



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2019

CORAM

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

S.A. (MD)No.614 of 2019

and

C.M.P. (MD) .No.12392 of 2019

Rajendran .. Appellant /Appellant/Defendant

Vs.

Thangaraj .. Respondent / Respondent/
Plaintiff

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, against the Judgment and decree dated 15.07.2019, passed in Appeal Suit No.56 of 2015, by the learned Subordinate Judge, Sankarankoil, confirming the Judgment and decree, dated 09.04.2015, passed in Original Suit No.116 of 2008, by the learned District Munsif-cum-Judicial Magistrate, Sivagiri.

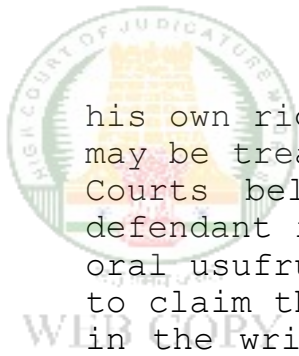
For Appellant : Mr.M.Jothi Basu

JUDGMENT

The defendant in O.S.No.116 of 2008, who had suffered a decree of declaration of title and recovery of possession at the hands of the Courts below has come up with this second appeal.

2. The plaintiff filed suit for declaration and recovery of possession contending that the suit property was assigned to him by the Government and he has also been granted patta under the natham settlement scheme. Since he was employed outside the village, he had allowed the defendant, who is his cousin (maternal uncle's son) to be in possession of the property in the year 2000. Since the defendant attempted to get the revenue records altered in his name in the year 2007, the plaintiff issued a notice on 21.11.2007 revoking the permission and requiring the defendant to handover vacant possession. The said notice was replied by the defendant with false averments. Hence, the plaintiff has come up with the suit for declaration and recovery of possession.

3. The defendant resisted the suit contending that it was his father, who arranged for grant of patta in favour of the plaintiff and according to him, he has been in possession of the property in



his own right. It was also specifically stated that the reply notice may be treated as part and parcel of the written statement. Both the Courts below upon the consideration of evidence found that the defendant is not consistent in his defence. While he had claimed the oral usufructuary mortgage(othi), in the reply notice, he had chosen to claim that he has been in possession of property in his own right in the written statement. It was also found that the defendant had claimed that he spent Rs.34,000/- and had constructed a house. In the absence of any evidence in proof of the claims of the defendant, the Courts below found that the plaintiff being a title holder is entitled to decree of declaration and recovery of possession. The claim of adverse possession was also rejected on the ground that a person, who claims to be in possession under a oral usufructuary mortgage, though invalid, cannot set up adverse possession.

4. On the above conclusions, the Courts below decreed the suit. Aggrieved, the defendant has come up with this appeal.

5. I have heard Mr.M.Jothi Basu, learned counsel for the appellant.

6. Mr.M.Jothi Basu, learned counsel for the appellant would vehemently contend that the Courts below were not right in granting a decree for declaration and recovery of possession, more so, when the plaintiff has not established the oral permission pleaded by him. I am unable to accept the said contention of the learned counsel for the appellant. The defendant in his reply notice had taken a plea that he is in possession under a usufructuary mortgage. In the written statement, he has suppressed the plea and had taken contradictory plea of adverse possession. He had also claimed that it was his father, who arranged for assignment of the land in favour of the plaintiff and therefore, he is entitled to the property. Though several conflicting and destructive pleas were raised by the defendant, he was not able to substantiate even one of them by letting in adequate evidence. The findings of the Courts below are based on material evidence, which can not be termed as perverse. I do not find any question of law much less than substantial question of law to enable me to entertain this appeal. Hence the second appeal fails and it is dismissed without being admitted. No Costs. Consequently, connected miscellaneous petition is dismissed.

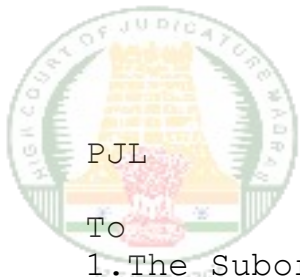
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Assistant Registrar(CS-I)

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/ /2020

Sub Assistant Registrar(CS)



PJL

To

1. The Subordinate Judge,
Sankarankoil.

2. The District Munsif-cum-Judicial Magistrate,
Sivagiri.

3. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-105950[F] dated
19/12/2019)

S.A(MD) .No. 614 of 2019
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