

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.116 of 2020
and C.M.P.No.2547 of 2020

Chithra

.. Appellant

Vs.

Dharmapura Adheenam
Thiruvarur Rajan Kattalai Inaippu,
A/M.Thiyagaraja Swami Thirukoil,
Thiruvapur
By its Hereditary Trustee
SriLa Sri Shanmugadesika
Gnamasambanda Pramachariya Swamigal,
Dharmapuram Adheenam,
Mayiladuthurai.

... Respondent

Prayer: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, praying to set aside the judgment and Decree passed in A.S.No.43 of 2018 dated 24.09.2019 on the file of the Sub Court, Thiruvarur by confirming the decree and judgment dated 17/03/2017 passed in O.S.No.42 of 2014 on the file of the District Munsif, Thiruvarur.

For Appellant : Mr.R.Anand Kumar

For Respondent : Mr.S.Sounthar

J U D G M E N T

The defendant in O.S.No.42 of 2014 who had suffered a decree for delivery of possession at the hands of the District Munsif, Thiruvarur, upon its confirmation by the Sub Court, Thiruvarur in A.S.No.43 of 2018 has come up with this second appeal.

2. The suit was laid by the respondent/plaintiff seeking recovery of possession contending that the defendant had encroached upon its property of an extent of about 600 Sq.ft in Survey No.2372.

3. The suit was resisted by the defendant contending that she has been in possession of the property for sufficiently long time and the property in her possession does not belong to the plaintiff temple. It is the further contention of the defendant that her possession has been recognised by the Government and her application for grant of patta is pending. It is also her case that the property in her possession is classified as Poramboke.

4. Pending trial, a Commissioner was appointed to measure the suit property and find out the area of encroachment. The said Commissioner was assisted by the Surveyor. The Commissioner and the surveyor measured the property and filed a report stating that an extent of about 0.01.24 Ares belonging to the plaintiff has been encroached upon by the defendant by putting up construction. Based on the said report as well as the oral and documentary evidence on record, the trial Court concluded that the plaintiff is entitled to a decree for recovery of possession. On the said findings, the trial Court decreed the suit. Aggrieved, the defendant preferred an appeal in A.S.No.43 of 2018.

5. The appellate Court reconsidered the evidence on record. It however agreed with the trial Court. Upon the said concurrence, the appeal was dismissed. Aggrieved, the defendant has come up with the second appeal.

6. I have heard Mr.R.Anand Kumar, learned counsel appearing for the appellant and Mr.S.Sounthar, learned counsel appearing for the respondent.

7. Mr.R.Anand Kumar, learned counsel appearing for the appellant/defendant would vehemently contend that the Courts below were not right in decreeing the suit for recovery of possession without proof of title. He would also point out that only revenue document had been filed by the plaintiff in support of its claim for title and therefore the suit ought not have been decreed. He would also contend that the findings of the trial Court as well as the appellate Court based on the report of the Commissioner and Surveyor cannot be sustained.

8. On the first question, I do not think that the learned counsel can raise a question in as much as there was no plea in the written statement denying the title of the plaintiff to the land in Survey No.2372. All that the defendant would plead is that she is not in possession of the land belonging to the plaintiff and the land in her possession is Poramboke land. This contention is belied by the Commissioner's report and the plan which shows that the defendant has encroached upon an

extent of about 0.01.24 Ares.

9. The learned counsel despite his best efforts is unable to make out any error in the report of the Commissioner assisted by a Surveyor in order to enable me to interfere with the factual findings based on the said report. Since the title of the plaintiff to the land in Survey No.2372 was not denied, the learned counsel appearing for the appellant cannot now seek to raise a question of title in the second appeal.

10. I am, therefore of the considered opinion that the Courts below were right in decreeing the suit for possession filed by the plaintiff. I do not see any question of law, much less a substantial question of law in order to enable me to interfere with concurrent findings rendered by the Courts below. The appeal therefore fails and it is dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

vum

To

1.The Subordinate Judge,
Sub Court, Thiruvarur.

2.The District Munsif,
District Munsif Court, Thiruvarur.

3. The Section Officer, सत्यमेव जयते
VR Section,
Madras High Court,
Chennai.

+1cc to Mr.R.Anand Kumar, Advocate SR.No.26060

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SSV(CO)
GMY(08/09/2020)