



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.06.2019
PRONOUNCED ON : 26.06.2019

CORAM:
THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.691 of 2019
and
C.M.P. No.13025 of 2019

Ganesan ... Appellant/Appellant/Defendant

Vs.

Sri Rangan ... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 07.03.2018 made in A.S.No. 113 of 2011 on the file of the Sub Court, Kallakurichi confirming the judgment and decree dated 18.03.2011 made in O.S. No.112 of 2007 on the file of the Principal District Munsif Court (Full additional charge of the III Addl. District Munsif Court), Kallakurichi.

For Appellant : Mr.N.Manokaran

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 07.03.2018, passed in A.S.No. 113 of 2011, on the file of the Subordinate Court, Kallakurichi confirming the judgment and decree dated 18.03.2011, passed in O.S. No.112 of 2007, on the file of the Principal District Munsif Court, Kallakurichi.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and possession.

4. The suit property has been described as located in old S.No.107/4, new S.No.107/9, measuring an extent of 0.06 cents (0.02.5 ares) with specific measurements consisting of a thatched shed and lying within the four boundaries as described in the plaint. Now, according to the plaintiff, the suit property belongs to his father Ayyakannu ancestrally and in the partition effected between Ayyakannu and his sons, the suit property had been allotted to his share in the partition deed



and the abovesaid partition deed has been marked as Ex.A1 by the plaintiff. Considering the abovesaid partition deed, particularly, the recitals contained therein, it is found that as rightly put forth by the plaintiff, the suit property, being the ancestral property of the plaintiff's family, in the partition effected by way of the Ex.A1 partition deed, the same had come to be allotted to the share of the plaintiff. Following the allotment of the suit property towards the plaintiff's share, it is seen that pattas had been issued in favour of the plaintiff and the same have been marked as Exs.A2 and A3. To establish that the plaintiff has been in the possession and enjoyment of the suit property from the days of his predecessor in interest, the electricity bills have been marked as Ex.A4 and A6. The tax receipt has been marked as Ex.A5 and in addition to that, the plaintiff has also tendered evidence with reference to his claim of title to the suit property in a clear and acceptable manner. Therefore, as rightly determined by the Courts below, the plaintiff is found to have established his claim of title to the suit property.

5. The defendant resisted the plaintiff's suit mainly contending that he had acquired title to the suit property by way of a sale deed dated 28.05.1970, marked as Ex.B1, said to have been executed in his favour by one Chinnasamy and according to the defendant, the plaintiff's father has also attested the said document. However, as rightly found by the Courts below, there is no material on the part of the defendant to establish that his predecessors in interest had title to the suit property as such. On the other hand, as could be seen from the sale deed relied upon by the defendant marked as Ex.B1, the property described therein is stated to be allotted in resurvey No.105/5, natham resurvey No.106/1 and therefore, when there is no indication contained therein that the said deed relates to the old S.No.107/4 or the new S.No.107/9 and furthermore, when the other documents projected by the defendant are also not shown to be pointing to the suit property as described in the plaint, in such view of the matter, the claim of the defendant that he has acquired title to the suit property based on Ex.B1 has been rightly rejected by the Courts below. In my considered opinion no interference is called for with reference to the same. Ex.B5 partition deed has also been not relied upon by the Courts below as the document emanates only after the institution of the suit and the same has been properly considered by the Courts below.

6. Arguments had been put forth that Ex.A1 partition deed had not come into effect. However, considering the patta documents projected by the plaintiff marked as Exs.A2 and A3 as well as the other documents filed on behalf of the plaintiff, it is found that based on Ex.A1 partition deed, the plaintiff had obtained patta in respect of the suit property in his favour



and enjoying the same and therefore, the case of the defendant that Ex.A1 partition deed has not been put in action, as such, cannot be countenanced.

7. No doubt, the plaintiff has pleaded that the defendant is in the occupation of the suit property on the permission granted by his father. However, according to the plaintiff, inasmuch as the suit property is required for his possession and accordingly, the plaintiff having terminated the permission granted in favour of the defendant by way of Ex.A7 legal notice and when as above discussed, the defendant has not established his valid claim of title, possession and enjoyment of the suit property, in such view of the matter, the plaintiff being found to be the lawful owner of the suit property, the Courts below are found to be wholly justified in granting the reliefs as prayed for by the plaintiff and no valid reason is projected warranting any interference to the abovesaid concurrent judgment and decree of the Courts below.

8. In the light of the abovesaid discussions, the Courts below having upheld the plaintiff's case based on the proper appreciation of the materials and when the judgment and decree of the Courts below do not suffer any irrationality or perversity in any manner. In all, it is found that no substantial question of law arises for consideration in this second appeal. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Subordinate Court,
Kallakurichi.

2. The Principal District Munsif Court,
Kallakurichi.(Full Additional charge of the III Additional
District Munsif Court)
+1 CC to Mr.N.Manokaran, Advocate sr 53128.

S.A. No.691 of 2019

and

C.M.P. No.13025 of 2019

RV(CO)

SP(20/11/2019)