

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.03.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA
S.A.No.978 of 2008
and
MP.No.1 of 2008

Menaka Ammal

...Appellant/Plaintiff

Vs

1. Selvan

2. Pandian

3. Kumar

...Respondents/ Defendants

PRAYER: Second Appeal is filed under Section 100 of CPC praying to prefer this Memorandum of Grounds of Second Appeal in this Hon'ble Court against the Judgment and Decree dated 31.3.2008 passed in A.S.No.17 of 2007 on the file of the Subordinate Judge, Panruti, confirming the judgment and decree dated 28.03.2007 made in O.S.No.125 of 2002 on the file of the District Munsif, Panruti.

For Appellant : Mr. M. Gnanamoorthy for
M/s. N. Suresh

For Respondents : Mr. R. Sunil Kumar for R1 to R3

Judgment

The unsuccessful plaintiff before the Courts below is the appellant before this Court.

2. The above Second Appeal emanates from the Judgment and Decree dated 28.3.2007 of the District Munsif, Panruti in O.S.No.125 of 2002, which was confirmed by the Subordinate Judge, Panruti in A.S.No. 17 of 2007.

3. The parties are referred to in the same litigative status as in the suit.

The plaintiff had filed the suit for permanent injunction restraining the defendants, their men or anybody claiming under them from trespassing into the suit property by putting up any construction over the suit property.

4. It is the case of the plaintiff that the suit property was purchased by her under a registered sale deed dated 25.01.1985 from one Kaliyan and others and that she has been in possession and enjoyment of the suit-property ever since the date of purchase. She would also submit that the revenue records have been appropriately mutated in her name.

5. She would contend that defendants, who are her neighbours were on enimical terms with her. On account of this animosity they were trying to trespass into the suit property thereby causing trouble to her. The plaintiff is an aged lady having no male support. The defendants, who are brothers, are threatening to dispossess her from the suit property. The plaintiff is using the suit property as a cattle shed and also using the same to store fire-wood, straw etc.

6. The defendants have stored sand and bricks near the suit property and are threatening to put up a construction over the suit item by removing the hut put up by her and hence she was constrained to file the suit for bare injunction. The plaintiff would contend that the threat to trespass commenced on 21.04.2002 and it continued even up to the date of filing of the suit. The plaintiff left with no other alternative, has been constrained to move the court.

7. Per contra, the defendants would submit that the suit property is their ancestral property and in this property, the father of the defendants had constructed a hut made of brick was in possession and enjoyment of the property well over the statutory period. The defendants had denied and questioned the validity of the sale in favour of the plaintiff. The defendants would state that they have never trespassed into the property and it is the plaintiff who was trying to trespass into the suit property which belongs to the defendants.

8. The defendants would further submit that there is already a house build of brick in the suit property, where the defendants are residing and for which property tax has already been levied. The defendants denied the plaintiff's right to the suit-property.

9. The learned District Munsif, Panruti had framed the following issues:

- a) Whether the plaintiff is in possession of the suit property?
- b) Whether the plaintiff is entitled to the relief of injunction?
- c) To what reliefs the plaintiff is entitled?

10. The plaintiff has examined two witnesses PW1 and PW.2 and had marked Exs. A1 to A3. The defendants had examined two witnesses DW1 and DW2 and had marked Exs. B1 to B20. Ultimately the learned District Munsif has rendered a finding that the plaintiff is not in possession of the suit-property and it is the defendants who are in possession of the property and consequently dismissed the suit.

11. Challenging the said judgment and decree, the appellant had filed A.S.No.17 of 2007 on the file of the Sub-Court, Panruti. The learned Subordinate Judge confirmed the Judgment and Decree of the Trial Court.

12. Challenging the same, the plaintiff is before this Court.

13. When the matter came up on 31.07.2008, only notice was ordered to the respondents and thereafter the matter had come up for hearing only on 3.10.2019 and after three adjournments the matter was listed before this Court. The counsels had advanced their arguments.

14. A perusal of the Judgment and Decree of the Courts below would reveal that the suit property originally belonged to one Subbu Gounder, who had five sons, namely, Duraisamy, Gopal, Appar, Manicka Gounder and Natesan. The plaintiff is the daughter of Natesan and grand daughter of Subbu Gounder. Duraisamy died leaving behind his son Sankaran. Sankaran in turn had three sons and three daughters. The defendants herein are the sons of Sankaran, who are the grandsons of Duraisami.

The plaintiff is said to have purchased the suit property from her younger brother and the sons of her deceased elder brother.

She would contend that her father Natesa Gounder had a share in the suit-property and after his death, her brothers sold their share in her favour and therefore she calims right to the suit property. The defendants have categorically denied that the plaintiff and her father ever enjoyed the suit property.

15. The Courts below have also considered the evidence of the plaintiff where she has stated that the defendants have been residing in the suit property for over 20 years. Further, there is no proof to show that the plaintiff or her father at any point of time were in possession of the suit property.

16. Considering the fact that the suit is one for a bare injunction and taking into account the admission of the plaintiff in her cross examination that she has been out of

possession for over 20 years, the Courts below held that the plaintiff is not in possession of the suit-property. This Court does not find any substantial question of law that arises for consideration in this Second Appeal. Hence, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar (CS)

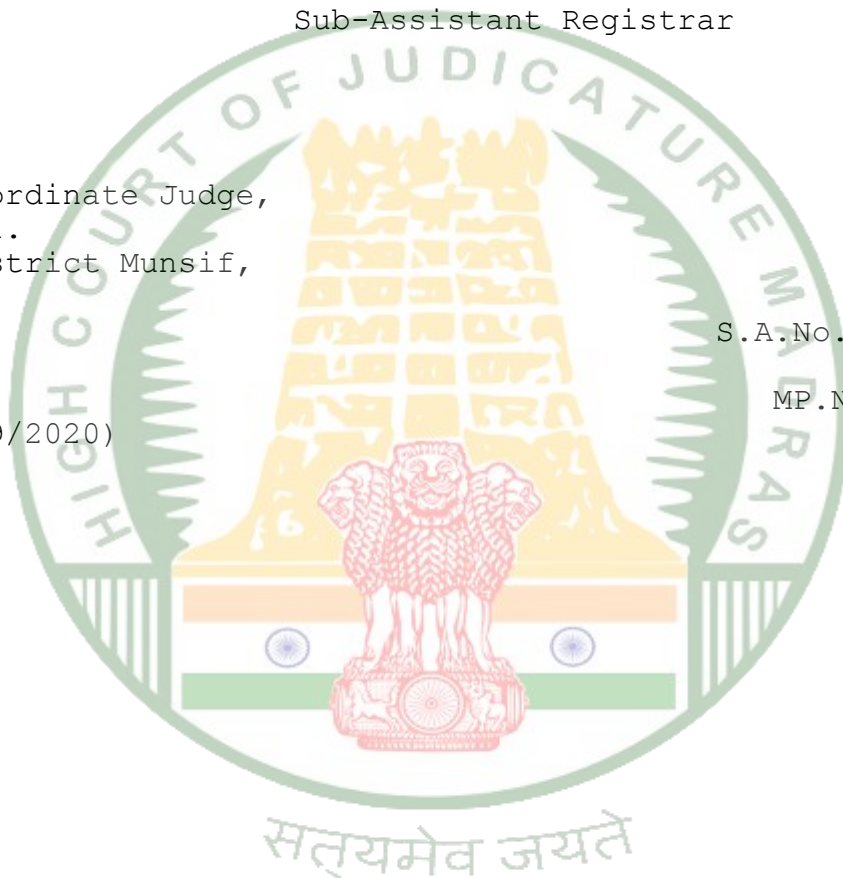
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To,
1. The Subordinate Judge,
Panruti.
2. The District Munsif,
Panruti.

S.A.No.978 of 2008
and
MP.No.1 of 2008

A.SK(04/09/2020)



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