule property Narasam belongs absolutely to the appellant. Projection stated by the plaintiff is only 5 feet over the window and both the 'B' Schedule property and southern side of the 'A' Schedule property belongs to appellant. O.S.No.125 of 1989 has nothing to do with the present relief sought for by the plaintiff.

6. Based on the pleadings, the learned Trial Judge framed necessary issues and additional issues on 01.08.2012. In the suit, an Advocate Commissioner was appointed. She inspected the suit property and filed her report along with plan. Before the learned Trial Judge second respondent was examined as P.W.1 and marked 10 documents as Exs.A1 to A10. The appellant examined himself as D.W.1 and marked one document as Ex.B1. The Advocate Commissioner was examined as a Court witness and the report and plan of the Advocate Commissioner were marked as Exs.C1 and C2. The learned Trial Judge considering the pleadings, oral and documentary evidence, decreed the suit.

7. Against the said judgment and decree dated 03.09.2014 made in O.S.No.209 of 2009, the appellant filed First Appeal, A.S.No.2 of 2015 on the file of the Sub Court, Madurantakam. The learned First Appellate Judge considering all the materials on record, judgment of the learned Trial Judge, dismissed the appeal, holding that 'B' Schedule property is a "Government Poramboke/Narasam" as per Ex.A8.

8. Against the said judgment and decree dated 03.01.2017 made in A.S.No.2 of 2017, the appellant has come out with the present Second Appeal.

9. The learned counsel for the appellant contended that 'A' Schedule property is bounded on the north by Narasam. In Ex.B2, Sale deed, Courts below failed to see that description of the property in document could not give any right in respect of the said property. The Courts below erred in granting mandatory injunction and permanent injunction. The grant of relief of mandatory injunction and permanent injunction restricting the appellant from enjoying his property is also an error. The Courts below failed to see that admission made by the appellant in the written statement is not unqualified but it is only a conditional admission.

10. Heard the learned counsel for the appellant and perused the materials available on record.

11. The deceased plaintiff P.Murugesan has filed suit for relief stated in the plaint on the ground that 'B' Schedule property is a Narasam and it has been enjoyed by both the

plaintiff and appellant. The respondents who are the legal heirs of the plaintiff have produced Ex.A8 and proved that 'B' Schedule property Narasam is a "Government Poramboke". The Advocate Commissioner in her report, plan and also as Court evidence had deposed about the existence of Narasam and drain water let in by the respondents. The appellant has not produced any document to substantiate his claim that 'B' Schedule property is his absolute property and respondents have no right to use the same. The appellant has admitted in Ex.A2, agreement between himself and K.Nadarajan, the existence of Narasam described in 'B' Schedule property. The Courts below have appreciated these documents as well as pleadings and oral evidence in proper perspective and decreed the suit and dismissed the appeal, A.S.No.2 of 2015. There is no error in the said judgment and decree of the Courts below warranting interference by this Court. No question of law much less than the substantial question of law has arisen in this Second Appeal.

12.In the result, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsa

To

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

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