



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

S.A(MD)No.246 of 2018

WEB COPY

Rajamani

... Appellant/Appellant/Plaintiff
Vs.

1.Ravichandran
2.Athiyaappan
3.Marimuthu
4.Velsamy
5.Vadivel

... Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure Code against the decree and judgment passed in A.S.No.50 of 2011 by the Sub Court, Ambasamudram, on 30.01.2015 confirming the decree and judgment passed in O.S.No.87 of 2007 dated 13.06.2011 by the District Munsif Court, Ambasamudram.

For Appellant : Mr.H.Thayumana Swamy

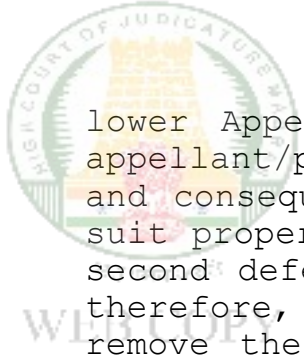
J U D G M E N T

The plaintiff, who lost the legal battle in both the courts below, is the appellant before this Court in the present Second Appeal.

2. The appellant/plaintiff filed the suit O.S.No. 87 of 2007 in the court of District Munsif, Ambasamudram, for the relief of declaration of possessory title over the suit schedule properties, permanent injunction and mandatory injunction. On the basis of the averment that although the underlined land originally had been puramboke, over a period of 100 years the same had been exclusively under the management and control of the plaintiff, the suit was filed. The claim was resisted by the respondents by filing a written statement.

3. The learned District Munsif, after trial, on an appreciation of evidence, came to the conclusion that the first item of suit schedule property is puramboke land, belonging to the Government and the defendants have encroached a portion of the first schedule property and constructed a "Sudalai Peedam" therein. Since the plaintiff had no interest in the capacity of the owner in the suit properties, he is not entitled to mandatory injunction also. As a result of the said finding, the learned District Munsif, by judgment and decree dated 13.06.2011 dismissed the suit filed by the appellant herein/plaintiff.

4. Challenging the decree of the trial court, the appellant herein preferred an appeal before the lower Appellate Court in A.S.No.50 of 2011. The learned Subordinate Judge, Ambasamudram, dismissed the appeal and confirmed the decree of the trial court by judgment and decree dated 30.01.2015. In dismissing the same, the



lower Appellate Court has framed three issues and held that the appellant/plaintiff is not entitled for the relief of declaration and consequential injunction. As far as the second schedule of the suit properties are concerned, the ''Sudalai Peedam'' put up by the second defendant is in the first schedule of the suit properties, therefore, the plaintiff is not entitled for mandatory injunction to remove the ''Sudalai Peedam''. As against the said decree of the lower Appellate Court, the appellant has preferred the present Second Appeal on various grounds set out in the memorandum of grounds to Second Appeal.

5. Heard the learned counsel appearing for the appellant and perused the materials available on record.

6. Learned counsel for the appellant submitted that both the courts had dismissed the suit *inter alia* for the reason that when the appellant had informed that the underlined land was originally puramboke, the Government had not been impleaded as a party. Learned counsel for the appellant sought permission to withdraw the present Second Appeal with liberty to move a fresh suit after impleading the Government as a party defendant.

7. Such plea is totally untenable. The courts below have rendered findings on fair appreciation of facts as well as oral and documentary evidence. The projected substantial questions of law incorporated in the memorandum of grounds of Second Appeal do not arise for determination in this Second Appeal. On preponderance of probabilities, both the courts below rendered clear and concurrent findings. The said findings cannot be termed either defective or infirm, much less perverse. There is no merit in the Second Appeal and the same deserves dismissal at the threshold.

8. In fine, the Second Appeal stands dismissed. No costs.

Sd/

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar (CS-III)

To,

1.The Sub Judge, Ambasamudram.

2.The District Munsif, Ambasamudram.

Copy to:

The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court, Madurai.(2 COPIES)

+1cc to Mr.H.THAYUMANASWAMY, Advocate, SR.No.75690

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