IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.01.2019

Coram

THE HONOURABLE MS. JUSTICE P.T.ASHA

S.A.No.825 of 2018
and CMP. No.22684 of 2018

Murali ... Appellant/Plaintiff

Versus

1. Tamil Nadu Government,
   Rep. by District Collector,
   Ariyalur District.

2. Tahsildar,
   Jeyankondam,
   Ariyalur District.

3. Executive Officer,
   Town Panchayat Office,
   Jeyankondam,
   Ariyalur District. ... Respondents/Defendants

Prayer : Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgement and Decree dated 22.09.2017 made in A.S.No.75 of 2017 on the file of the Court of the Subordinate Judge, at Jeyankondam, confirming the Judgment and Decree dated 17.06.2015 made in O.S.No.123 of 2008 on the file of the Court of the District Munsif, at Jeyankondam.

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For Appellant : Mr. M.V.Krishnan

J U D G M E N T

The plaintiff is the appellant before this court, the second appeal is filed challenging the judgment and decree passed by the Subordinate Judge, Jeyankondam, in A.S.No.75 of 2017 whereby, the learned judge had confirmed the judgment and decree

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of the learned District Munsif at Jeyankondam in O.S.No.123 of 2008.

2. The suit in question is filed for a mandatory injunction directing the defendants 1 & 2 to issue patta to the plaintiff and for a permanent injunction restraining the 3rd defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property(for the sake of convenience the parties are referred to in their same ranking as in the suit).

3. It is the case of the plaintiff that he had purchased the suit property on 07.04.1999 and in the revenue records the suit property had been classified as a Poramboke. Thereafter it was decided by the Revenue Authorities to convert this land as a Natham and the plaintiff had taken steps to have the patta issued in his name. The plaintiff has put up a thatched hut in the suit scheduled property, which is a small house site. He has been assessed to electricity charges as well as house tax and has been in possession of the said property for over 12 years. On 12.06.2008 the 3rd defendant had issued a notice to the plaintiff calling upon him to remove his thatched house stating that the plaintiff has encroached into the Government land and calling upon him to remove the tached house.

4. The 3rd defendant namely the Executive Officer, Jeyankondam Municipality, had filed a counter wherein he had stated that it is the Government Poramboke and the plaintiff has no right over the said property. The 3rd defendant had further submitted that the letter given by the plaintiff to the 1st defendant who have granted patta in his favour will not clothe him with in any right.

5. The 2nd defendant namely the Tahsildar, Jeyankondam, had also filed a written statement more or less adopting the written statement of the 3rd respondent and contending that the vendor of the plaintiff had no right to the property and consequently the sale deed executed in favour of the plaintiff was invalid. The 2nd defendant had further contended that the suit property is situate in a water body and therefore there is no possibility to grant Patta in view of the various judgments of this court as well as the Hon'ble Supreme Court and they had also contended that the plaintiff is the owner of another house and therefore even on that score he is not entitled to be given a Patta.

6. The parties had gone to trial before the learned District Munsif, Jeyankondam and the plaintiff had examined himself as P.W.1 and three others as P.Ws 2 to 4. In support of his contentions he had marked Exs.A1 to A7. The defendants had examined D.W.1 and D.W.2 and marked Exs.B1 and B2. The learned District Munsif, on considering the evidence on record came to

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the conclusion that the suit property is a water body and that apart the plaintiff is the owner of another property as evidence by Exs.B1 and B2 and therefore not entitled to the relief that he claimed.

7. The unsuccessful plaintiff had filed A.S.No.75 of 2017 on the file of the Sub Court, Jeyankondam, challenging the judgment and decree in O.S.No.123 of 2008. The learned Subordinate judge confirmed the judgment and decree of the learned District Munsif and it is aggrieved by this concurrent judgment and decree that the appellant is before this court.

8. Heard, Mr.M.V.Krishnan, for the appellant. From perusal of the papers before this court it is clearly evident that the suit property which is comprised in Survey No.323 is a Government Poramboke and classified as a water tank/kuttai. It is also evident from Ex.B2 that the plaintiff is owning another property for which he has paid house tax as well, therefore the plaintiff is not entitled to a second property.

9. In view of the above I am of the opinion that there is no infirmity in the judgment and decree of the courts below, there is no substantial question of law involved in the above second appeal. Consequently, the same is dismissed.

10. In the result, the Judgment and Decree passed in A.S.No.75 of 2017 dated 22.09.2017 on the file of Subordinate Judge, at Jeyankondam, confirming the Judgment and Decree passed in O.S.No.123 of 2008 dated 17.06.2015 on the file of the Court of the District Munsif, at Jeyankondam is confirmed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The Subordinate Judge, Jeyankondam.

2. The District Munsif, Jeyankondam.

S.A.No.825 of 2018

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