

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.01.2018

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.834 of 2017
and C.M.P.No.20866 of 2017

Pon Raman

...

Appellant

...vs..

Banumathy

...

Respondent

Second Appeal filed under Section 100 C.P.C. against the Judgment and decree of the Principal Subordinate Judge, Virudhachalam passed in A.S.No.25 of 2011 on 14.03.2013 confirming the judgment and decree of the District Munsif cum Judicial Magistrate Court, Thittakudi passed in O.S.No.631 of 1996 on 18.03.2003.

For Appellant : Mr.V. Anand

J U D G M E N T

The defendant aggrieved by the unanimous decisions of the Courts below, has preferred the above Second Appeal.

2. The suit was filed by the plaintiff/respondent for declaration of title and for recovery of possession. The said suit was tried along with the suit in O.S.No.589 of 1996 by the defendant/appellant for permanent injunction. So far as the present suit in O.S.No.631 of 1996 is concerned, it is only with respect to only one item of the suit properties, which is shown as second item in O.S.No.589 of 1996. Admittedly, the properties originally belonged to one Kaliyan, to whom the appellant and the respondent are related. After the death of the said Kaliyan, the respondent herein came to be in possession of the suit property in Survey No.21/5. To prove her possession, the respondent herein had filed Exs.B5 to B17 in O.S.No.631 of 1996. The respondent herein also seems to have filed Adangal and also B-16, which is the patta in her name. Based on a perusal of the above documents, the Courts below have concurrently held that the respondent herein, who is the

plaintiff in the suit in O.S.No.631 of 1996, is entitled for a decree as prayed for. Aggrieved by the same, the above Second Appeal has been filed by the defendant.

3. So far as the appellant is concerned, the documents filed by him are Exs.A1 to A5, which are standing in the name of the deceased Kaliyan. The findings of the Courts below is that there is no iota of evidence to show that the property in Survey No.21/5 was in possession of the appellant. Accordingly, the Courts below have concurrently held that the respondent is in possession of the suit properties.

4. As stated earlier, after the death of original owner Kaliyan, both the appellant and the respondent claimed to be in possession. Only the respondent has substantiated her claim by producing Exs.B5 to B17. In the absence of any better evidence to prove his possession, the defendant cannot claim any right or title or even possession over the suit property. Even presuming that the suit property is a Poramboke land, it is only the Government, which has to recover the possession from the respondent and the appellant cannot have any right over the same.

5. It is contended by the learned counsel for the appellant that in the common judgment passed in O.S.No.549 of 1996 and O.S.No.631 of 1996, the possession of item Nos.1 and 3 of the suit properties was admitted by the respondent herein, therefore the Courts below should have granted a decree. Even presuming it is so, the appellant should have challenged the said decree and cannot attempt to correct the same in this appeal.

5. In the light of the above, in the absence of any substantial question of law arising out of the said facts, the Second Appeal is dismissed, confirming the judgment and decree of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Principal Subordinate Judge,
Virudhachalam

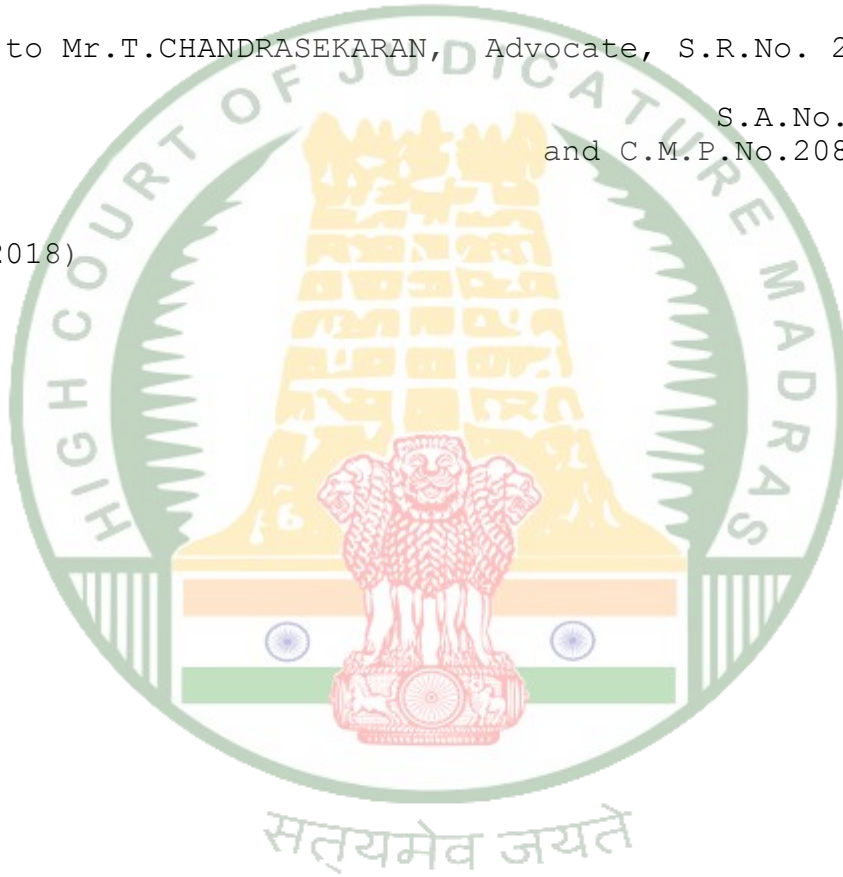
2. The District Munsif
cum Judicial Magistrate Court, Thittakudi

3. The Section Officer,
V.R.Section, High Court, Madras (2 COPIES)

+1cc to Mr.T.CHANDRASEKARAN, Advocate, S.R.No. 2830

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MR (CO)
TR(12/02/2018)



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