

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :25.02.2019

PRONOUNCED ON:11.03.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.531 of 2005
and
C.M.P.No.8200 of 2005

Kalamani ... Appellant/1st Defendant

Vs.

1.The Commissioner,
Bahour Commune Panchayat,
Pondicherry.

2.Viruthambal

3.Pachaimuthu @ Kumar

4.Balasubramanian

5.Subbulakshmi

6.Pachaiammal

7.Valliammal

8.Sakunthala ...Respondents/2nd Defendant & Lrs of the Plaintiff

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Court of II Additional District Judge, Pondicherry in A.S.No.97 of 2000 dated 29.04.2002 in confirming the judgment and decree of the court of Additional District Munsif Court, Pondicherry in O.S.No.135 of 1999, dated 27.06.2000.

For Appellant : Mrs.V.Srimathi

For RR1 : Mrs.G.D.Jearany
Govt. Advocate (Pondicherry)

For RR2 to R8 : No appearance
Set exparte vide order dated
25.02.2019

J U D G M E N T

Challenge in this Second Appeal is made to the judgment and decree dated 29.04.2002 passed in A.S.No.97 of 2000 on the file of the II Additional District Court, Pondicherry confirming the judgment and decree dated 27.06.2000 passed in O.S.No.135 of 1999 on the file of the Additional District Munsif Court, Pondicherry.

2. The second appeal has been admitted on the following substantial questions of law:

(a) That the Courts below are right in decreeing the suit for mandatory injunction directing the removal of water pipe line when the B schedule property is commonly enjoyed by both the plaintiff and the defendant?

(b) When Ex.A2 speaks of a pathway of the southern side of the property purchased under it and when the same is in existence for over 90 years, are the courts below right in granting or declaratory relied upsetting the rights of the owners of the adjoining land of the eastern side of the plaintiff's property?

© Whether the Courts below are right in decreeing the suit for mandatory injunction contrary to the principle set out in 1981 Mad page 220 and 1997 Mad page 342?

(d) Whether the Courts below are right in exercising the jurisdiction under section 37 of the Specific Relief Act directing the removal of water pipe lines, when the plaintiff has not established and injury to his right?

3.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of case in detail.

4.For the sake of convenience, the parties are referred to as per the rankings in the trial court.

5. The suit has been laid by the plaintiff for the reliefs of declaration and mandatory injunction and the declaration of title is sought for in respect of the plaint B schedule property and the relief of mandatory injunction is sought to remove the water pipe installed by the first defendant unlawfully in the B schedule property.

6. For sustaining the abovesaid case of the plaintiff, the plaintiff has examined the power agent as P.W.1 and marked Exs.A1 to A10. On the side of the contesting first defendant, no oral and documentary evidence has been adduced. Considering the materials placed on record, the Courts below had accepted the plaintiff's case and granted the appropriate reliefs in favour of the plaintiff. Impugning the same, the first defendant has come forward with the present second appeal.

7. According to the plaintiff, the plaint B schedule property forms part of the plaint A schedule property. The plaintiff claims title to the plaint A schedule property by way of the documents marked as Exs.A2 and A3. It is seen that as rightly determined by the Courts below, the grandfather of the plaintiff is found to have acquired an extent of 4 kuzhies of land in the plaint A schedule property by way of the sale deed dated 24.02.1905, which document has come to be marked as Ex.A2 and it is seen that the abovesaid extent is lying adjacent to the 4 kuzhies and 11 veesanams of land purchased by the plaintiff in the plaint A schedule property by way of Ex.A3 sale transaction dated 13.06.2000. Further, according to the plaintiff, he had derived title to the property comprised in Ex.A2 as per the law of inheritance and enjoying the same and by way of Ex.A3 sale transaction he has purchased an extent of 4 kuzhies and 11 veesanams of land and thus it is the case of the plaintiff that, in all, he has acquired an extent of 8 kuzhies and 11 veesanams. To establish that the plaintiff and his forefathers had been in the possession and enjoyment of the abovesaid property described in the plaint A schedule property, the plaintiff has also produced the patta in his name marked as Ex.A4 and as rightly determined by the Courts below, the extent given in the patta document, is found to be tallying with the total extent covered by the title deeds of the plaintiff marked as Exs.A2 and A3. The plaintiff has also produced the resurvey plan marked as Ex.A5 relating to the suit property and the same

is found to be corroborating to the contents of the patta document marked as Ex.A4. In all, on an analysis of the abovesaid documents marked as Exs.A2 to A5, it is found and as determined by the Courts below, it is only the plaintiff, who is the lawful owner of the area covered under R.S.No.166/11 and 166/12 and inasmuch as, the plaintiff has produced the title deeds pertaining to the same as well as the revenue documents as abovestated evidencing his claim of ownership and possession, it is rightly found that the plaintiff is the lawful owner of the plaint A schedule property. Furthermore, on perusal of the Advocate Commissioner's report available in the records, the same would go to disclose that the plaint B schedule property forms part of the plaint A schedule property and lying on the southern side in the plaint A schedule property and it is thus found that the plaintiff is the owner of the plaint B schedule property as such and the pipeline laid by the first defendant is found to be running through the same in the portion marked as XY as disclosed in the Commissioner's report and plan.

8. The first defendant has resisted the plaintiff's suit merely on the footing that the portion, where he had put up pipeline in the B schedule property marked as XY by the Commissioner is not belonging to the plaintiff and therefore the plaintiff is not entitled to seek and obtain the reliefs claimed in the suit.

9. However, as rightly found by the Courts below, when the plaintiff has established his entitlement to the plaint A schedule property through the documents marked as Exs.A2 to A5 and when Commissioner's report and plan disclose that the plaint B schedule property forms part of the A plaint schedule property and the first defendant having not filed any piece of evidence evidencing that he has a valid claim to lay the pipeline in the XY portion of the B schedule property and furthermore the second defendant, the Commissioner, Bahoor Commune Panchayat is also not shown to be entitled to issue any proceedings to the first defendant to lay the pipeline beneath the plaint B schedule property, in such view of the matter, when it is found that the first defendant is found to have laid the pipeline without any authority in the plaint B schedule property belonging to the plaintiff, as rightly determined by the Courts below, the plaintiff is entitled to the reliefs prayed for and in such view of the matter, I do not find any error or mistake in the grant of reliefs in favour of the plaintiff as determined by the Courts below.

10. From the materials available on record, considering the case put forth by the parties, when it is seen that the plaintiff has established his claim of title to the property in dispute and even though the first defendant has been granted ample opportunity to establish his claim of title to the property in

dispute and on the other hand, when the first defendant failed to place any evidence to sustain his claim of title to the property in dispute and that he is entitled to lay the pipeline beneath the same, in such view of the matter, as rightly determined by the Courts below, inasmuch as the first defendant has no right whatsoever in the plaint B schedule property and as the same belong to the plaintiff lawfully, it is seen that, inasmuch as the first defendant has put up the pipeline beneath the same unlawfully, the plaintiff has been necessitated to come forward with the suit seeking appropriate reliefs against the defendants as such.

11. In the light of the above discussions, the judgment and decree of the Courts below upholding the plaintiff's case being found to be based on the proper appreciation of the materials placed on record in the right perceptive, both factually as well as legally and considering the fact that the first defendant has failed to establish any claim of title to the property in dispute despite affording opportunities and failed to establish his entitlement to lay the pipeline beneath the plaint B schedule property and furthermore, when the first defendant has failed to establish that the plaint B schedule property is jointly enjoyed by the plaintiff as well as by him by placing any proof whatsoever and on the other hand, when the documents projected by the plaintiff would go to disclose that the plaintiff has acquired title to the plaint A schedule property inclusive of the plaint B schedule property, in such view of the matter, in my considered opinion, no substantial question of law involved in the second appeal. Be that as it may, the substantial question of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the first defendant.

12. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

mfa

To

1. The II Additional District Judge,
II Additional District Court,
Pondicherry.
- 2.The Additional District Munsif,
Additional District Munsif Court,
Pondicherry.

Copy to

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

+1cc to Mr.V.Raghavachari, Advocate SR.No.22358

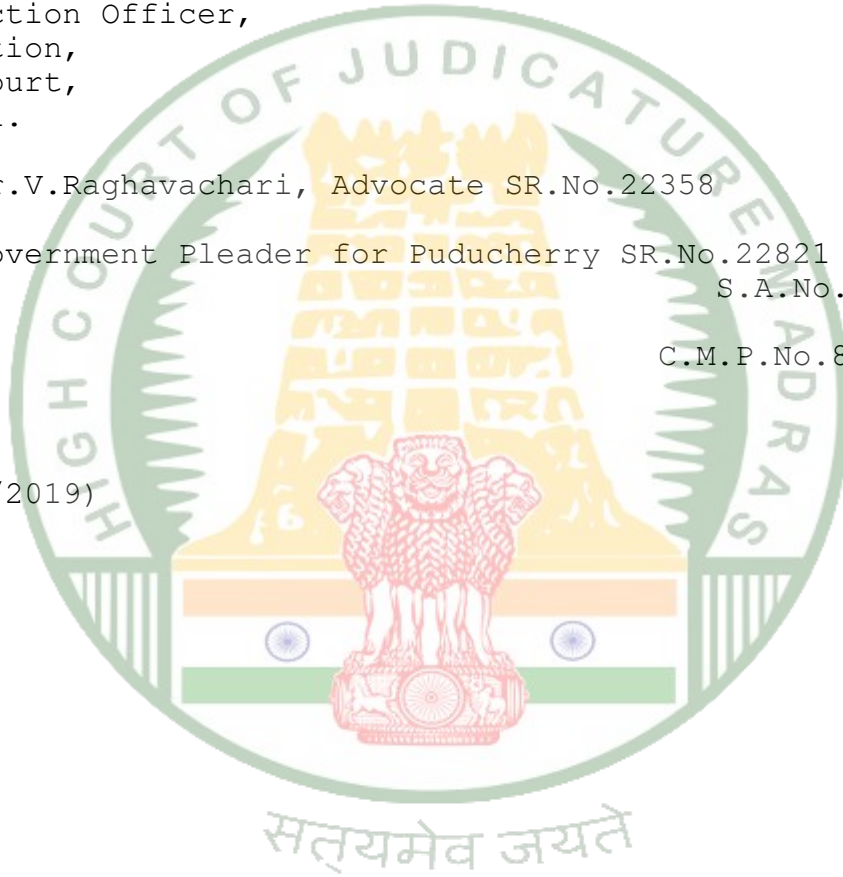
+1cc to Government Pleader for Puducherry SR.No.22821

S.A.No.531 of 2005

and

C.M.P.No.8200 of 2005

PA (CO)
GMY (05/09/2019)



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