

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2019

PRONOUNCED ON : 12.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.845 of 2005

Jarina Bee

...
Vs.

Appellant

The Executive Officer
Town Panchayat
Gingee.

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 20.11.2004 passed in A.S.No.11 of 2003 on the file of the Principal Subordinate Court, Tindivanam, confirming the Judgment and Decree dated 27.12.2002 passed in O.S.No.170 of 1996 on the file of the Principal District Munsif Court, Gingee.

For Appellant : Mr.P.Srinivas

For Respondent : No appearance

Set exparte vide order
dated 07.02.2019.

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 20.11.2004 passed in A.S.No.11 of 2003 on the file of the Principal Subordinate Court, Tindivanam, confirming the Judgment and Decree dated 27.12.2002 passed in O.S.No.170 of 1996 on the file of the Principal District Munsif Court, Gingee.

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

" 1.Whether the courts below can go into the issue of title of the defendant in a suit for injunction by the appellant/plaintiff and declare the title of the defendant?

2.Whether the question of the identity of the property were to be decided, is not the patta containing the survey number and the sub-division number sufficient to identify the property?"

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

4.Parties are referred to as per their rankings in the trial Court.

5.Suffice to state that the suit has been laid by the plaintiff for bare permanent injunction. The plaintiff based her suit, on the footing

that the suit property had been gifted orally in her favour by her husband in lieu of Mahr amount and based upon the same, it is stated by the plaintiff that she has put up a thatched house in the suit site and been enjoying the same for more than 30 years and patta had also been issued in her favour and after, the thatched house had become dilapidated, she has proposed to put up a new construction in the suit site and without any authority or entitlement, the defendant Panchayat objected the construction put up by her in the property on the footing that the suit property belonged to the panchayat, hence, according to her, she has been necessitated to levy the suit for appropriate reliefs.

6.The defendant has taken the plea that in the guise of putting up construction in the property alleged to be belonging to her, the plaintiff is in reality putting up the construction in the public street vested with the panchayat, which the plaintiff is not entitled to and furthermore, the plaintiff has not obtained any permission for putting up the construction in the suit property as per law and accordingly, sought for the dismissal of the plaintiff's suit.

7.The suit property has been described by the plaintiff as located in Krishnapuram Village of Gingee Talk bearing patta No.198 of an extent of 0.1 ½ cents lying to the West of the house of Ameer Sayabu,

to the East of the house of Indira Ammal, to the South of Street and to the North of lane. This is how the plaintiff has described the suit property. With reference to her claim of entitlement to the abovesaid suit property, the plaintiff is found to have relied upon mainly Exs.A1 & A2. At the foremost, though the plaintiff would claim that the suit property had been orally gifted in her favour by her husband in lieu of mahr amount, with reference to the same, there is no proof placed on the part of the plaintiff. Furthermore, though the plaintiff would claim that she had put up a thatched house in the suit property and enjoying the same for more than 30 years by paying Tax etc., with reference to the abovesaid case of the plaintiff, no proof has been forthcoming. Furthermore, the documents marked as Exs.A1 & A2 by the plaintiff denote that the property comprised in the abovesaid documents is lying in survey No.6/22. However, as abovenoted, the plaintiff has not described the suit property by furnishing the survey number and on the other hand, has come forward with the suit only furnishing the patta number. As rightly determined by the Courts below, when the lie of the suit property itself is in dispute, the plaintiff claiming the same to be her property and the defendant panchayat contending that the same is a public street vested with it, in such view of the matter, when the claim of title to the suit property as such is involved in the matter, in my considered opinion, the plaintiff should have endeavoured to seek the relief of declaration of title to the suit

property as per law and despite the resistance of her entitlement to the suit property by the defendant panchayat, the plaintiff has not chosen to seek the relief of declaration and on that score alone, it is seen that the plaintiff's suit is not legally sustainable.

8.As abovenoted, the lie of the property itself is being contested by the defendant panchayat putting forth the case that in the guise of putting up a new construction, the plaintiff is attempting to put up the construction in the public street vested with the panchayat. To evidence that the alleged construction put up by the plaintiff is only in the property owned by the plaintiff and covered under the documents marked as Exs.A1 & A2, the plaintiff has not endeavoured to take out a commission with reference to the same. Furthermore, the plaintiff has also not placed the field map of the property belonging to her located in survey No.6/22 and comprised in patta No.198. Though the plaintiff would claim that she had been enjoying the suit property for more than 30 years by putting up a thatched structure and also had obtained service connection etc., with reference to her abovesaid alleged enjoyment, the plaintiff has not placed any electricity bills evidencing her possession and enjoyment. Furthermore, if the plaintiff had been in the enjoyment of the suit property by putting up thatched structure for more than 30 years, definitely she would have been assessed to pay tax by the panchayat and on the other hand,

evidencing the same, there is no proof placed on the part of the plaintiff.

9. Furthermore, the plaintiff has not placed any acceptable evidence to show that she is endeavoring to put up the structure only in the property legally owned by her and not in the public street vested with the defendant's panchayat and in this connection, the plaintiff's witness examined as PW2 would state that the 3' lane is situated on the eastern side of the suit property and thereafter, the house of Ameer Sayabu is located. On the other hand, in the description of the suit property, the plaintiff has averred that the house of Ameer Sayabu is located adjacent to the suit property on the eastern side. Furthermore, according to PW2, on the western side, the house of one Nadar is located and on the other hand, in the plaintiff's description of the suit property, as averred in the plaint, it is found that the house of Indira Ammal has been shown as the western boundary. As rightly determined by the Courts below, no endeavour has been made by the plaintiff to establish the relationship between Nadar and Indira Ammal and in such view of the matter, it is found that inasmuch as the plaintiff or her witness is unable to identify the suit property and also the location of the same with correct boundaries, they are not able to place a clear picture with reference to the same and in such view of the matter, when the lie of the suit

property itself is not established and furthermore, when the plaintiff has also not established the plaintiff's possession and enjoyment of the suit property as described in the plaint, the Courts below are found to be fully justified in dismissing the plaintiff's suit.

10.The plaintiff seems to have relied upon the sale deed marked as Ex.A5 dated 09.06.1988, which has been executed by her husband and his brother in favour of Indira Ammal. In the plaint description, the house of Indira Ammal is stated to be located to the West of the suit property. On the other hand, on a perusal of Ex.A5, it is seen the plaintiff's husband and his brother had alienated the property to Indira ammal and the said property is described as lying to the east of the plaintiff's property. In the plaint description, the house of Ameer Sayabu is stated to be lying to the east of the plaintiff's property. Furthermore, in Ex.A5, the property comprised therein is shown to be bounded on the eastern side by a lane. On the other hand, the suit property has been described in the plaint as lying to the North of lane. Therefore, when the description of the property is not found to be tallying with the recitals containing in Ex.A5 sale deed and both mutually contradict each other, the resultant position is that inasmuch as the plaintiff is not sure as to where the property lies, she is unable to bring out the clear particulars with reference to the same and accordingly, as rightly determined by the Courts below, in the pretext

of putting up a new construction in the suit property, it is evident that the plaintiff is attempting to encroach into the public street vested with the panchayat, to which, she is not lawfully entitled to.

11.The plaintiff's counsel contended that the defendant has not placed any document evidencing that the property in dispute is vested with the panchayat and on that footing, further contended that the Courts below should have accepted the plaintiff's case. However, as the plaintiff has come forward with the suit seeking for necessary relief and when the plaintiff's entitlement to seek the reliefs is being challenged by the defendant in toto, it is for the plaintiff to establish her case by placing acceptable and reliable materials. As above discussed, when the lie of the suit property, the enjoyment of the same and the entitlement of the plaintiff to the same has not been established clearly by placing reliable materials, the Courts below are found to be fully justified in dismissing the plaintiff's suit and I do not see any valid reason to interfere with the same.

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12.In the light of the above discussions, in my considered opinion, no substantial question of law is found to be involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendant.

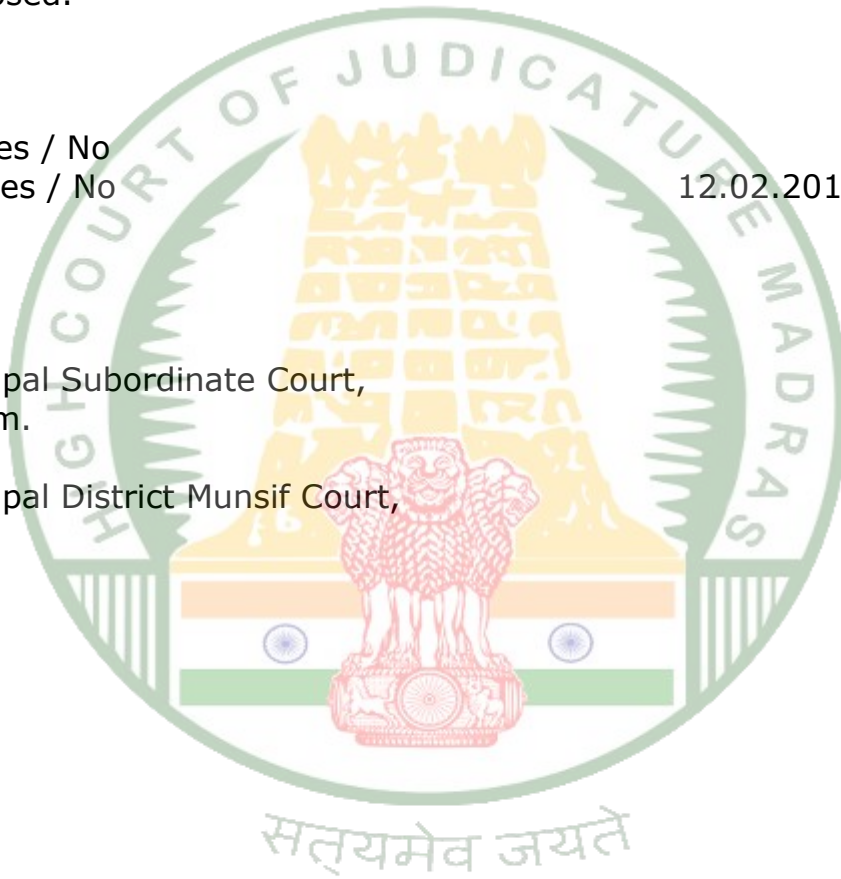
13. In conclusion, the second appeal fails and is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No
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12.02.2019

To

- 1.The Principal Subordinate Court,
Tindivanam.
- 2.The Principal District Munsif Court,
Gingee.



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T.RAVINDRAN, J.

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**Pre-delivery Judgment made
in S.A.No.845 of 2005**

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