

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2018

CORAM :

The Hon'ble MR.JUSTICE R.SUBRAMANIAN

S.A.No.535 of 2008
and M.P.No.1 of 2008

Arulmighu Manmathaswamy Koil
Gnaniyar Street, Rep. by its
Hereditary Trustee, Thamizharasan.

.. Appellant/Plaintiff in O.S

-vs-

Sundarambal .. Respondent/Defendant in O.S

Appeal under Section 100 of C.P.C. against the Judgment and Decree dated 05.12.2007 on the file of Principal Sub Court, Mayiladuthurai, made in A.S.No.59 of 2007, confirming the Judgment and Decree of District Munsif Court, Sirkali, dated 13.06.2007, made in O.S.No.119 of 2004.

For Appellant : Mr.S.Sounther

For Respondent : Mr.A.Muthukumar

J U D G M E N T

The plaintiff in O.S.No.119 of 2004 on the file of District Munsif Court, Sirkali, is the appellant. The said suit was filed seeking a permanent injunction restraining the defendant from interfering with the possession of the suit property by the plaintiff. According to the plaintiff, the suit property, which is shown as ABCD in the plan, belongs to the plaintiff temple and the defendant who is a resident of property of one Sivaramachettiar situate on the south of the suit property, is attempting to interfere with the possession of the plaintiff.

2.The suit was resisted by the defendant raising various contentions. The defendant would claim that Thamizharasan, who had filed the suit claiming to be a hereditary trustee of the plaintiff temple, is not entitled to represent the temple as he is not the hereditary trustee. It is further claimed that it is one Muthaiyan who is the hereditary trustee of the temple and

the suit property belongs to the said Muthaiyan. It is also contended that there was no cause of action for the suit inasmuch as the defendant never attempted to interfere with the possession of the temple.

3. On the above pleadings, the learned District Munsif framed the following issues :-

- 1) Is plaintiff entitled to file the suit ?
- 2) Is defendant a mis-joinder party to the suit ?
- 3) Are necessary parties not added in the suit ?
- 4) Is plaintiff entitled for permanent injunction ?
- 5) What other reliefs plaintiff is entitled to ?

4. During trial, three witnesses were examined on the side of the plaintiff including the alleged hereditary trustee and Exs.A1 to A4 were marked. Four witnesses were examined on the side of the defendant and Exs.B1 to B8 were marked. Upon consideration of the oral and documentary evidence, the learned trial Judge came to the conclusion that the plaintiff has not established its possession of the suit property on the date of suit. The documentary evidence produced by the plaintiff does not reflect the claim of the plaintiff. The learned trial Judge also found that Exs.B1 to B7 do show that the suit property belonged to one Muthaiyan who was not a party to the suit. On the above findings, the learned trial Judge dismissed the suit.

5. Aggrieved, the plaintiff filed an appeal before the Principal Sub Court, Mayiladuthurai in A.S.No.59 of 2007. The lower appellate Court, after hearing the arguments, had framed the following point for consideration in the appeal :

"Whether the appeal filed by the appellant/plaintiff is permissible?"

6. The learned Subordinate Judge, upon consideration of the evidence, both oral and documentary, concluded that the plaintiff has not established its possession of the suit property on the date of the suit. The learned Subordinate Judge had also taken note of the evidence of P.W.1, wherein he had stated that the defendant has not disturbed the possession of the plaintiff and therefore, the Appellate Judge had come to the conclusion that there was no cause of action for the suit. On the above conclusion, the learned Appellate Judge dismissed the appeal. Aggrieved, the plaintiff has come forward with the above second appeal.

7. Notice of admission was ordered on 09.04.2008 and upon service, the respondent has entered appearance.

8. I have heard Mr.S.Sounther, learned counsel appearing for the appellant and Mr.A.Muthukumar, learned counsel appearing for the respondent.

9.Mr.Sounther, learned counsel appearing for the appellant, would contend that though P.W.1 had stated that the defendant did not attempt to interfere with the possession of the temple, the very fact that defendant had filed written statement denying the title and possession of the temple would show that the defendant had projected a right over the suit property and therefore, according to him, the learned Appellate Judge is not right in dismissing the suit on the ground of absence of cause of action.

10.Per contra, Mr.A.Muthukumar, learned counsel appearing for the respondent, would contend that both the Courts below have, apart from holding that there was no cause of action for the suit, found that plaintiff has not established its title and possession over the suit property.

11.I am unable to countenance the submissions of the learned counsel for the appellant for the following reasons. The plaintiff came forward with the suit claiming that the defendant had attempted to interfere with its possession of the suit property. A threat of interference is a must to constitute a cause of action for the suit. When once the plaintiff's witness himself chooses to admit that the defendant did not attempt to interfere with the possession of the plaintiff, the cause of action does not survive at all. If it is found that there was no cause of action for the suit, that too a suit for bare injunction, there would not be any other issue to be raised or decided. Despite his best efforts, the learned counsel for the appellant is unable to make out a question of law, much less a substantial question of law in order to enable this Court to entertain the above second appeal.

Hence, the second appeal is dismissed without being admitted. However, in the circumstances, there will be no order as to costs. Consequently, M.P.No.1 of 2008 also stands dismissed.

Sd/-

Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

sra

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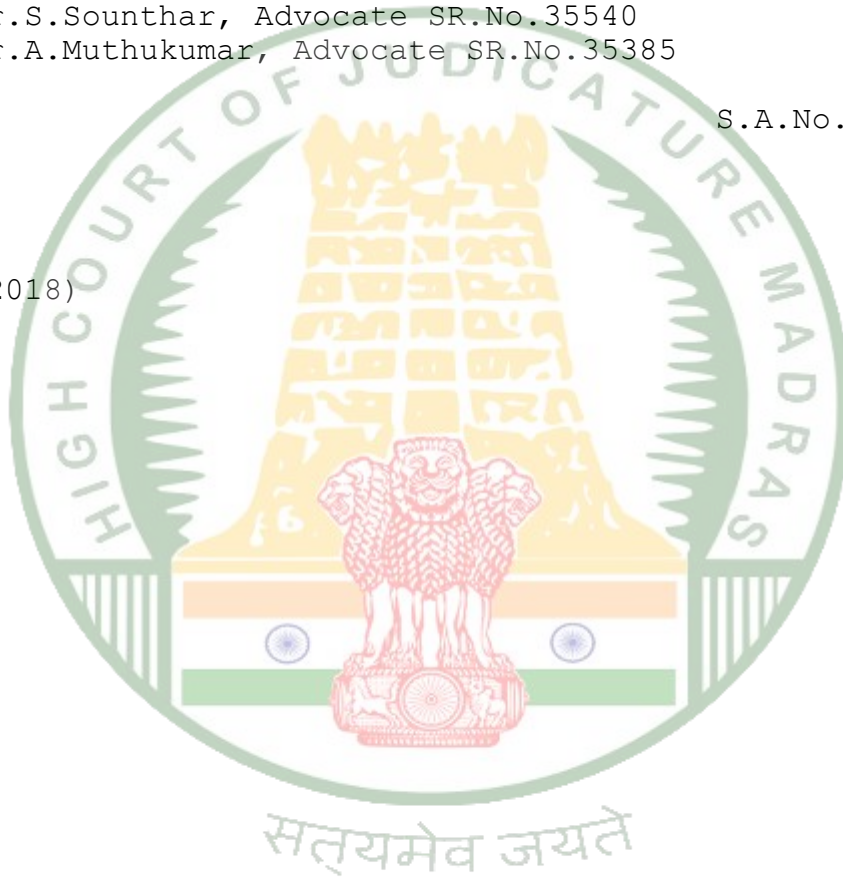
- 1.The Principal Sub Judge,
Mayiladuthurai.
- 2.The District Munsif,
Sirkali.
3. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.S.Sounthar, Advocate SR.No.35540

+1cc to Mr.A.Muthukumar, Advocate SR.No.35385

S.A.No.535 of 2008

SKV(CO)
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