

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 22.02.2019****CORAM****THE HONOURABLE MRS.JUSTICE R.HEMALATHA****S.A.No.176 of 2007**

1.Chinnappulian

2.Chinnakkunchu

... Plaintiffs/Respondents/Appellants

-Vs-

1. Vellaiyammal

2. Chandra

3. Sivanthi

Defendants / Appellants/Respondents

Prayer: Second Appeal filed under Section 100 of the code of Civil Procedure Code, against the decree and judgment dated 28.11.2005 passed in A.S.No.113 of 2004 by the Principal Sub Court, Madurai reversing the decree and judgment dated 19.11.2003 passed in O.S.No.56 of 2002 by the District Munsif, Melur.

For Appellants	: Mr.S.Jothimani
For Respondents	: No Appearance

JUDGMENT

There is no representation on behalf of the respondents.

2.The appellants are the plaintiffs in O.S.No.56 of 2002, on the file of the District Munsif, Melur. They filed a suit for bare injunction restraining the respondents/defendants from interfering with their peaceful possession and enjoyment over the suit properties. The first item of the suit property is a hut and vacant site measuring 2 cents in S.No.491/92 (old S.No.209/13) Melur Taluk, Madurai District, and the second item is a vacant site, measuring 0.02 cents in S.No.209/13 of Pattur Village, Melur Sub Division, Madurai District.

3. For the sake of convenience the parties are referred to as per their ranking in the trial Court.

4. The case of the appellant/plaintiff is as follows:-

The suit properties are ancestral properties of the plaintiffs and they are in possession and enjoyment of the same for 40 years by putting up a hut in the suit properties. While so, the



defendants are attempting to interfere with their right over the suit properties and one such attempt was made on 09.03.2002. A police complaint was given by the plaintiffs and the police did not take any action against the defendants.

5. The defendants filed a written statement and also a counter claim. In the written statement as well as in the counter claim the defendants have contented that the plaintiffs are entitled to two cents in S.No.491/92 and that they don't have any right in S.No.491/93. They further contend that the plaintiffs have trespassed into the defendants land and they claim right over their property. Therefore, they prayed for dismissal of the suit filed by the plaintiffs and prayed for recovery of possession of their property measuring 0.0052 cents reclaim in S.No.491/93 of Pattur Village, Melur Taluk, Madurai District.

6. The Trial Court framed the following issues for consideration:-

"1) Whether the plaintiffs are entitled to permanent injunction as prayed for them?

2) Whether the defendants are entitled for recovery of possession?

3) To what relief, the plaintiffs and defendants are entitled?"

7. In the trial Court, the first plaintiff examined himself and two other witnesses and marked Ex.A1 to Ex.A4. The second defendant examined himself and marked Ex.B1 to Ex.B7. After full contest, the learned District Munsif, Melur, decreed the suit filed by the plaintiffs and dismissed the counter claim made by the defendants. Aggrieved over the same, the defendants filed an appeal in A.S.No.113 of 2004 before the Principal Subordinate Judge, Madurai. The learned Principal Subordinate Judge, Madurai after analysing oral and documentary evidence adduced on both sides, allowed the appeal partly and the decree and judgment passed by the trial Court was set aside. In fact, the first appellate Court dismissed the suit filed by the plaintiffs in respect of the second item of the suit property. Aggrieved over the same, the plaintiffs have filed the present second appeal on the following Substantial Questions of law:-

"1) whether the Lower Appellate Court erred in dismissing the suit on the basis of the presumption and equity of law?

2) Whether the Lower Appellate Court has erred in considering the evidence given by the first plaintiff in respect of the items of scheduled properties?

3) Whether the conclusion of the Lower Appellate



Court that the second defendant has title to the extent of second item of plaint schedule properties, is correct in law?"

8. At the out set, it may be observed that the suit item No.1 is Survey Number 209/13 and the new Survey Number is S.No.291/92. The plaintiffs have described the second item of the suit property Survey Number 209/13 measuring 0.02 cents. It is pertinent to point out that the plaintiffs have not indicated the resurvey number for the S.No.209/13, especially, when the defendants contend that they are entitled to new S.No.491/93. No revenue records are filed to show that resurvey number for S.No.209/13 is R.S.No.491/93. The Revenue department had issued a patta (Ex.B1) to the second defendant in respect of a property situated in S.No.209/13. The corresponding new survey number is 491/93.

9. Mr.S.Jothimani, learned counsel appearing for the appellant would contend that though the counter claim was dismissed by the trial Court, the defendants did not file any appeal against the same and that the plaintiffs are in possession of both the items of the suit properties. He would further contend that the first appellate Court did not consider the second item of the suit property and dismissed the suit with regard to the second item erroneously. A perusal of the judgment passed by the first appellate court, dated 28.11.2005 clearly shows that the first appellate court had concluded that the plaintiffs have not established their possession over the second item of the suit property.

10. This observation of the first appellate court is based on facts and evidence. The plaintiffs did not adduced any acceptable evidence to show that they are in possession of second item of the suit property and the observations made by the first appellate court are perfectly in order. Therefore, this Court does not find any reason to interfere with the decree and judgment dated 28.11.2005 passed by the first appellate court. Therefore, the appeal fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)



To:

1.The Principal Sub Judge,
Madurai.

2.The District Munsif ,
Melur.

3.The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

dss

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