

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.279 of 2015
and M.P.No.1 of 2015

Periasamy ... Appellant/Respondent/
Defendant

vs.

Nallathambi ... Respondent/Appellant/
Plaintiff

Prayer: This second appeal is filed under Section 100 of C.P.C. praying to set aside the Judgment and Decree passed by the First Appellate Court (Subordinate Court, Perambalur) dated 20.12.2011 passed in Cross Objection No. 6 of 2011 in A.S.No.6 of 2011, modifying the finding in Judgment and Decree of the District Munsif, Perambalur dated 16/02/2010 in O.S.No. 81/2002.

For Appellant : Mr.B.K.Sreenivasan
For Respondent : Mr.T.Ravichandran

J U D G M E N T

The defendant is the appellant in a suit for bare injunction filed by the plaintiff restraining the defendant from interfering with the peaceful possession of the plaintiff and enjoyment of two items of property situated in S.No.86/1-0.14 cents and S.No.86/2-1.12 acres situated in Azhagiripalayam Village, Kunnam Taluk, Perambalur District.

2. The suit was also resisted by the defendant on various grounds. Before the Trial Court, the plaintiff examined himself as P.W.1 and Exs.A1 to A9 were marked. The defendant examined himself as D.W.1 and Exs.B1 to B19 were marked.

3. The Trial Court on consideration of the facts and evidence had decreed the suit with respect to item 1, namely, S.No.86/1 an extent of 0.14 cents. So far as the 2nd item is concerned, i.e., S.No.86/2, the suit was decreed only for an extent of 0.86 cents out of 1.12 acres. Aggrieved by the said judgment and decree, both the plaintiff as well as the defendant

had made a challenge. The defendant had filed A.S.No.6 of 2011, before the Subordinate Court, Perambalur, whereas, the plaintiff had filed Cross Appeal No.6 of 2011 challenging the disallowed portion, namely, 0.26 cents in S.No.86/2.

4. The Lower Appellate Court had allowed the appeal preferred by the defendant and also the cross appeal preferred by the plaintiff. In the cross appeal, a decree has been granted in favour of the plaintiff for relief of injunction restraining the defendant from disturbing his possession with respect to 0.14 cents in S.No.86/4, 0.04 cents in S.No.86/3 and 0.86 cents in S.No.86/2. Hence, the second appeal.

5. The Second Appeal is admitted for determination of the following substantial questions of law:

"(i) Is the Lower Appellate Court right in granting a decree of permanent injunction in respect of the properties, namely (1) 4 cents in S.No.86/3; and (2) 14 cents in S.No.86/4, of Azhagiripalayam Village, Kunnam Taluk, Perambalur District, which are not subject matter of the suit.

(ii) Is the Lower Appellate Court right in granting a decree of permanent injunction in favour of the respondent herein, in respect of the properties, namely (1) 4 cents in S.No.86/3; and (2) 14 cents in S.No.86/4, of Azhagiripalayam Village, Kunnam Taluk, Perambalur District, which neither belong to the respondent herein, not in his possession?"

6. The grievance of the appellant is that the lower appellate Court while modifying the decree of the trial Court had granted a decree for injunction in respect of properties which are not subject matter of the dispute.

7. The appellate Court, while considering the documents Exs.A1 and B1, had gone beyond the scope of the suit with respect to the suit items and decreed the suit for S.Nos.86/3 and 86/4 also. The appellate Court had considered Ex.A1, which comprises of other Survey Numbers including suit S.No.86/2. The appellate Court had gone into the question of title of the plaintiff in S.Nos.86/3 and 86/4 and discussed the title of the plaintiff, which is unnecessary. In fact, S.No.86/3 is belonging to one Mottaiyan and it is no way concerned with the parties to the suit. The appellate Court also had found that as per Ex.A2, the plaintiff was entitled to 0.14 cents only in S.No.86/4 and not as claimed by him in S.No.86/1. If it was a mistake then the plaintiff ought to have amended the plaint schedule property. In the absence of any amendment to include S.Nos.86/3 and 86/4, the

Court has no power to grant a decree with respect to properties not averred in the plaint.

8. As stated earlier, when S.Nos.86/3 and 86/4 are not even shown as the suit items and there is no whisper about the same in the plaint, the Lower Appellate Court has granted the above said decree without any basis. Similarly, in the regular appeal filed by the defendant in A.S.No.6 of 2011, the Trial Court decree was modified and allowed the appeal. In fine, the Lower Appellate Court had allowed the suit with respect to Item 1, namely, S.No.86/1-0.14 cents, while confirming the decree already granted by the Trial Court with respect to second item of property, i.e., 0.86 cents with respect to S.No.86/2. The decree granted in the cross appeal with regard to S.Nos.86/3 and 86/4 an extent of 0.04 cents and 0.14 cents respectively, are not concerning the suit items.

9. It is stated by the learned counsel appearing for the appellant that S.No.86/4 an extent of 0.14 cents belongs to the appellant herein and his brother. Thus, the Lower Appellate Court has exceeded in its jurisdiction by granting the decree beyond the scope of the suit.

10. Accordingly, the questions of law are answered in favour of the appellant. The decree passed in A.S.No.6 of 2011 as well as Cross Appeal No.6 of 2011 on the file of the Subordinate Court, Perambalur is modified as follows:

(i) The relief for permanent injunction with respect to S.No.86/1 (0.14 cents) is dismissed.

(ii) With respect to S.No.86/2, the decree granted by the Trial Court and as affirmed by the Appellate Court is confirmed.

(iii) The decree granted in Cross Appeal No.6 of 2011 with respect to S.Nos.86/3 and 86/4 are set aside.

11. In the result, the second appeal is partly allowed as indicated above. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

rsi/gg

To

1. The Subordinate Judge,
Perambalur.

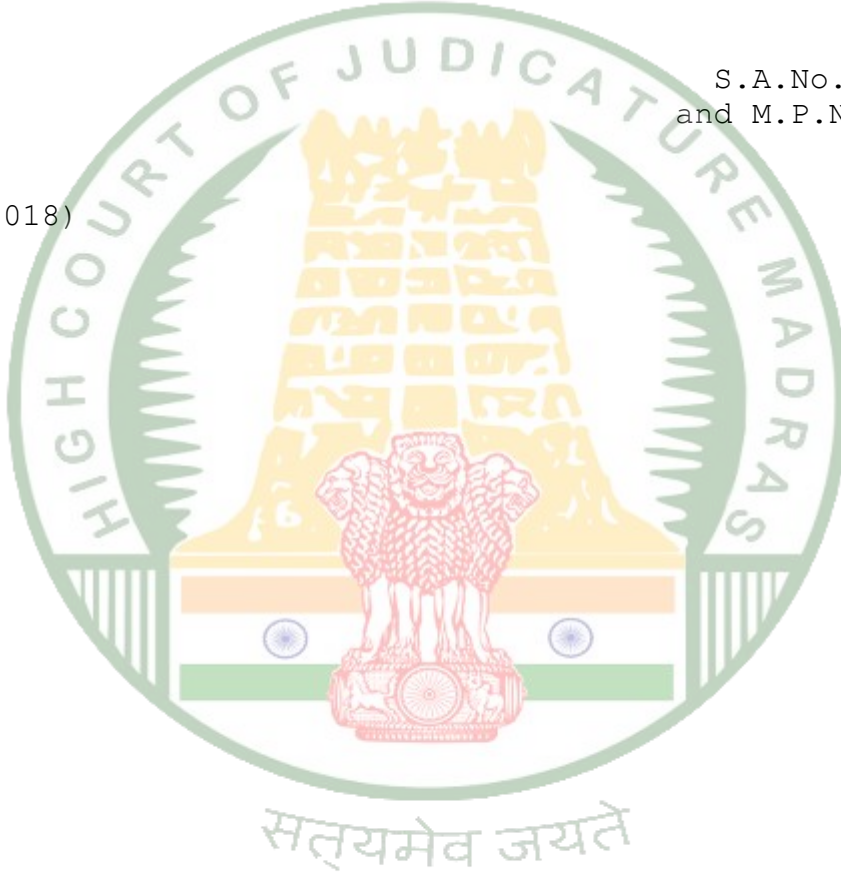
2. The District Munsif,
Perambalur.

+lcc to Mr.T.Ravichandran, Advocate SR.No.18873

+lcc to Mr.B.K.Sreenivasan, Advocate SR.No.18752

S.A.No.279 of 2015
and M.P.No.1 of 2015

CNR (CO)
GN (25/07/2018)



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