



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2020

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CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

S.A. (MD)No.417 of 2018

and

C.M.P (MD)No.11835 of 2018

1.Vellaiyan
2.Veerammal

Veeran (Died)

3.Maragathavalli
4.Lakshmi
5.Vellammal
6.Sivagami
7.Govindammal

... Appellants / Appellants / Defendants

Vs.

A/M Sundararaj Perumal Devasthanam Managing Trustee,
Paramakudi Sourashtra Bramana Mahajangal,
Paramakudi Town,
Ramanathapuram District.

... Respondent / Respondent / Plaintiff

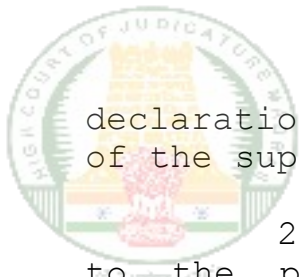
PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 24.07.2018 made in A.S.No.71 of 2000 on the file of the Sub Court, Paramakudi, confirming the decree and judgment in O.S.No.29 of 1996 dated 01.06.2000 on the file of the District Munsif Court, Paramakudi.

For Appellants : Mr.S.Siva Thilakar

For Respondent : Mrs.P.Jessi Jeeva Priya

JUDGMENT

The Defendants, who suffered a decree for possession at the hands of the Courts below have come up with this Second Appeal. The suit in O.S.No.44 of 1992 (renumbered as O.S.No.29 of 1996) was filed by the Plaintiff / Respondent herein seeking



declaration of title and for recovery of possession after removal of the super structures put up by the defendants.

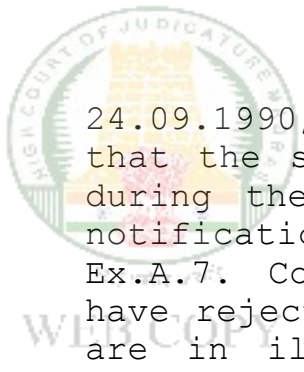
2. According to the plaintiff, the suit property belongs to the plaintiff/temple, as per the gift deed executed by prominent persons belonging to Sourashtra Community of Paramakudi on 15.04.1960. According to the plaintiff, certain parts of the suit property were let out to various persons. During the floods in the year 1952 - 1954, most of the constructions and the garden were washed away and thereafter the suit property was wrongly classified as 'river poramboke' without any notice to the plaintiff or its predecessors. Upon notice of such wrong classification, the plaintiff took steps to have the revenue records corrected. While so, taking advantage of the wrong classification, the defendants trespassed into the property and put up construction during the year 1998. A suit in O.S.No.363 of 1988 was filed by the defendants against the then trustees and an injunction order was obtained. Taking advantage of the injunction order, the defendants have put up constructions. On 10.06.1992, the defendants removed the temporary huts put up by them and attempted to put up pucca bricks built structures. Hence, the plaintiff has come up with the suit.

3. The suit was resisted by the defendants contending that they have put up construction in the suit property several years ago and they have been in possession of the same, paying house tax to the Municipality. It is also claimed that they paid penal levy to the Government. The defendants also disputed the title set up by the plaintiff. According to the defendants, the property covered by the settlement deed, dated 15.04.1960 and the parent document of 1916 is situated on the south of the suit property in which the plaintiff has put up Kalyana Mandapam. The fact that the suit property was classified as "river poramboke" was also put forth as defence.

4. At trial, on the side of the plaintiff one Achutharam was examined as P.W.1 and one Balasubramanian was examined as P.W.2. Exs.A.1 to A.27 were marked. On the side of the defendants, the 1st defendant was examined as D.W.1 and Exs.B.1 to B.63 were marked.

5. Upon consideration of the evidence both oral and documentary, the Courts below came to the conclusion that the suit property belongs to the plaintiff and it is the same property covered by Exs.A.1 to A.3. The decree of the District Munsif Court, Paramakudi in O.S.No.169 of 1962 dated 20.07.1963 was also taken into account to support the claim of title made by the plaintiff. As regards the wrong classification, the Courts below

<https://hcservices.courts.gov.in/hcservices/> relied upon the proceedings of the Taluk Surveyor, dated



24.09.1990, wherein, the Taluk Surveyor has specifically concluded that the suit property was wrongly classified as river poramboke during the resurvey operations. Pursuant to Ex.A.5, a Gazette notification was also issued by the Government as evidenced by Ex.A.7. Considering the above said documents, the Courts below have rejected the claim of the defendants and concluded that they are in illegal possession of the suit property. The B-memo evidencing the payment of penal levy were rejected on the ground that they are not related to the suit property. On the above conclusions, the Courts below decreed the suit.

6. Aggrieved over the same, the defendants have preferred this second appeal.

7. I heard Mr.S.Siva Thilakar, learned Counsel for the appellants. Mr.Siva Thilakar, learned Counsel for the appellants would contend that the plaintiff has failed to prove the title set up by it in the plaint and hence, the Courts below were right in decreeing the suit. I am unable to accept the said submission of the learned Counsel for the appellants. The Courts below considered the parent title deeds which are produced as Ex.A.2 and Ex.A.3 and concluded that the suit property was owned by the predecessors in interest of the plaintiff. Ex.A.1 settlement deed shows that the suit property was settled in favour of the plaintiff. The fact that the plaintiff was in enjoyment of the property by letting out it to various persons is also evidenced by Ex.A.4 decree in O.S.No.169 of 1962 on the file of the District Munsif Court, Paramakudi.

8. The Taluk Surveyor had made an inspection of the property and concluded that the property was covered under Exs.A.1 to A.3. The wrong classification showing the lands as "river poramboke" was revised and the revenue records have been mutated in the name of the plaintiff. Exs.A.11 to A.15 the rent deeds executed by various persons in favour of the plaintiff have been considered by the Courts below to conclude that the plaintiff has established its title over the suit property. As against the documentary evidence that has been produced by the plaintiff, the defendants have not produced any evidence to show that they are in long possession. The primary contention of the defendants that the suit property is classified as river poramboke stands nullified by the Taluk Surveyor's report Ex.A.5 and the Gazette publication by Ex.A.7. Under the aforesaid two documents, the Government has in fact had given up its claim over the suit property. Therefore, I do not find any perversity in the findings of the Courts below. There is no question of law much less substantial question of law to enable me to entertain this second appeal.



9.In the result, this second appeal is dismissed without being admitted. No costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar (CS-I)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Subordinate Court,
Paramakudi.

2.The District Munsif Court,
Paramakudi,

copy to

The Section Officer,-2 copies
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.P.JESSI JEEVA PRIYA, Advocate (SR-2073[F] dated 21/01/2020)

+1 CC to Mr.S.SIVATHILAKAR, Advocate (SR-2065[F] dated 20/01/2020)

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