



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A. (MD) No.497 of 2017

and

CMP (MD) No.10614 of 2017

1.Muniyasamy Nadar [Died]

2.M.Kalijothi

3.Balachander

4.Punitha

5.Saravanan

6.Nagalakshmi ...Appellant/Appellant/Plaintiff

[Appellants 2 to 6 were brought on record as LRs of deceased sole appellant vide order dated 04.07.2018 in CMP (MD) No.5713 to 5715 of 2018]

Vs.

Muthu Thevar ... Respondent/Respondent/Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, to allow the second appeal and set aside the judgment and decree dated 22.09.2016 made in A.S.No.77 of 2014 on the file of the Subordinate Court, Paramakudi, confirming the judgment and decree dated 29.10.2014 made in O.S.No.46 of 1995 on the file of the District Munsif Court, Mudukulathur.

For Appellants: Mr.PT.S.Narendravasan

For Respondent: Mr.G.Kasilingam

JUDGMENT

This second appeal is filed by the plaintiff in O.S.No.46 of 1995 on the file of the District Munsif Court, Mudukulathoor.
<https://hservices.courts.gov.in/hservices/>

2.The first appellant filed the suit in O.S.No.46 of 1995



for declaration of plaintiff's title in the suit property, for consequential mandatory injunction to remove the encroachment committed by the defendant and for recovery of possession.

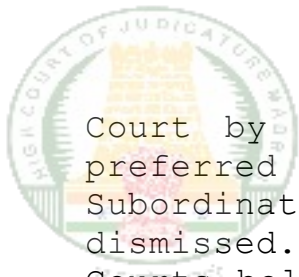
3. The brief facts of case of the first appellant in the suit are as follows:

3.1. The suit property originally belonged to the sons of one Thanganna Nadar by name Arumuga Nadar and Ayyamperumal Nadar. Suit property is their ancestral property. Arumuga Nadar had two sons by name Muthu Vazhkaara Nadar and Gnanadurai Nadar. Ayyamperumal Nadar had two sons by name Krishna Nadar and Nadarasa Nadar.

3.2. A joint patta was issued in the name of the sons of Arumuga Nadar and Ayyamperumal Nadar by way of oral partition by which entire extent of 42 cents in survey No.53/3 was divided among parties. The Northern side of the property measuring an extent of 10.5 cents was allotted to Gnanadurai Nadar son of Arumuga Nadar. The remaining part of the property on the Southern side was divided among three others. 3 /4th property lying on the Southern side was given by other sharers for construction of Hospital. The Northern side 10.5 cents was inherited by the plaintiff to the sons of Gnanadurai Nadar. Plaintiff is cultivating the lands. However, the defendant wanted to put up temporary shed in the suit property despite objection raised by the plaintiff. Though the plaintiff gave a complaint to the police there was no progress and therefore, the plaintiff is constrained to file the suit for declaration of title and mandatory injunction.

3.3. The suit was contested by the defendant claiming right in respect of second item of suit property, though the defendant has no right in the suit first item. It is stated that survey No.53/3 namely a portion of suit second item is a land classified as Grama Natham. The plaintiff got permission to put up a shop there, after removing the fencing that was put up by the hospital administration. It is the specific case of the defendant that the plaintiff was never in enjoyment of the property. Stating that the defendant is conducting a Tiffin Centre in the suit property, the defendant claimed possessory right over the suit property.

3.4. The defendant did not claim any title to the property is seen from the written statement. It appears that the suit was originally dismissed and later appeal filed by the plaintiff was allowed. However, after second appeal was preferred by the defendant in S.A No.1329 of 1999 and the same was allowed and remitted to the Lower Appellate Court to decide the suit afresh, after getting a report from the Advocate Commissioner. Thereafter, the suit was dismissed by the trial



Court by judgment and decree dated 29.10.2014. The plaintiff preferred an appeal in A.S.No.77 of 2014 on the file of the Subordinate Court, Mudukulathur and the appeal was also dismissed. Against the concurrent judgments and decrees of the Courts below, the above second appeal has been preferred by the plaintiff.

4.The plaintiff has filed the suit for declaration of his title and consequential reliefs. Though defendant has not proved his title, he can get mandatory injunction, only if he proves his title in the Courts below. The plaintiff has not established his title to the property. The trial Court as well as lower appellate Court considered all the documents filed by the plaintiff.

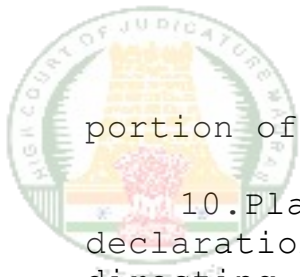
5.Though the plaintiff predecessors interest in respect of Survey No.53/3 was admitted, the plaintiff has not disputed the fact that Southern portion of survey No.53/3 is in occupation of the Hospital. The case of the plaintiff in the plaint is that Southern side 3/4th portion of the land was taken by the Government for construction of Hospital. No document is produced to show the extent of property that was conveyed or the property that was secured by the Government for construction of said Hospital. Though the plaintiff claims only right in respect of 10.5 cents in the Northern side of survey No.53/3, the plaintiff has not proved any oral partition as claimed by him or the enjoyment of the Northern side 1/3rd portion of the entire extent in survey No.53/3 by producing relevant documents.

6.10.5 cents of suit property from the Northern side in survey No.53/3 was never sub divided in the name of plaintiff or in the name of his father Gnanadurai Nadar.

7.To confirm the aforesaid oral partition, no one was examined by the plaintiff and hence, the Courts below have concurrently held that the plaintiff has failed to prove his case. Having regard to the Commissioner's report and the physical features that was noted by the Commissioner, the Courts below have come to the conclusion that the Northern portion of the property in Survey No.53/3 have been let for using as a common pathway.

8.Findings of the Courts below appears to be probable. It is true that the defendant has not proved his right or any right to be in enjoyment of the property, which is in dispute.

9. It is the specific case of the defendant that the owner of the property permitted him to occupy the shop. Even though, the defendant has not proved his easementary right to that effect, he has put up a shop in a



portion of the suit property, which is in dispute.

10. Plaintiff has come forward with the suit, not only for declaration of title, but also for mandatory injunction, directing the defendant to remove the encroachment, alleged to have been committed by the defendant by putting up a shop, in which he is carrying on business.

11. Under the aforesaid circumstances, unless the plaintiff proves his title, the Court cannot grant consequential relief. The plaintiff has miserably failed to prove his title. Therefore, this Court has no reason to interfere with the findings of the Courts below. Having regard to the facts that the findings of the Courts below are supported by reasons, this Court is not inclined to entertain this second appeal.

12. As a result this second appeal is dismissed. Consequently, CMP(MD)No.10614 of 2017 is closed. No orders as to costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Subordinate Judge,
Paramakudi.
2. The District Munsif,
Mudukulathur.
3. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO MR.G.KASILINGAM, ADVOCATE IN SR NO. 75867

DSK

BU/MK/RPS/SAR-I : 25.09.2018 : 4P/6C

S.A. (MD) No. 497 of 2017
31.07.2018