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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.NO.1427 OF 2008

1.Malaiyan
2.Arunachalam
3.Moiyan
4.Vellaiammal
5.A.Annamalai
6.Lakshmi

... Appellants 1 to 6/
Plaintiffs 5 to 9 and 11

7.A.Balakrishnan
(The 7th appellant was a party
only in the First Appellate Court
added as LR of the 10th plaintiff.)

... 7th Appellant

..Vs..

1. The District Collector,
Salem.

2. Revenue Divisional Officer,
Salem.

3. The Tahsildar,
Yercaud, Salem District.

... Respondents 1 to 3/
Defendants 1 to 3

4. Chinna Gounder

... 4th Respondent/1st Plaintiff

5. Malaichiammal

... 5th Respondents

(5th Respondent was a party only
before the 1st Appellate Court as
the LR of the 10th plaintiff)

Prayer: The second appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 29.10.2004 passed in A.S.No.7 of 2002 on the file of the First Additional District Judge, Salem, confirming the judgment and decree dated 28.09.2001 passed in O.S.No.391 of 2001 on the file of the Principal District Munsif Court, Salem.



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For Appellants : Mr.S.Kalyanaraman
For Respondent : Mr.N.Manikandan
Nos.1 to 3 Govt.Advocate
Respondent Nos.4 & 5 : No appearance

JUDGMENT

Challenge in this second appeal is made to the Judgment and decree dated 29.10.2004 passed in A.S.No.7 of 2002 on the file of the First Additional District Court, Salem, confirming the judgment and decree dated 28.09.2001 passed in O.S.No.391 of 2001 on the file of the Principal District Munsif Court, Salem.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.The unsuccessful plaintiffs are the appellants in the second appeal.

4.The suit has been laid by the plaintiffs for the reliefs of declaration and consequential permanent injunction.

5.From the materials placed on record and also going through the averments contained in the plaint and in the written statement as well as the judgment of the Courts below, it is found that as rightly concluded by the Courts below, the plaintiffs are not sure about the nature of the suit property as such. However, from the materials available on record, it is evident that the suit property is the Government Temple Poramboku land. The plaintiffs put forth the claim that they had been enjoying the suit property for several years and thereby, acquired title and further, according to the plaintiffs, for the enjoyment of the suit properties, they have been paying kist receipt, which had been exhibited in the matter and therefore, according to the plaintiffs, the Courts below have failed to consider the abovesaid facts in the proper perspective and erroneously dismissed the suit laid by them.

6.Per contra, it is the contention of the defendants that the suit land is a porambokku land used for the festival occasion and according to them, 72 surrounding villages would assemble in the suit land to worship Gods and therefore, when the suit land is utilised for the public purpose in connection



with the temple festival, no one is entitled to claim the exclusive possession and enjoyment of the suit land and the plaintiffs, on the footing that they are enjoying a small extent of land in the suit property and paying penal tax with reference to the same and thereby cannot lay a claim that they had acquired title to the suit property as described in the plaint and enjoying the same as the absolute owners thereof.

7.As rightly concluded by the Courts below, the plaintiffs have not even taken the plea of adverse possession for claiming title to the suit property. That apart, the plaintiffs have also not established that they had perfected their title to the suit property by way of adverse possession by placing acceptable and reliable materials to evidence that they had been in the possession and enjoyment of the suit property openly, continuously, uninterrupted for more than the statutory period exhibiting animus attitude against the real owner of the suit property and in such view of the matter, merely on the production of certain penal tax receipts and when admittedly the suit property is the temple porambokku land, which fact has not been controverted as such, in such view of the matter, the Courts below are found to be justified in non suiting the plaintiffs. As rightly concluded by the Courts below, the judgment and decree obtained by the plaintiffs in O.S.No.209 of 1991 on the file the District Munsif Court, Salem would not in any manner advance their case. Particularly, the abovesaid suit has been laid only claiming for the relief of permanent injunction and the Government is also not a party to the said suit. In such view of the matter, as rightly held by the Courts below, Ex.A4 judgment rendered in the abovesaid suit would not be useful to sustain the plaintiffs' case.

8.In view of the abovesaid factors, the suit property being the temple porambokku land and the plaintiffs having encroached the small extent and paying penal tax, on that footing, cannot claim any title over the suit property and also the relief of permanent injunction against the defendants and in such view of the matter, the reasonings and conclusions of the Courts below for dismissing the plaintiffs' suit are found to be cogent and acceptable and also on the proper appreciation of the materials placed on record in the right perspective and in such view of the matter, there is no reason for warranting interference in the same. In such view of the matter, no substantial question of law is involved in this second appeal.

In conclusion, the Judgment and decree dated 29.10.2004 passed in A.S.No.7 of 2002 on the file of the First Additional



District Court, Salem, confirming the judgment and decree dated 28.09.2001 passed in O.S.No.391 of 2001 on the file of the Principal District Munsif Court, Salem, are confirmed and accordingly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sms

To

1. The First Additional District Judge,
Salem.
2. The Principal District Munsif Court,
Salem.

Copy To

The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.S.Kalyanaraman, Advocate, S.R.No.5698
+1cc to Special Government Pleader (CS), S.R.No.5780

S.A.No.1427 of 2008

VGI(CO)
CS/04/10/2021