

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 24.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.190 of 2020

1. Palaniappan
2. Mohan
3. Velu

.. Appellants/
Appellants/Plaintiffs

Versus

1. Soundararajan
2. Kamalakkannan
3. Arunkumar
4. Raja @ Cirpiraja

.. Respondents/
Respondents/ Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 18.12.2019 passed in A.S.No.18 of 2016 on the file of the Subordinate Judge, Rasipuram confirming the decree and judgment dated 15.09.2016 passed in O.S.No.173 of 2011 by the District Munsif, Rasipuram.

For Appellants : Mr.I.C.Vasudevan

JUDGMENT

The plaintiffs in O.S.No.173 of 2011 on the file of the District Munsif Court, Rasipuram are the appellants herein. The said suit was filed for declaration of title by way of adverse possession and for consequential permanent injunction.

2. The case of the plaintiffs is that though the suit property was originally belonged to defendants 1 to 3, the plaintiffs have been in possession of the property for more than 30 years. It is claimed that in O.S.No.174 of 1991, the Advocate Commissioner found that the plaintiffs were in possession of the suit property. Hence, the plaintiffs are entitled for declaration of title by way of adverse possession.

3. In the written statement, the entire averments and allegations of the plaintiffs were denied. It is contended that the present suit is hit by res judicata and the basic requirements of adverse possession has not been stated by the plaintiffs in their pleadings and there is no cause of action for filing the suit.

4. Based on the above pleadings, the Trial Court framed necessary issues. On the side of the plaintiffs, PW1 to PW3 were examined and Exs.A1 A10 were marked. On the side of the defendants, DW1 and DW2 were examined but no document was produced. Exs.C1 and C2 are the report and plan produced by the Advocate Commissioner in the earlier suit. Upon consideration of the evidence adduced by the parties, the Trial Court dismissed the suit. Aggrieved over the same, the plaintiffs preferred an appeal, but the Appellate Court dismissed the appeal. Assailing the findings, the present appeal has been filed.

5. Mr.I.C.Vasudevan, learned counsel for the appellants would submit that both the Courts were not correct in dismissing the suit without considering the well settled principles of law and the materials available on record. It is also contended that the suit filed by appellants were dismissed on erroneous assumption that it is hit by res judicata.

6. In the matter on hand, the appellants / plaintiffs filed the suit for declaration on the basis that they perfected the title to the suit property by adverse possession. It is the case of the plaintiffs that they have been in continuous possession of the land for more than 30 years. The respondents / defendants categorically denied the assertion made by the plaintiffs in their written statement.

7. It is not in dispute that O.S.No.174 of 1991 was filed by the first plaintiff against the father of the defendant and others for the same relief, but it was dismissed. Admittedly, the property in the present suit and in the earlier suit are one and the same. Hence, it is hit by res judicata. It is relevant to note that the plaintiffs are relying on the report and plan of the Advocate Commissioner, viz., Exs.C1 and C2 filed in the earlier suit to establish their continuous possession of the suit property.

8. At this juncture, it is appropriate to mention that it is settled proposition of law that a person who basis his title by adverse possession must establish that his possession is hostile to the real owner and amounts to denial of title to the property. A perusal of the averments show that this basic and fundamental plea is absent. Therefore, I find no infirmity in the findings of the Trial Court and the Appellate Court

that the plaintiff must prove his possession for the statutory period and also the nature of possession, but he has not adduced any evidence.

9. Fore the reasons stated above, I find no illegality or perversity in the findings of the Courts below. In fine, the Second Appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

pvs

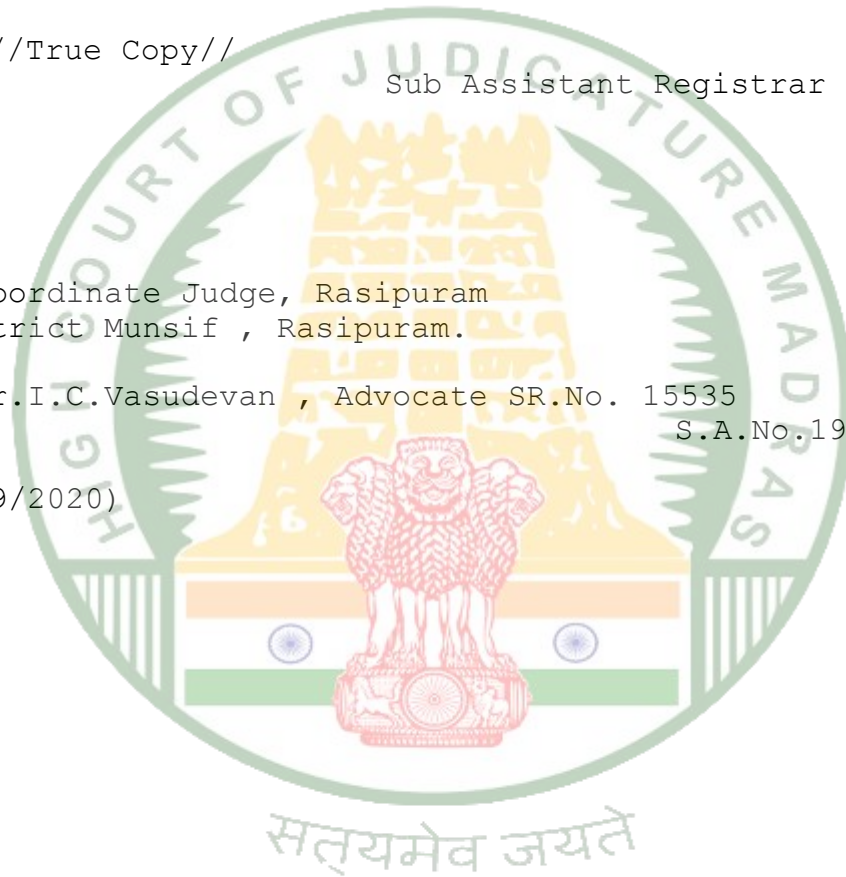
To

1. The Subordinate Judge, Rasipuram
- 2.The District Munsif , Rasipuram.

+lcc to Mr.I.C.Vasudevan , Advocate SR.No. 15535

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A.SK(07/09/2020)



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