

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2018

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.582 of 2017

N.Thevaraj

..Appellant/plaintiff

..vs..

Nanjan (died)

1. Lingan
2. Mathan
3. Bomman
4. Raman
5. N.Sivakumar
6. N.Rajkumar
7. Lakshmi

... Respondent/Defendants

Second Appeal filed under Section 100 C.P.C. against the Judgment and decree dated 17.11.2016 in A.S.No.30 of 2014 on the file of the Subordinate Judge, Uthagamandalam, partly reversing the judgment and decree dated 16.06.2014 in O.S.No.59 of 2011 on the file of the District Munsif, Coonoor.

For Appellant : Ms.A.L.Gandhimathi

J U D G M E N T

The appellant herein, who is the plaintiff in a suit for declaration and injunction, has preferred the above Second Appeal.

2. The case of the plaintiff is that he is the owner of 3-1/2 cents of lands with specific boundaries in Old Survey No. 753 in New Survey No.710/1A1 and he has been in possession from the year 1972 onwards. It is his case that he had purchased the property on 25.05.1972 and subsequently, mutated his name in the relevant revenue records. As the defendants tried to disturb the same, the suit has been filed.

3. The case of the defendants is that the properties in the said survey number belonged to them and according to them, there is no vacant site of 3-1/2 cents as claimed by the plaintiff. The defendants' grandfather had purchased an extent

of 0.39 acres of land on 10.02.1943 and other properties on various dates. Therefore, it is their specific case that even the plaintiff's vendor did not have any right to sell the property to the plaintiff. Hence, they prayed for dismissal of the suit.

4. Considering the oral and documentary evidence, the trial Court had dismissed the suit insofar as the relief of declaration is concerned and decreed the suit with respect to relief of injunction. The defendants had preferred an appeal in A.S.No.30 of 2014 challenging the order of injunction. The lower appellate Court dismissed the suit with respect to relief of injunction and thereby, the entire suit was dismissed. The plaintiff had not challenged the decree refusing to grant the relief of declaration. Therefore, the said finding with respect to relief of declaration, has become final.

5. So far as the injunction is concerned, the plaintiff has not produced any documents excepting Exs-A1 to A4, which are Chitta Extract, Encumbrance Certificate, Sketch and photographs. The above documents do not prove the possession of the plaintiff. A Commissioner was appointed in this regard and he has specifically stated that there are buildings in the suit property. When the plaintiff has specifically stated that the suit property is only a vacant site of 3-1/2 cents and the report of the Commissioner reveals that there are buildings in the said property and hence, the case of the plaintiff was rightly disbelieved by the lower appellate Court. Admittedly, the plaintiff also had not challenged the report of the Commissioner by filing objections. The plaintiff ought to have proved his case independent of the defendants' evidence and that without challenging the dismissal for the relief of declaration, the plaintiff had challenged only the relief of injunction, which was also rightly was dismissed by the lower appellate Court for want of evidence. As there is no infirmity in the findings of the lower appellate Court and in the absence of any substantial question of law, this Court finds no reason to interfere with the same.

6. Accordingly, the Second Appeal is dismissed confirming the judgment and decree of the lower appellate Court. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

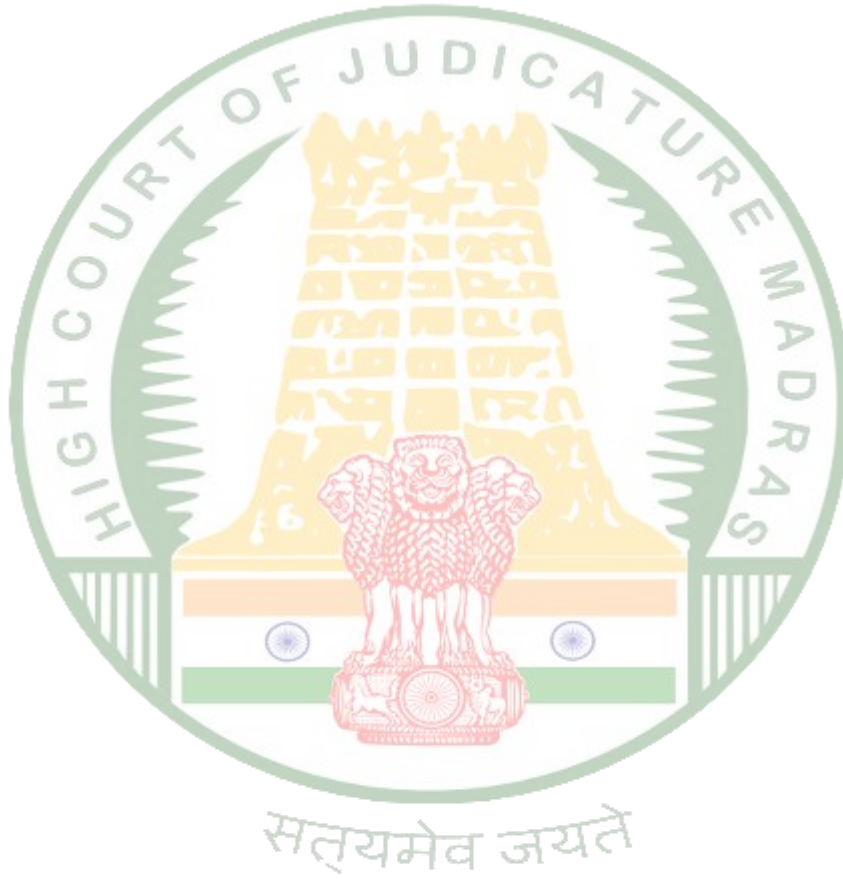
1. The Subordinate Judge, Uthagamandalam

2. The District Munsif, Coonoor.

+1cc to Ms.A.L.Gandhimathi, Advocate sr.no.16915

S.A.No.582 of 2017

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