

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

S.A.No.1700 of 1998

1.Velayuda Asari (died)
2.Vasanth
3.Venkatesan
4.Ramachandran
5.Saminathan
6.Mariyappan

...Appellants/ Defendants

vs.

1.Lakshmi Narasimhan
2.Govindharasu
3.Rameshkumar

... Respondents/Plaintiffs

(Appellants 2 to 6 and Respondents 2 and 3 brought on records as LR's of the deceased sole appellant Viz., Velayuda Asari vide Court order dated 30.01.2019 made in C.M.P.No.1182 to 1884/2011 in S.A.No.1700/1998.

PRAYER: The Second Appeal is filed under Section 100 of CPC, against the judgment and decree made in A.S.No.147 of 1997 dated 04.06.1998 on the file of the Principal Sub Court, Nagapattinam, reversing the judgment and decree of the District Munsif Court, Nannilam, made in O.S.No.20 of 1996 dated 23.07.1997.

For Appellants : Mr.S.Sounthar

For Respondents: No Appearance

JUDGMENT

The defendant in O.S.No.20 of 1996 is the appellant herein. The plaintiff has filed the suit in O.S.No.20 of 1996 before the District Munsif, Court, Nannilam seeking declaration of title to the suit property and for mandatory injunction and also for removing super structure built upon the property. The plaint property map B, B1, D, D1 and the extension of the land for declaration of the title is covered under A, B1, D1 and C. The respondent/plaintiff has filed the above suit on the averment that he had purchased the suit property from one Rajeswari Ammal through his power agent in respect of the land covered under the sale deed/Ex.A1.

2.It appears from the records that the plaint proceeded on the basis that the appellant/defendant has hold the whole right of the land for the small extent after obtaining permission for execution of the sale. The respondent remitted Rs.5/- per month as rent and issued permission of tenancy. The notice issued to the defendant was marked as Ex.A1, reply to the said notice was marked as Ex.A3, rejoinder was marked as Ex.A4 and revenue records were marked as Ex.A6 to A10.

3.The appellant/defendant had filed written statement inter alia disputing the title of the vendor of the respondent/plaintiff, has stated that the land in dispute is Government poramboke and hence, the suit is not maintainable.

4.Considering the oral and documentary evidence, the Trial Court has dismissed the suit. As against the same, the plaintiff has filed First Appeal before the First Appellate Court in A.S.No.147 of 1997 and the learned Principal Sub-Judge, Nagapattinam decreed the suit and allowed the appeal. As against the same, the defendant in the suit has preferred the above Second Appeal.

5.The above Second Appeal is admitted on the following substantial questions of law:

"1) Whether the Lower Appellate Court is correct in decreeing the suit for recovery of possession from alleged lessee when the plaintiff/respondent failed to prove the alleged landlord lessee relationship pleaded by him.

2) Whether the plaintiff in this suit is entitled to recovery possession from the defendant/appellant without proving his Vendor's title, when his Vendor's title is expressly disputed by the defendant/appellant. Whether the Lower Appellate Court ignored Sec.110 of the Evidence Act in this regard?"

6.During the pendency of the above Second Appeal the appellant had died and hence, his legal representative viz., appellants 2 to 6 and respondents 1 and 3 were brought on records.

7.Heard the learned counsel appearing for the appellant/defendant.

8.The learned counsel appearing for the appellant/defendant submitted that the plaintiff has to stand on his legs especially when the relief of mandatory injunction was sought for and he has to prove his pleadings and cannot take decree on the weakness of the defendant. In the absence thereof, a decree cannot be granted in his favour and also made submission in support of the substantial questions of law referred above.

9.It is seen from the judgment of the Lower Appellate Court that, as per Ex.A1/sale deed, the land belongs to Rajaram Iyyer who is none other than the father of Rajeswari Ammal, from whom the respondent/plaintiff has purchased a piece of land under Ex.A1 is found to be correct. Even at the time of the sale, it appears that appellant/defendant was in occupation of a portion of the property by putting up a carpentry shop. As per Ex.A1/sale deed, in the plaint map be A,B,C,D found on the southern side, which was marked as B, B1, D, D1. It is alleged in the plaint that the appellant/defendant is an encroacher and portion marked under A,B1,D1,C was an encroachment area. The respondent/plaintiff sought relief of declaration.

10.Taking into consideration, the documentary evidence of Ex.A1 coupled with the documents Ex.A6 to A10 the lower appellate Court has rightly come to the conclusion that the land in dispute was covered under Ex.A1/sale deed and further held that based upon the facts that no other material has been produced by the appellant/defendant in respect of the plea that the land in question is a Government land/Poramboke land. Further more in support of the plea of defendant that the land is a revenue land, it is seen that no officers from the revenue department were examined to substantiate the same also assumes signature. Accordingly, relying upon the documentary evidence of Ex.A1/sale deed coupled with Exs.A6 to A10 and in the absence of any positive evidence, either oral or any document, obtained from the revenue department, the lower appellate Court has rightly come to the conclusion that the plaintiff is entitled for the relief of declaration of title to the suit property. Further more, in view of admission of D.W.1- defendant the appellant, (in his cross examination), stated that he has obtained permission from Rajaram Iyyer before putting upon the carpentry shop. Thus, the lower appellate Court has rightly come to the conclusion that the property is in permissive possession of defendant/appellant and has rightly negated the plea of adverse possession raised by the appellant/defendant.

11.On the above factual matrix of documentary evidence of Exs.A1, A6 to A10 coupled with admission of D.W.1, as discussed supra, this Court is of the considered view that in view of the admission of D.W.1 that he is in permissive possession of the land and consequently, the relationship between the landlord and tenant existed and hence the plea of adverse possession cannot be pressed into operation and in view of the documentary evidence, as cited above, the title of the vendor of the respondent/plaintiff is being established and the same is hereby confirmed and both substantial

questions of law are answered in negative against the appellant and the Second Appeal is devoid of merits and liable to be dismissed. The same is dismissed. The judgment and decree made in AS.No.147 of 1997 dated 04.06.1998 on the file of the Principal Sub Court, Nagapattinam is confirmed. No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

rst

To

1.The Principal Sub Judge,
Nagapattinam.

2.The District Munsif Judge,
Nannilam.

Copy to:

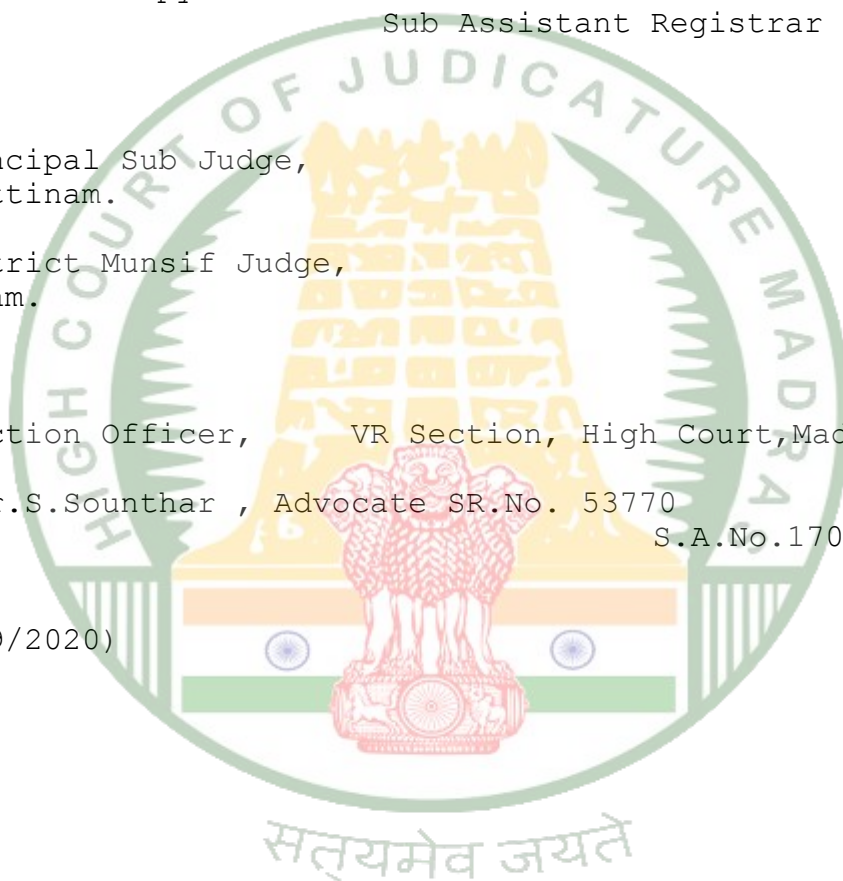
The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.S.Sounthar , Advocate SR.No. 53770

S.A.No.1700 of 1998

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A.SK(04/09/2020)



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