



IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated:01.02.2021

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

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C.M.A.No.3159 of 2009
and
M.P.No.1 of 2009

1.Kaleel,
S/o.Vahit Khan.

2.Vahit Khan,
S/o.Ameer Khan.

..Appellants/1 & 2
Respondents/1 & 2 Defendants

Vs.

1.Paramanandam,
S/o.Pavadai Mudaliar.

..1st Respondent/Appellant/Plaintiff

2.The Commissioner,
Virudhachalam Municipality,
Virudhachalam.

..2nd Respondent/
3rd Respondent/3rd Defendant

PRAYER : Civil Miscellaneous Appeal is filed under 43 Rule (1) (u) read with Section 104 of the Civil Procedure Code, against the judgment and decree dated 14.09.2009, passed in in A.S.No.3 of 2007 on the file of the Principal Subordinate Judge, Virudhachalam, remanding and setting aside the judgment and decree dated 27.10.2006 passed in O.S.No.201 of 2000, on the file of the Principal District Munsiff Court, Virudhachalam.

For Appellants :Mr.Sabarish for
Mr.S.K.Raghunathan

For Respondents :Ms. Mitrareshaa
for Mr.V.Raghavachari for R1

J U D G M E N T

The appellants herein are the defendants 1 and 2 in the suit against whom and another defendant, the first respondent herein filed a suit for declaration and consequential injunction relief, recovery of possession and other reliefs in O.S.No.201 of 2000, on the file of the Principal District Munsif Court, Virudhachalam. The defendants contested the suit. After full trial, the trial Court dismissed the suit as not maintainable in law.



2. Aggrieved, the plaintiff preferred the first appeal before the Principal Subordinate Judge, Virudhachalam, in A.S.No.3 of 2007 and the same also contested by the respondents. After full trial, the first Appellate Court remanded the case to the trial Court for the reason to examine the witnesses belonging to Virudhachalam Municipality to prove his possession and enjoyment of the suit property.

3. Aggrieved that order, the defendants 1 and 2 preferred this Civil Miscellaneous Appeal on the following grounds:

(i) The Court below failed to note that the first respondent has not made out any case for remand especially when the trial Court on a consideration of the entire oral and documentary evidence rejected the claim of the first respondent;

(ii) The Court below erred in holding that in respect of Ex-A1 to A19, the trial Court rejected the documents as the same were not proved and that therefore the documents should be reconsidered by the trial Court by giving an opportunity to the first respondent;

(iii) The Court below failed to note that reconsidering the documents by the trial Court will not at all arise as the same will amount to filling up the lacuna in the case of the first respondent;

(iv) The Court below failed to note that two Advocate Commissioners were appointed and their reports were considered by the trial Court and it is only on consideration of the reports of the Commissioner and the oral and documentary evidence of the first respondent, the Court below rejected the case of the first respondent;

(v) The Court below failed to note that the lower appellate Court has given permission to the first respondent to fill up the latches in his case and in such circumstances the order of remand made by the lower appellate Court cannot be sustained.

4. The first respondent/plaintiff also contested this Appeal.

5. Heard both sides and perused the materials available on records.

6. As per the submissions made by the appellants that the first Appellate Court erroneously remanded the matter to the trial Court in order to fill up the lacuna by the plaintiff, which is not permissible in law.



7. The learned counsel appearing for the appellants also submits that the trial Court elaborately discussed about the material and documentary evidence adduced on the side of the plaintiff and dismissed the suit as it has no merits. But, before the first Appellate Court, the counsel for the plaintiff sought for sufficient opportunity to prove his enjoyment by examining officials from municipality which was observed by the trial Judge, while passing the decree. Considering that the first Appellate Court remanded the matter to the trial Court.

8. On perusal of the records, it reveals that the plaintiff approached the Court for relief of declaration, injunction and recovery of possession against the defendants 1 and 2, and Virudhachalam Municipality who is added as the formal party to the proceedings. The suit property with four boundaries in O.S.No.21 of 2007 as discussed in the plaint schedule in R.S.No.99/16 with an extent of 0.03 cent in Ayirar Mada Street, Virudhachalam, Door No.48/6, belongs to him by way of enjoyment. The defendants 1 and 2 falsely claimed right over the property with the help of the Virudhachalam Municipality. Hence, the plaintiff approached the Court for declaration and other reliefs. The first and second defendants contested the suit stating that the entire S.No.99/16 with an extent of 4 acre and 44 cents belongs to their ancestors viz., Ameer Khan and obtained patta for that property. So the D1 and D2 claimed claim right over the entire S.No.99/16 with an extent of 4 acre and 44 cents, the Municipality/3rd defendants contended that they have not made any attempt to transfer the patta as alleged by the plaintiff.

9. Admittedly, the suit property is situated in Natham Poramboke land, and neither document was produced and nor witness was examined including the Revenue Officials by the plaintiff to prove his possession and enjoyment of the suit property. The trial Judge elaborately discussed about the documents filed by the plaintiff and dismissed the suit. Moreover, a Commissioner also appointed and his report also taken into consideration by the trial Judge which was marked as Exs.C.W.1 to C.W.4 . Based on the Commissioner's report the trial Judge concluded that the property shown as 'ABCD' concerned with the suit property and another portion related to thatched roof of physical structure found in the property and the same also measured with the help of surveyor and the said 'ABCD' portion situated in S.No.99/16 with an extent of 4 acre and 44 cents. Therefore, the Commissioner report also clearly reveals that the property is situated at Natham Poramboke land. The trial Judge, based upon the Commissioner report, dismissed the suit as the plaintiff is not entitled for any declaration relief to the Natham Poramboke land. But, without considering all these facts, the first Appellate Court simply remanded the



matter to the trial Court with the reason that the plaintiff has to be given opportunity to prove his case by examine the revenue officials in order to prove his long term enjoyment.

10. Considering the entire judgment of the trial Court in all aspects, the plaintiff failed to prove his case, based upon the documents ExS.P1 to P19. He was given opportunity to prove his case, while he was adduced the evidence before the trial Court but as rightly pointed by the appellant counsel to fill up lacuna, the matter was remanded back to the trial which is not permissible in law.

11. Furthermore, the defendants 1 and 2/appellants also claimed right over the property based upon the enjoyment said to be made by their ancestors. But, admittedly, S.F.No.99/16, Natham Poramboke land, over which, the defendants right also was not acceptable one. As the plaintiff approached the Court for relief, he has to prove his case with all materials evidence, but before the trial Court, he not only failed to prove his title but also not proved his possession of the property on the date of the suit. The trial Court rightly dismissed the suit. Without considering the legal aspects, the first Appellate Court erroneously remanded the matter to the trial Court, which is unsustainable one.

12. Accordingly, this Civil Miscellaneous Appeal is allowed, and the order of the first appellate Court is set aside. Accordingly, the order passed by the trial Court is confirmed. No Costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To

1.The Principal Subordinate Judge
Virudhachalam

2.The Principal District Munsif
Virudhachalam



Copy to

The Section Officer
VR Section
High Court, Madras 104.

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+1 CC to Mr.S.K.Raghunathan, Advocate sr 5608.

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SSD(CO)
SP(21/10/2021)