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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.06.2019

PRONOUNCED ON : 01.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.695 of 2019

Mahathma .. Appellant

Vs.

Chockalingam .. Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 25.02.2019 passed in A.S.No.12 of 2017 on the file of the Subordinate Court, Uthangarai, reversing the Judgment and Decree dated 22.09.2017 passed in O.S.No.10 of 2017 on the file of the District Munsif - Cum- Judicial Magistrate, Uthangarai.

For Appellant : Mr.N.Jayachander

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 25.02.2019 passed in A.S.No.12 of 2017 on the file of the Subordinate Court, Uthangarai, reversing the Judgment and Decree dated 22.09.2017 passed in O.S.No.10 of 2017 on the file of the District Munsif - Cum- Judicial Magistrate Court, Uthangarai.

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

3.The suit has been laid by the plaintiff for the reliefs of declaration and permanent injunction.

4.The suit property is comprised in survey No.75/3B Punja land of an extent of 0.11.0 hectare inclusive of Tamarind tree and it is further seen that the plaintiff has valued the Tamarind tree at Rs.2,000/- and accordingly, paying the necessary Court fees for the reliefs prayed for, levied the suit against the defendant contending that the suit property as



described in the plaint had been allotted to his share in the partition deed dated 26.12.2011 and that pursuant to the same, it is he, who has been in the possession and enjoyment of the same and paying kist and also enjoying the usufructs of the Tamarind tree situated therein and the defendant, without any authority, attempted to interfere with his possession and enjoyment of the suit property and hence, he has been necessitated to institute the suit against the defendant for appropriate reliefs.

5.The defendant has resisted the plaintiff's suit, in toto, challenging the claim of title, right and interest of the plaintiff in respect of the suit property, particularly, disputed the case of the plaintiff that the Tamarind tree is lying in survey No.75/3B and that the plaintiff is enjoying the same and according to the defendant, the property comprised in survey No.75/3B of an extent of 0.11.0 hectare is not an agricultural land as projected by the plaintiff and on the other hand, it is contended by him that the same had been used by the public as a road and hence, the suit property belonged to the Government and further, it is also stated that on the southern side of the abovesaid road, the defendant's family is having land in survey No.77 and the defendant's grandfather had planted the Tamarind tree in front of his house and hence, the plaintiff has no title over the suit Tamarind tree and suppressing the abovesaid factors, had come forward with the false suit and therefore, the suit is liable to be dismissed.

6.On the basis of the abovesaid pleas, the parties went for trial and in support of the plaintiff's case, PWs 1 to 4 were examined and Exs.A1 to A6 were marked. On the side of the defendant, DWs 1 to 3 were examined and Exs.B1 to B5 were marked.

7.On a consideration of the materials placed on record and the submissions made, the trial Court was pleased to accept the plaintiff's case and granted the reliefs in favour of the plaintiff. On appeal by the defendant, the first appellate Court, on a consideration of the materials placed on record and the submissions made, was pleased to set aside the judgement and decree of the trial Court and thereby dismissed the plaintiff's suit and aggrieved over the same, the plaintiff has come forward with the present second appeal.

8.The plaintiff claims title to the suit property based on the partition deed dated 26.12.2011, the certified copy of which has been marked as Ex.A5. As could be seen from the recitals contained in Ex.A5, it is found that survey No.75/3B had been allotted to the share of the plaintiff. However, the lis between the parties is only with reference to the tamarind tree, in particular, said to be lying in survey No.75/3B on the part of the plaintiff. According to the defendant, no such tamarind



tree is lying in survey No.75/3B and further, according to the defendant, the survey No.75/3B has been used only as the road by the public and the plaintiff has not derived any title to the abovesaid property by way of the partition deed marked as Ex.A5.

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9. In support of his case, the plaintiff has placed reliance upon the documents marked as Exs.A1 to A5. As rightly found by the first appellate Court, considering the computerised chitta marked as Ex.A1, the "A" register extract receipt marked as Ex.A2, the survey sketch marked as Ex.A3, the kist receipt marked as Ex.A4, the copy of the partition deed as above noted marked as Ex.A5 and the Adangal extract given by the VAO marked as Ex.A6, absolutely, there is no reference about any tamarind tree as lying in survey No.75/3B in the abovesaid documents and even in Ex.A5 partition deed, there is no reference at all about any tamarind tree lying in survey No.75/3B and moreso, even in the adangal extract much relied upon by the plaintiff marked as Ex.A6, there is no indication of any tamarind tree lying in survey No.75/3B and in such view of the matter, as rightly found and determined by the first appellate Court, the tamarind tree with reference to which, the plaintiff has, in particular, levied the suit is not at all disclosed in any of the documents projected by the plaintiff and therefore, the claim of the plaintiff that he has been allotted the suit property inclusive of the tamarind tree by way of Ex.A5 partition deed cannot be believed and rightly rejected by the first appellate Court.

10. In addition to that, the plaintiff examined as PW1 has clearly admitted during the course of cross examination that on ground, the survey No.75/3B is only depicted as Mud road and according to him, it is only he, who had allotted the suit property for the formation of Mud road and further also admitted that the Mud road earlier formed has now been relaid as thar road and also admitted that in the survey plan, the survey No.75/3B has been only depicted as Thar road and the same runs in the property allotted to him and even as on date, the Thar road is in existence and also further admitted that there is no reference at all in Ex.A6 about any tamarind tree in survey No.75/3B. Therefore, considering the abovesaid clear admission of the plaintiff examined as PW1 that even though survey No.75/3B is said to have been allotted to him by way of Ex.A5 partition deed, the same is only used as a mud road and thereafter, as the thar road by the public and the same had been recognised only as Thar road by the revenue authorities and when there is no material on the part of the plaintiff that after the formation of the Thar road in survey No.75/3B, he had retained any other property in the suit survey number and to cap it all, when there is no material placed on the part of the plaintiff evidencing that he and his predecessor in interest had planted any tamarind tree in S.No.75/3B and enjoying the same and as abovenoted, when in none of the documents relied upon by the



plaintiff, there is any reference about the tamarind tree in survey N.75/3B and all the more when according to the plaintiff, the survey No.75/3B is used only as the Thar road and recognised to be the thar road by the revenue authorities and also so depicted in the survey plan, in such view of the matter, the claim of the plaintiff that he is in the possession and enjoyment of the suit property by way of Ex.A5 partition deed inclusive of the Tamarind tree cannot be accepted and as rightly found and determined by the first appellate Court, the plaintiff has miserably failed to establish that after the formation of the Mud road/Thar road in survey No.75/3B, he had retained or derived any further title in the abovesaid property and in such view of the matter, the first appellate Court is justified in holding that the plaintiff has not established the derivation of title to the suit property and his possession and enjoyment of the same as put forth in the plaint inclusive of the tamarind tree and accordingly, thereby, rightly set aside the judgment and decree of the trial Court, which had proceeded to uphold the plaintiff's case without any acceptable and reliable materials placed on the part of the plaintiff evidencing his derivation of title, possession and enjoyment of the same inclusive of the Tamarind tree.

11.As rightly pointed out by the first appellate Court, even assuming for the sake of arguments, the failure of the defendant in establishing that his predecessor in interest had planted the tamarind tree in front of his property and enjoying the same, that automatically would not lead to the conclusion that the tamarind tree claimed by the plaintiff belongs to him as put forth in the plaint. As rightly held by the first appellate Court, the weakness of the defence version would not enure to the benefit of the plaintiff for sustaining his case and it is only the plaintiff, who has to stand or fall on the strength of his case and when as above discussed, the plaintiff having miserably failed to establish his claim of title, possession and enjoyment of the suit property inclusive of the tamarind tree, the first appellate Court is perfectly correct in reversing the illogical and irrational judgment and decree of the trial Court and dismissing the plaintiff's suit.

12.In the light of the abovesaid discussions, it is found that the first appellate Court has assessed and analysed the materials placed on record, both oral and documentary, in the right perspective and correctly held that the plaintiff has failed to establish his claim of title, possession and enjoyment of the suit property as described in the plaint and the abovesaid determination of the first appellate Court, being founded on the proper appreciation of the factual matrix involved in the matter and not suffering from any perversity and irrationality, in such view of the matter, in my considered opinion, no substantial question of law is involved in the



second appeal. Resultantly, the second appeal fails and is, accordingly, dismissed. Consequently, connected miscellaneous petition, if any, is closed.

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-s/d-
Assistant Registrar

True Copy

Sub Assistant Registrar

sms
To

- 1.The Subordinate Court, Uthangarai.
- 2.The District Munsif - Cum- Judicial Magistrate, Uthangarai.
- 3.The Section Officer, V.R.Section, High Court, Madras.

+1 cc to Mr.N.Jayachander Advocate sr 55312

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