

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1183 of 2019

The Nagapattinam Municipality,
Rep.by its Commissioner,
Nagapattinam.

.. Appellant/1st Defendant

Vs

1.Amaravathi .. 1st Respondent/Plaintiff
2.Joseph .. 2nd Respondent/ 2nd Defendant

Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree dated 18.01.2000 made in A.S.No.11 of 1999 on the file of the Additional District Court, Nagapattinam in confirming the judgment and decree dated 19.11.1997 in O.S.No.58 of 1997 on the file of the District Munsif Court, Nagapattinam.

For Appellant : Mr.P.Srinivas

For Respondents: Mr.T.R.Rajagopalan
Senior Counsel for
Mr.K.Selvakumar for 1st respondent

JUDGMENT

The second appeal has been filed against the judgment and decree passed in A.S.No.11 of 1999 confirming the judgment and decree of the Trial Court passed in O.S.No.58 of 1997.

2. According to the 1st respondent/plaintiff, the suit property is classified as Government poramboke and his father Oyyathevar had been in possession and enjoyment of the property for more than 60 years and he passed away on 16.05.1988. Thereafter, the 1st respondent/plaintiff is in possession and she has been paying Kist to the local body. While so, the appellant/1st defendant issued a notice dated 23.6.1997 and directed the plaintiff to remove the superstructure. Hence, the suit was filed by the 1st respondent/plaintiff for permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the property.

3. A written statement was filed by the defendants contending that the suit scheduled property was allotted as a weekly market and the plaintiff is an encroacher of the land.

It is further stated that part of the suit property belongs to the National Highways, however, the National Highways is not impleaded as one of the defendants in the suit. Therefore, it is liable to be dismissed for non joining of necessary parties.

4. Before the Trial Court, the plaintiff examined herself as P.W.1 and marked Exs.A1 to A42. On the side of the defendants, one Latiff examined as D.W.1, but, no documentary evidence was marked.

5. The evidence produced by the plaintiff would establish that the father of the plaintiff came into possession of the property in the year 1951 and continuously, they have been in possession and enjoyment of the property. The Trial Court and the Appellate Court based on the evidence came to the conclusion, in my view rightly, that the plaintiff has proved his case.

6. In the case on hand, the plaintiff has filed the suit only for bare injunction. According to the appellant/1st defendant, 3/4th of the suit property belongs to the National Highways and 1/4th share belongs to the local body i.e. Municipality. Though, the suit for permanent injunction was decreed in favour of the plaintiff, the respondents are given liberty to evict the plaintiff in accordance with law.

7. I do not find any reason to interfere with the concurrent findings of the Trial Court and the Appellate Court. Hence, the findings of the Courts below are confirmed, however, granting liberty to the appellant and the National Highways to evict the plaintiff by following due process of law. In fine, the Second Appeal fails and the same is dismissed. No costs.

Sd/-

सत्यमेव जयते Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional District Judge, Nagapattinam
- 2.The District Munsif, Nagapattinam.

Copy to:

The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.P.Srinivas, Advocate,SR.101026.

mp(co)

krd 21/9

<https://hcservices.ecourts.gov.in/hcservices/>

S.A.No.1183 of 2019