



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

S.A.NO.589 OF 2003

AND

C.M.P.NO.5452 OF 2003

Puthu Perungalathur Grama,
Seerthirutha Sangam,
Represented by its President,
Perumal Nadar.

... Appellant/Plaintiff

Versus

1. Sikamani
2. Chellappa Naicker

... Respondents/Defendants

PRAYER:-

Second Appeal filed under Section 100 of the Civil Procedure code, against the judgment and the decree dated 27.12.2002 made in A.S. No.74/01 on the file of the Additional Subordinate Court at Chengalpattu confirming the judgment and decree dated 28.09.2000 made in O.S.No.2680 of 1993 on the file of the District Munsif Court at Tambaram.

For Appellant : Mr.T.Girish
For Srinath Sridevan

For Respondents : Batta with petition due reg.

JUDGMENT

(Heard through Video Conference)

Heard Mr.T.Girish, learned counsel for the appellant and perused and examined the materials and evidence available on record.

2. This Second Appeal has been filed challenging the concurrent findings of the Courts below.



3. The appellant is the plaintiff in the suit O.S.No.2680 of 1993 on the file of the District Munsif Court at Tambaram. The respondents are the defendants 2 and 3 in the said suit. The suit was filed for permanent injunction restraining the respondents/defendants from trespassing into the suit property and interfering with the appellant's/plaintiff's peaceful possession and enjoyment. The appellant/plaintiff claims that they are the absolute owner of the suit schedule property and the defendants are attempting to trespass into the same. However, it is a case of the respondents/defendants 2 and 3 that the appellant/plaintiff -Sangam is a non existent Association. According to the respondents/defendants, the plaintiff-Sangam have no right or interest in the suit schedule property and they are not entitled to file the suit.

4. Before the Trial Court, the appellant/plaintiff filed six documents, which were marked as A1 to A6 and the respondents/defendants filed, six documents which were marked as Exs. B1 to B6. An Advocate Commissioner was also appointed during the pendency of the suit and the Advocate Commissioner's report as well as the Advocate Commissioner's sketch were also marked as Exs.C1 and C2. On the side of the appellant, Perumal Nadar, who claims to be the President of the appellant/plaintiff Sangam was examined as PW1 before the Trial Court. On the side of the respondents/defendants, two witnesses were examined, the 1st respondent/second defendant was examined as DW1 and the 2nd respondent/third defendant was examined as DW2.

5. The Trial Court dismissed the suit of the appellant holding that the appellant does not have any authority to file the suit and that at the time of filing of the suit, the appellant/plaintiff was not a registered Sangam.

6. The Trial Court has also observed that the appellant/plaintiff cannot try to prove its case through the evidence let in by the respondents/defendants and has to stand on its own legs for the purpose of establishing its case. Having failed to discharge its burden of proving its case for the purpose of getting the relief as sought for in the suit, the Trial Court dismissed the suit.

7. Aggrieved by the same, the appellant/plaintiff filed the first appeal before the Lower Appellate Court in A.S.No.74 of 2001. The Lower Appellate Court by its judgment and decree dated 27.12.2002 also confirmed the findings of the Trial Court in its judgment and decree dated 28.09.2000 passed in O.S.No.2680 of 1993. Aggrieved by the concurrent findings of the Courts below, this Second Appeal filed in the year 2003.



8. At the time of admission of the Second Appeal on 22.04.2003, this Court formulated the following substantial question of law :

WEB COPY "Whether both the Courts below were right in holding that the suit is not maintainable in law"

9. Both the Courts below based on the materials and evidence available on record, which cannot be considered to be baseless have concurrently held that the appellant/plaintiff did not have authority to file the suit against the respondents/defendants. Admittedly, at the time of filing of the suit, the appellant/Sangam was not a registered Sangam. No Board resolution has also been filed entitling Perumal Nadar to file the suit on behalf of the Sangam. The Trial Court has also taken note of the aforementioned factors and has come to the right conclusion that the appellant/plaintiff has not discharged its burden of proving its case by filing sufficient documentary evidence in support of their case.

10. The Lower Appellate Court has also rightly appreciated the materials and evidence available on record as well as the judgment and decree passed by the Trial Court on 28.09.2000 in O.S.No.2680 of 1993 and only thereafter dismissed the appeal on 27.12.2002 in A.S.No.74 of 2012.

11. As seen from the evidence and materials available on record, there are no debatable issues and there is also no substantial question of law that requires further consideration. Hence, the substantial question of law framed by this Court referred to supra on 22.04.2003 is answered against the appellant/plaintiff. Hence, there is no merit in the Second Appeal and accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AD IV)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Additional Subordinate Judge,
Chengalpattu.



2. The District Munsif,
Tambaram.

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

WEB COPY

S.A.NO.589 OF 2003

NMI (CO)
PBS/12/11/2021