

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.672 of 2008  
and MP.No.1 of 2008

1.Santhanam  
2.Dasarathan  
3.Subramani

.... Appellants/Defendants

Vs

S.Ekambaram

.... Respondent/Plaintiff

Prayer :-

Second Appeal filed under Section 100 of CPC, to set aside the judgment and decree of the trial Court dated 11.08.2004 passed in O.S.No.403 of 1986 on the file of District Munsif, Ponneri, as confirmed by the judgment and decree dated 07.08.2007 in A.S.No.17 of 2005 on the file of Sub Court, Ponneri.

For Appellants : Ms.Jayalakshmi  
for M/s.Paul & Paul

For Respondent : Ms.M.Meenatchi  
for Mr.P.Anbarasan

JUDGMENT

The defendants in O.S.No.403 of 1986, having suffered successive decrees both before the trial Court as well before the first Appellate Court, have come forward with this appeal. The suit was initially laid by the plaintiff/respondent as one for injunction against defendants 1 and 2/appellants 1 and 2, and later, the third defendant was impleaded and relief too was amended to include a prayer seeking recovery of possession of the suit property.

2. The suit property is described as a plot measuring 35'x60' in Survey No.171 with a larger extent of 3.77 acres in

Athipattu Village, Ponneri Taluk. This property, according to the plaintiff belonged to Sadaiamman Temple. The defendants, however clarifies in their written statement that Sadaiamman temple is also known by the name Ramanatheeswarar Temple. According to the plaintiff, more than 50 persons have come to occupy this entire plot of land, as if it were a layout, laid roads and occupied specific plots by putting up huts for their occupation. The plaintiff accordingly came to be in occupation of a plot measuring 35'x60. On 11.7.1986, when the plaintiff was in the process of carrying out some maintenance work to his hut, the defendants attempted to interfere with his possession, and hence he came up with a suit for injunction. Subsequently, as the defendants forcibly entered the suit property, he amended the plaint and sought recovery of possession.

3.1 In the written statement filed by the defendants 1 and 2, it was pleaded that the plaintiff was not the resident of the suit property, that the suit property is now located in what has now come to be known as 'Kalaingar Karunanidhi Nagar' but, is a resident of 'Dr.Ambedkar Nagar'. According to them, the third defendant, Subramani has always been in possession and enjoyment of the suit property and hence there arose no question of anybody attempting to interfere with the same.

3.2. In his written statement, the third defendant has contended that this defendant has put up a superstructure in the suit property and has been in possession of the same. Since, the plaintiff claims title to the same, he ought to have laid the suit for declaration of his title. He would also say that the defendants have been in possession of the property and hence the suit, as framed was not maintainable.

4.1 The dispute went for trial where the plaintiff examined himself as P.W.1. He also examined the Executive Officer of the temple (which owns the entire property in Survey No.171 of which the suit property is a small fraction) as P.W.3. He has also produced Exts.A-1 to A-9, all of which are the tax receipts or kist receipts etc., Ext.A-5 in particular is a letter issued by the Executive Officer of Arulmighu Ramanatheeswarar Temple to the plaintiff. For the defendants, third and first defendants and certain Srinivasan were examined respectively as D.W.1 to D.W.3, and they have produced 13 documents that came to be marked by the trial Court as Exts.B-1 to B-13.

4.2. On appreciating the evidence, the trial Court relied on the evidence of P.W.3 in particular and held that the plaintiff was entitled to a decree for recovery of suit property as well as for consequential injunction. It is seen that the defendants have taken up a plea that the amendment introducing a prayer for recovery of property was filed some 12 years after

the suit was laid, but this was rejected by the trial Court by relying on the authority in Sambath Kumar Vs. Ayyakannu and another [2003-2-LW-21], and has held that as per the said authority, the amendment to the suit would relate back to the date of the suit unless the Court restricts the dating back of the amendment to the suit, and in the instance case when the amendment was allowed, there is no such restricting term in the order amending the plaint. It also indicated that all the documents relied on by the defendants are post suit.

4.3. Aggrieved by the said judgment of the trial Court, the defendants preferred A.S.No.17 of 2005 before the Sub Court, Ponneri. The first Appellate Court concurred substantially with the findings of the trial Court, and on the point of limitation in seeking amendment of the prayer for recovery of property, it finds the very prayer for amendment sought in I.A.No.1351/1987 is well within time.

5. Aggrieved by the same, the defendants have come forward with the present appeal. The appeal is not yet admitted and notice was ordered to the respondent/plaintiff and he has entered appearance.

6. Heard both sides. The learned counsel for the appellants insisted that the Courts below have not appreciated the evidence before it properly and they ought to have held that the plaintiff was not an occupant of the suit property, as he is the resident of a certain Dr.Ambedkar Nagar. In this regard, it brought to the notice of the Court that the correspondences in Ext.A-5, issued by the Executive Officer of the Temple to the plaintiff, addressed to Dr.Ambedkar Nagar, and some other documents carries certain corrections.

7. On going through the material papers and evidence available on record, this Court is not impressed with the submissions of the learned counsel or the appellants. One critical evidence which is common to both the plaintiff and the defendants is that of P.W.3, the Executive Officer of the temple. P.W.3 has spoken in favour of the plaintiff, and has testified that the plaintiff has been the tenant of the temple as regards to the site of the suit property. In his cross-examination, nowhere have the defendants put forth a case that they are in actual occupation, nor have they confronted him with such material documents in their possession to indicate that the third defendant has been in possession even prior to the suit. It is an indisputable fact that all the documents produced by the defendants are post litigation and they may not bail out their case from the position this Court finds it in. Ultimately, it is the case where both the Courts below have found that the plaintiff was in possession of the suit property

and that he has been forcibly removed by the third defendant. This finding is essentially the one on fact, and the learned counsel for the appellants could not convince this Court that there exists any substantial questions of law for this Court to consider.

8. In the final analysis, this Court finds no merit and the appeal is dismissed and in this circumstances, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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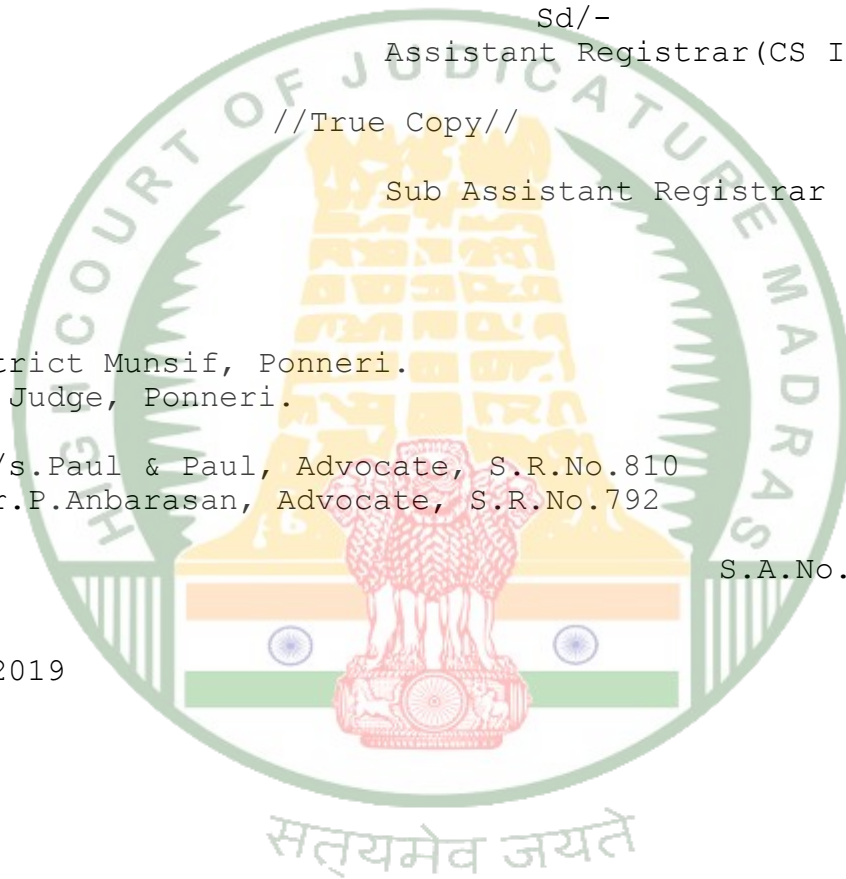
- 1.The District Munsif, Ponneri.
- 2.The Sub Judge, Ponneri.

+1cc to M/s.Paul & Paul, Advocate, S.R.No.810

+1cc to Mr.P.Anbarasan, Advocate, S.R.No.792

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CNR (CO)  
CS/27/03/2019



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