

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.07.2019

PRONOUNCED ON : 17.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.570 of 2019

Dayalan

...

Appellant

Vs.

1.Natesan

2.The District Collector of
Tiruvannamalai District Collector
Office, Vengikkal Village and Post,
Tiruvannamalai.

3.The Thasildhar,
Taluk Office,
Tiruvannamalai.

4.The Deputy Inspector of Survey,
Taluk Office, Tiruvannamalai.

5.Unnamalai

6.Vasugi

7.Kalaiarasi

8.Kasiyammal

9.Parvathmm5al

10.Kumari

11.Vijaya

12.Manjula

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 28.04.2018 passed in A.S.No.46 of 2006 on the file of the Additional Subordinate Court, Tiruvannamalai, confirming the Judgment and Decree dated 27.02.2006 passed in O.S.No.58 of 2001 on the file of the Additional District Munsif Court, Tiruvannamalai.

For Appellant

: Mr.V.Prakash Babu

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 28.04.2018 passed in A.S.No.46 of 2006 on the file of the Additional Subordinate Court, Tiruvannamalai, confirming the Judgment and Decree dated 27.02.2006 passed in O.S.No.58 of 2001 on the file of the Additional District Munsif Court, Tiruvannamalai.

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

3.The suit has come to be laid by the plaintiff seeking for the reliefs of recovery of possession by way of a mandatory injunction, future mense profits and also for direction.

4.The case of the plaintiff has been resisted by the defendants on various grounds.

5.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow campus, in my considered opinion, it is unnecessary to dwell into the facts of the case in detail.

6.As could be seen from the materials placed on record, it is found that the plaintiff had already levied a suit in O.S.No.540 of 1996 against the defendants on the file of the Additional District Munsif Court, Tiruvannamalai in respect of the suit properties and other properties. It is found that the abovesaid suit had been contested by the defendants and the abovesaid suit ended in favour of the plaintiff, thereby, the plaintiff had been granted the relief of declaration of title to the suit properties as well as the item 5 of the suit properties described in the abovesaid suit and also it is seen that the plaintiff had also been granted the relief of permanent injunction restraining the defendants from in any manner interfering with his possession and enjoyment of the abovesaid items of the suit properties described in the said suit. Aggrieved over the judgment and decree passed in O.S.No.540 of 1996, it is seen that the appellant had preferred the first appeal in A.S.No.62 of 1999 on the file of the Additional District and Sessions Judge cum Chief Judicial Magistrate Court, Tiruvannamalai and the first appellate Court is found to have partly modified the judgment and decree of the trial Court passed in O.S.No.540 of 1996 and concurred with the judgment and decree of the trial Court in so far as the suit properties are concerned and only rejected the plaintiff's case with reference to the 5th item of the suit properties as described in the abovesaid suit. Though it is seen that the appellant and the other defendants had been professing that they had preferred the second appeal against the judgment and decree of the first appellate Court passed in A.S.No.62 of 1999, it is seen that there is no material placed on the part of the defendants to hold that they had preferred any challenge to the judgment and decree passed by the first appellate Court in A.S.No.62 of 1999. The abovesaid facts had been clearly admitted by the first defendant examined as DW1 on behalf of the defendants and from his evidence and the other materials placed on record, it is seen that the defendants had already suffered a decree in respect of the suit properties in O.S.No.540 of 1996 and the same had also

been confirmed in A.S.No.62 of 1999. Furthermore, it is also found that prior to O.S.No.540 of 1996, already another suit had been pending between the parties in respect of the suit properties in O.S.No.233 of 1977 and however, it is noted that the abovesaid suit has not been proceeded further for one reason and the other. Be that as it may, the defendants having admitted that the plaintiff's title to the suit properties had been already declared in O.S.No.540 of 1996 and confirmed in A.S.No.62 of 1999 and as above noted, when there is no material on the part of the defendants to evidence that they had thrown any challenge to the judgment and decree passed in the abovesaid proceedings, in such view of the matter, it is seen that as rightly determined by the Courts below, the judgment and decree passed in O.S.No.540 of 1996 as confirmed in A.S.No.62 of 1999 as abovestated, would be binding upon the defendants in all aspects. In such view of the matter, it is evident that it is only the plaintiff, who has title to the suit properties and the claim of title projected by the defendants had already been turned down by the competent Court as abovestated.

7.Now, according to the plaintiff, despite the decree obtained by him in O.S.No.540 of 1996, the defendants without any authority had intruded and encroached into the suit properties and failed to surrender the possession of the suit properties, despite requests and therefore, it is seen that the plaintiff had been necessitated to seek the relief of recovery of possession from the defendants as prayed for. The courts below had gone into the above aspects of the matter and found that the plaintiff had also alleged complained against the defendants for their alleged trespass into the suit properties and accordingly, it is found that despite the fact that the defendants have no title to the suit properties and as they had encroached into the same unlawfully, in such view of the matter, the Courts below are found to be totally justified in granting the relief of recovery of possession of the suit properties from the defendants as prayed for by the plaintiff.

8.As regards the relief sought for by the plaintiff against the defendants 5 to 7, it is found that the defendants 5 to 7 had not contested the plaintiff's suit throughout both in the trial Court as well as in the first appellate Court and accordingly, when it is found that the plaintiff's title to the suit properties had been declared and the defendants have not placed any material to uphold their alleged claim of title to the suit properties and accordingly, the plaintiff, as the owner of the suit properties, is entitled to initiate survey proceedings in respect of the suit properties for the identification of the same by planting survey stones etc., through the appropriate authorities and in such view of the matter, the defendants 5 to 7 are not justified in refusing to accede the abovesaid lawful request of the plaintiff and thereby, it is seen that the Courts below are justified in

granting the abovesaid relief in favour of the plaintiff as prayed for.

9. In the light of the abovesaid discussions, considering the reasonings and conclusion of the Courts below for upholding the plaintiff's claim of title to the suit properties as well as for upholding the entitlement of the plaintiff to seek and obtain the reliefs prayed for in the suit and having also correctly held that the defendants had failed to establish their claim of title to the suit properties in any manner and the abovesaid determination of the Courts below being founded on the proper appreciation of the materials placed on record and the principles of law governing the issues involved between the parties and the same does not suffer from any perversity or irrationality in any manner, in such view of the matter, I do not find any valid reason to interfere with the concurrent judgment and decree of the Courts below.

For the reasons aforesaid, no substantial question of law is found to be involved in the second appeal. Accordingly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sms
To

1. The District Collector of
Tiruvannamalai District Collector
Office, Vengikkal Village and Post,
Tiruvannamalai.
 2. The Thasildhar,
Taluk Office,
Tiruvannamalai.
 3. The Deputy Inspector of Survey,
Taluk Office, Tiruvannamalai.
 4. The Additional Subordinate Court, Tiruvannamalai.
 5. The Additional District Munsif Court, Tiruvannamalai.
 6. The Section Officer, V.R. Section, High Court, Madras.
in S.A.No.570 of 2019
- A.SK(17/12/2019)