

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 385 of 2016

Palanisamy

.. Appellant/Plaintiff

Vs.

1. The District Collector,
Ayyampalayam, Tiruchengode Road,
Namakkal.
2. Revenue Divisional Officer,
Mohanur Road, Namakkal Town,
Namakkal Taluk and District.
3. Tahsildar,
Mohaur Road, Namakkal.
4. Palanisamy ..Respondents/Defendants

Prayer: Second appeal filed under Section 100 of C.P.C, against the judgment and decree dated 25.09.2014 made in A.S.No. 8 of 2013 on the file of the Sub-Ordinate Judge, Namakkal confirming the judgment and decree dated 27.09.2012 made in O.S.No. 57 of 2009 on the file of the Principal District Munsif Court, Namakkal.

For Appellant : Mr.T.Dhanyakumar

For Respondents : Mr.Dev Narendran,
Government Advocate for R1 to R3
Mr.T.L.Thirumalaisamy for R4.

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J U D G E M E N T

The plaintiff in O.S.No.57 of 2009, whose suit for permanent injunction restraining the defendants namely, the District Collector and others from interfering with his possession of the land in Survey No. 376/3 was dismissed by the Trial Court, upon its affirmation by the Appellate Court in A.S.No. 83 of 2013 has come up with this second appeal.

2. According to the plaintiff, he own lands in Survey Nos. 375/11 and 375/6. He had encroached upon an extent of about 2 acres 20 cents in Survey No. 376/3 and he has been in occupation of the same for more than 30 years by cultivating the same. On this strength of such possession, the plaintiff sought for injunction.

3. The suit was resisted by the defendants contending that the land in Survey No.376/3 is classified as "Eri" and it forms part of a water body. Since the plaintiff had encroached upon the same, the authorities took action for removal of encroachment and the encroachment was removed on 19.03.2009. Therefore, according to the defendants, the plaintiff is not entitled to decree for permanent injunction.

4. The Trial Court, upon a consideration of the evidence on record accepted the defence plea and dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No. 8 of 2013. The lower Appellate Court also concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved, the plaintiff has come up with this second appeal.

5. I have heard Mr. T.Dhanyakumar, learned counsel for the appellant, Mr.Dev Narendran, learned Government Advocate for the respondents 1 to 3 and Mr.T.L.Tirumalaisamy for the 4th respondent. Notice of motion was ordered on 21.04.2016.

6. Mr.T.Dhanyakumar, learned counsel for the appellant would contend that the Commissioner's report shows that the plaintiff is in possession of the property in Survey No.376/3 and therefore, the Courts below were not right in dismissing the suit for injunction. He would further contend that the Courts below should have atleast granted an order of injunction restraining the Government from interfering with his possession, except under due process of law. I do not think that the said submission of the learned counsel could be accepted. It is found by the Courts below that the Commissioner inspected the property without notice to the respondents. The report of the Commissioner, who inspected the property without notice to the other side cannot be taken as valid piece of evidence to establish possession. Further, it is also seen that the plaintiff has encroached the suit property. Hence, his possession cannot said to be legal. It is in evidence that the authorities have taken steps to remove the encroachments and the encroachments have been removed. D.W.1, the Village Administrative Officer has spoken about the removal of the encroachment. I do not see any perversity in the findings recorded by the Courts below.

7. Despite his best efforts, Mr.T.Dhanyakumar is unable to make out any question of law much less a substantial question of law in order to enable me to entertain this appeal. Hence, this appeal fails and it is accordingly dismissed without being admitted. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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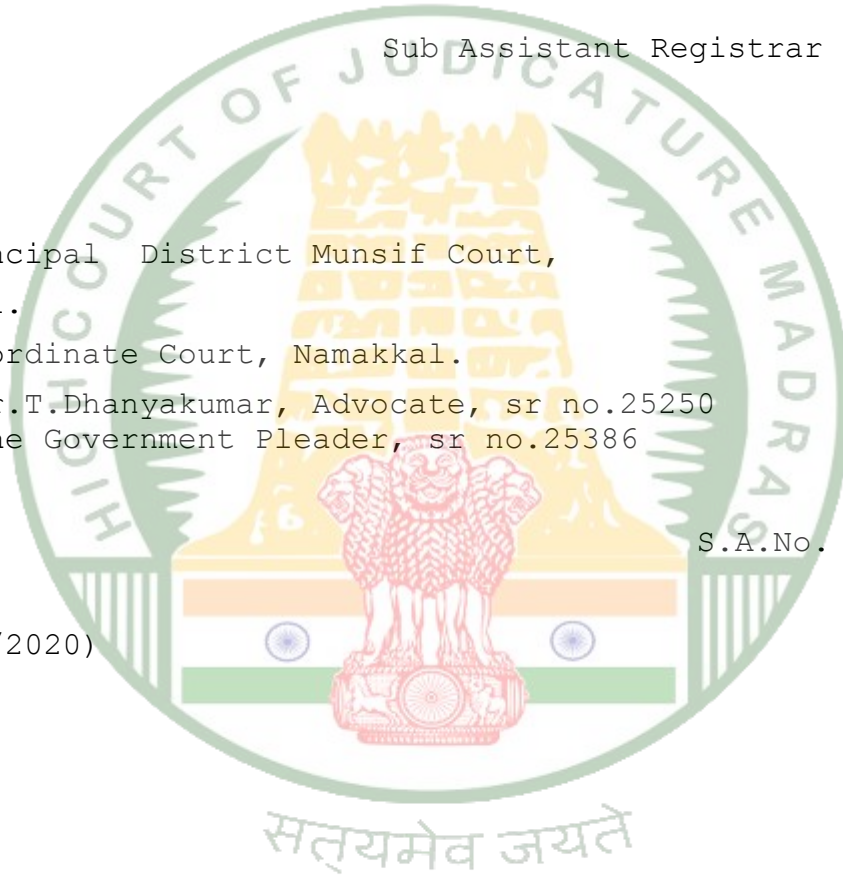
To:-

- 1.The Principal District Munsif Court,
Namakkal.
- 2.The Subordinate Court, Namakkal.

+1cc to Mr.T.Dhanyakumar, Advocate, sr no.25250
+1cc to The Government Pleader, sr no.25386

S.A.No. 385 of 2016

TM(CO)
RMP(16/12/2020)



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