

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 17.06.2019
CORAM: The Hon'ble Mr.Justice N.Seshasayee

S.A.No.2041 of 2004
and
C.M.P.No.2655 of 2005

K.P.Murugesan

...Appellant

Vs.

1.A.Vadivel
2.A.Periyasami

...Respondents

Prayer:- Second Appeals filed under Section 100 of Civil Procedure Code against the Judgment and Decree of the learned Additional District Judge, Namakkal(Fast Track Court No.3, Namakkal) dt.26-4-2004 made in A.S.No.352 of 2002 reversing that of the learned Additional District Munsif, Namakkal dated 19.9.1994 made in O.S.No.454 of 1990.

For Appellant : No appearance
For Respondents : Mr. M.S.Palanisamy [R2]

JUDGMENT

The plaintiff claiming himself to be a title holder to the suit property has come forward with a Suit for bare injunction to protect the possession of the suit property from the defendants. The parties would be referred to by their ranks before the trial court.

2.The defense of the defendants/respondents is that the Suit property was originally a Natham property comprised in Sy.No.26/P. Later, settlement of Natham property had taken place, wherein, the Suit property came to be correlated to re-survey No.514/3 and the property belong to certain Periyakandiammal Koil.

3.The defendants also pleaded that they are the Dharmakartha cum Pujari of the temple and that the plaintiff is only a lessee of the property. There is yet another fact which indicates that the plaintiff has put up a construction and doing some business in the suit property.

4. Before the trial Court, the plaintiff has examined himself as P.W.1 and produced several documents, all of which pertain to the building he has put up in the Suit property. For the defendants, they have inter alia produced Exs.B.1 to B.5, of which, Ex.B.1 to B.3 are letters addressed by the plaintiff to the first defendant and Ex.B.4 and B.5 are lease deeds executed by him.

5. On appreciating the evidence, the trial Court decreed the Suit basically on the pleading of the defendants that the plaintiff is its lessee and is in possession of the suit property. The first Appellate Court reversed it on the ground that in his evidence, the plaintiff has agreed to vacate the property. Now the plaintiff who has lost before the first Appellate Court has come forward with this appeal.

6. The appeal is admitted on the following substantial questions of law;

(1) Whether the learned Additional District Judge committed an error in acting upon Exs.B-4 and B-5 which were unregistered, not duly stamped and as such, inadmissible in evidence?

(2) Whether the learned Additional District Judge erred in law in holding that Ex.B-6 is one extract from Adangal Register entirely overlooking it is a copy of a register prepared under Land Measurement Scheme which will not establish title of the temple or the respondent?

(3) Whether the learned Additional District Judge erred in law in relying on Exs.B-1 to B-3 which were executed by the appellant because of compulsion and the said Exhibits had no reference to suit land but other lands of the temple?

(4) Whether the learned Additional District Judge after holding that the suit land is Natham Poromboke was justified in holding that the property belonged to the temple without any basis or evidence to come to such conclusion?

7. On 04-06-2019, when the case was listed, the counsel for the appellant made a statement that he had already handed over the papers to the appellant and that his services have been dis-engaged.

8. Here is a tenant who has admitted Exts.B.2 to B.5 and had deposed during his examination as P.W.1, and one who knows fully well that he is only a lessee of the site, had suppressed the entire facts and has come forward with a false case that he is the title holder. It is not so much about whether the plaintiff conducts himself contrary to doctrine of estoppel provided for in Section 116 of the Evidence Act but, is all about suppressing material facts before the Court and giving a different character to his possession. This is a conscious fraud played by him on the Court.

9. This Court is aghast and at a loss to appreciate as why deliberate case of fraud by a litigant be encouraged, and sustain his case for possession merely because his possession as a lessee is admitted by the defendants. This Court therefore choose to agree with the finding of the first Appellate Court but for an additional reason that the plaintiff herein shall fail because he has not been able to establish his title to his possession as he pleaded.

10. In the result, the second appeal is dismissed and the Judgment and Decree of the learned Additional District Judge, Namakkal(Fast Track Court No.3, Namakkal), dated 26.4.2004, made in A.S.No.352 of 2002 reversing the Judgment and Decree of the learned Additional District Munsif, Namakkal, dated 19.9.1994, made in O.S.No.454 of 1990 is upheld. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

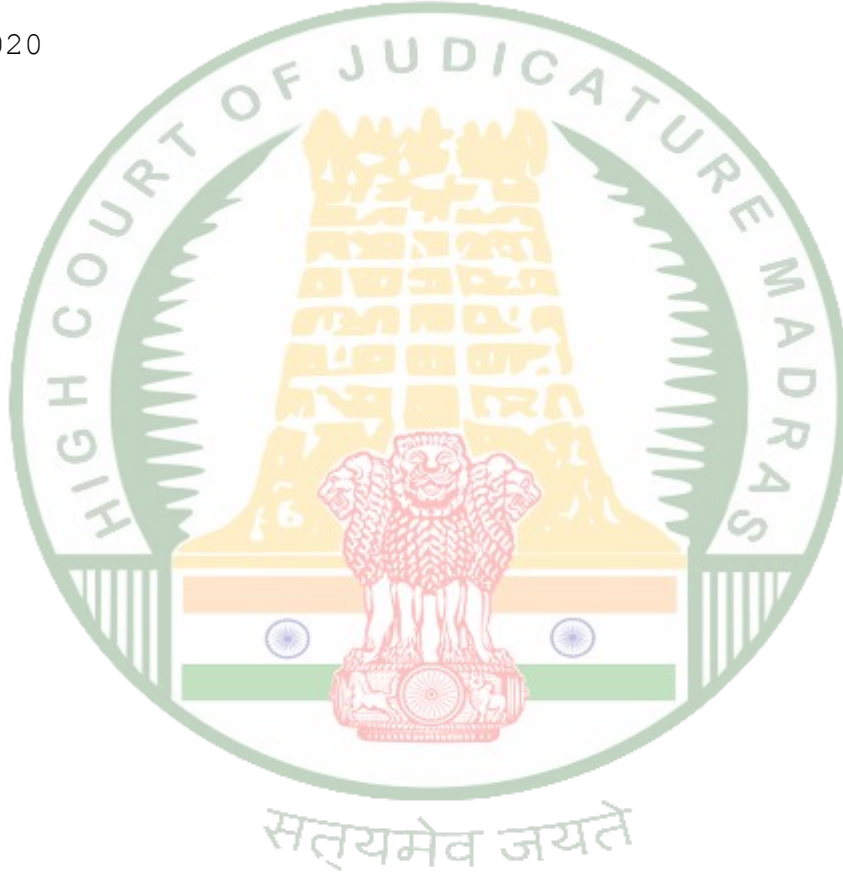
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To

- 1.The Additional District Judge,
Namakkal(Fast Track Court No.3, Namakkal)
- 2.The Additional District Munsif, Namakkal.
- 3.The Section Officer, VR Section, High Court, Madras.

+1 cc to Mr.M.S.Palanisamy Advocate sr47338

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