

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.881 of 2002

1.K.Krishnan
2.M.Mohan
3.K.Eswaran
4.K.Chandran
5.K.Kakkamallan

....Appellants/Defendants

Vs.

B.D.Wodayar

...Respondent/Plaintiff

PRAYER: The Second Appeal has been filed under Section 100 of C.P.C. to set aside the Judgment and Decree made in A.S.No.29/1999 dated 06.07.2001 on the file of the District Judge, Udthagamandalam, The Nilgiris, confirming the Judgment and Decree in O.S.No.49/1990 dated 17.09.1998 on the file of the District Munsif Court, Coonoor, the Nilgiris.

For Appellants: Mr.Srinath Sridevan

For Respondent: Mr.S.Kingston Jerold
for Mr.S.K.Rakhunathan

J U D G M E N T

The unsuccessful appellants/defendants, who lost the case before the courts below filed the present second appeal before this court.

2. The averments contained in the plaint, in brief, are as follows:

The plaintiff is the absolute owner of the land measuring about 2.21 acres of land situated in S.No.558 of Adigaratty Village. Originally, the suit property was owned by the plaintiff's father and by virtue of the registered partition deed dated 23.09.1964, the plaintiff has become the owner of the said property. Prior to the said partition, the plaintiff's father/ M.Basuviah was in possession and enjoyment of the said extent of 1.52 acres of land in S.No.558 in Adigaratty Village. Subsequent to the said partition, the plaintiff has been in possession and enjoyment of the same. Thereafter, in the year 1960, the respondent/plaintiff has also purchased a land measuring to the extent of 0.72-1/2 acres in S.No.558 by a registered sale deed dated 09.02.1960. Ever since date of

purchase, the plaintiff has been in continuous possession and enjoyment of the total extent of 2.21 acres of land in S.R.No.558 of the said village paying all the land revenue/tax in respect of the above said property. However, the defendants have no manner of right or title. On 16.10.1989, with an intention to grab the suit property, they tried to trespass in 0.20 cents of land on the northern end of the suit property. Again on 24.11.1989, the defendants attempted to trespass into the suit property and put up a small shed in the same over night taking advantage of the police personal's pre-occupation with the Lok Sabha Election. Aggrieved by the same, the plaintiff has filed a suit seeking for mandatory injunction against the defendants directing the defendants to demolish and remove the unlawful construction of the suit property and also to direct the defendants to handover the suit property to the plaintiff.

3. The averments contained in the written statement filed by the defendants, in brief, are as follows:

The written statement was filed by the fifth defendant and adopted by the other defendants. The defendants have been in possession and enjoyment of 0.20 acres of land in R.S.No.558 of Adigaratty Village in their own right as owners thereof. The defendants as rightful owners of the property are in possession and enjoyment of the said property, they are questioning the maintainability of the suit.

4. After conducting elaborate trial, the learned District Munsif Court, Coonoor, The Nilgiris, decreed the suit in favour of the plaintiff. Aggrieved against which, the defendants had filed an appeal before the lower appellate court. The lower appellate court has also confirmed the decree passed by the lower court, aggrieved against which, the appellants/defendants are before this court by way of the present second appeal.

5. At the time of the entertaining the appeal, this court has framed the following substantial question of law:

"Whether the courts below are right in granting a decree for mandatory injunction in the absence of specific and definite pleadings about the nature, extent and description of the encroachment alleged."

6. Learned counsel appearing for the appellants/defendants would submit that SR.No.558 is a vast extent of land and the defendants is in possession of the property for more than a decade even prior to the filing of a suit. Thereafter, they constructed a house therein and paid the house tax to the local body. The Revenue Officials, recognising their possession, granted patta in favour of the defendants. The plaintiff is paying all the land revenue/tax in respect of the above said property. By virtue of the above, the plaintiff is in

possession of the said property for a long time. On the above observations, the lower court and the lower appellate court held in favour of the respondent/plaintiff and the findings of the lower court is perverse and the defendants are entitled for possession of the property which was recognised by the revenue authorities.

7. Learned counsel for the respondent/plaintiff would submit that respondent/plaintiff inherited the property from his father and most of the properties were purchased by him. The plaintiff is holding the title in respect of SR.Nos.558 and 550 and the same was proved by way of EXs.A1 and A4 sale deeds which disclosed the title of the plaintiff. The defendants, without any authority, entered the suit premises and ingressed to the eastern portion of the land to the extent of nearly 0.20 acres of land and put up a small hut. Thereby, the plaintiffs filed a suit for removal of hut and recovery of possession. Both the courts have concurrently held in favour of the plaintiffs. While considering the Judgments of the lower court and lower appellate court, the Judgments need not be interfered with without any valuable and suffice material.

8. On perusal of the materials on record, the undisputed facts are extracted as follows:

On perusal of the sale deeds marked by the respondent/plaintiff, it is seen that admittedly, the properties stand in the name of the respondent/plaintiff. However, no document was marked in order to prove the title of the appellants/defendants. The appellants/defendants did not mark any document in favour of them. However, the appellants/defendants marked the patta granted by the revenue authorities in the year 1998. On perusal of the material records, it is seen that the suit is filed in the year 1990. However, patta was obtained by the defendants in the year 1998 i.e., after filing the suit and the law is well settled that patta will not confer any title over the property. However, patta is only a limited right and mere marking of patta will not confer any title over the property. In view of the above, it is crystal clear that patta which was obtained by the defendants in the year 1998, will not give a possessory right to occupy the suit premises.

9. In view of the above and on perusal of the findings of the lower court as well as the lower appellate court, I do not find any error or infirmity to interfere with the orders of the courts below and accordingly, the substantial question of law are answered against the appellants.

In the result, the second appeal is dismissed and the

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-s/d-

Assistant Registrar (CS-II)

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Sub-Assistant Registrar

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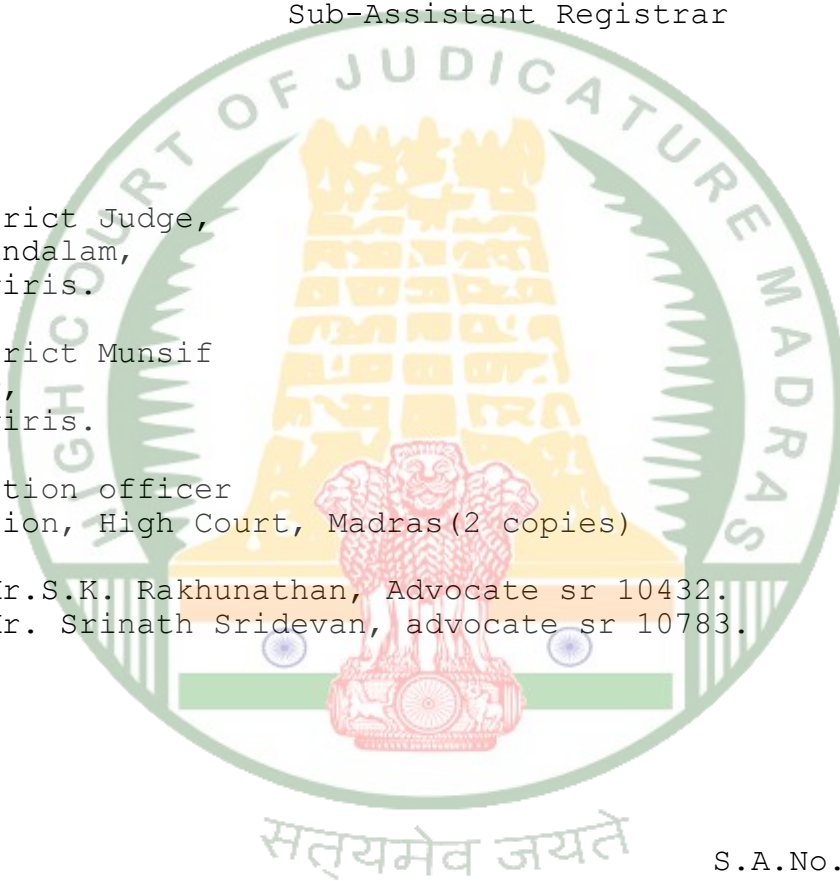
1. The District Judge,
Udhagamandalam,
The Nilgiris.

2. The District Munsif
Coonoor,
The Nilgiris.

3. The Section officer
VR Section, High Court, Madras (2 copies)

+1 CC to Mr. S.K. Rakhunathan, Advocate sr 10432.

+1 CC to Mr. Srinath Sridevan, advocate sr 10783.



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BR (CO)
SP (10/04/2018)

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