



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.632 of 2012
and M.P.No.1 of 2012

P.Velusamy ... Appellant/Plaintiff

Vs.

1.P.Ravikumar
2.R.Selvakumar
3.R.Palanisamy
4.M.S.Sengottaiyam,
5.Palaniyappan ... Respondents 1 to 5/Defendants 1 to 5

6.Muthugoundenpalayam Panchayat,
Represented by its Executive Officer,
Muthugoundenpalayam Panchayat.

7.The State of Tamil Nadu
represented by its District Collector,
Erode District,
Collectorate, Erode 11. ... Respondents 6 & 7/
Defendants 6 & 7

PRAYER: This Second Appeal has been filed under Section 100 of CPC against the judgment and decree made in A.S.No.16 of 2011, on the file of the learned I Additional Subordinate Judge, Erode, dated 10.01.2012, reversing the judgment and decree made in O.S.No.264 of 2002, by the I Additional District Munsif, Erode, dated 31.01.2011.

For Appellant	:	Mr.Chandrasekharan
For R1 to R5	:	Mr.V.S.Kesavan
For R6	:	Mrs.T.P.Savitha
For R7	:	Mr.D.Gopal Government Advocate



JUDGMENT

The unsuccessful plaintiff is the appellant herein.

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2.This Second Appeal has been filed against the judgment and decree passed in A.S.No.16 of 2011, by the learned I Additional Subordinate Judge, Erode, dated 10.01.2012, wherein, the learned Judge has reversed the judgment and decree passed in O.S.No.264 of 2002, by the I Additional District Munsif, Erode, dated 31.01.2011.

3.For the sake of convenience parties are referred to as per their ranking before the Trial Court.

4.The plaintiff has filed a suit in O.S.No.264 of 2002, before the I Additional District Munsif, Erode, for permanent injunction against the private defendants and official defendants. The Trial Court on consideration of both oral and documentary evidence, had decreed the suit. Agreed over the same, the private defendants have preferred an appeal suit in A.S.No.16 of 2011, before the learned I Additional Subordinate Judge, Erode and by an order dated 10.01.2012, the learned Judge has allowed the appeal and dismissed the suit. Hence, the Second Appeal.

5.The above Second Appeal was admitted on the following substantial question of law:

"1.Whether the Lower Appellate Court has rendered a perverse finding holding that the appellant/plaintiff has not proved his possession in respect of the suit property?"

6.Heard Mr.Chandrasekharan, learned counsel for the revision petitioner, Mr.V.S.Kesavan, learned counsel for the respondent Nos.1 to 5, Mrs.T.P.Savitha, learned counsel for respondent No.6 and Mr.D.Gopal, learned counsel for the respondent No.7. Perused the materials placed on record.

7.After hearing the learned Government Advocate appearing for the respondent No.7, it is appears that the suit property is Natham Poramboke and no Patta has been issued in favour of the plaintiff. The said property was enjoying by the Nanjai Uthukuli Villagers as a pathway to reach Karuppannan Temple and it appears that festivals of the said temple have also been celebrated in the part of the temple area, which is also comes within the area of the suit property. The Lower Appellate Court



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has taken into consideration the above pleadings as projected by the Government Pleader along with the admission of PW1/Velumani in the witness box that he has not issued Patta in respect of the suit property, no revenue records available to demonstrate the plaintiff's possession nor any Kist receipt has been filed and accordingly, non suited the plaintiff.

8.The learned counsel for the appellant/plaintiff would contend that as per Ex.A4/xerox copy of the sale deed dated 06.12.1967, forefather by name Poosappa Gounder is referred to be in possession of the property. As per the description in Ex.A4/sale deed that the suit property is lies on the South of the property in possession of Poosappa Gounder and PW2 is neighbour and admittedly Ex.A4 is sale deed is not between inter parties. The executent of Ex.A4/xerox copy of the sale deed 06.12.1967 was not examined. Further, the learned counsel for the appellant would draw my attention to Ex.A1/release deed dated 04.06.2002, Ex.A4/sale deed dated 06.12.1967, Ex.A5 which is equal to Ex.B2/settlement deed in favour of D6 (Ex.A5 is the xerox copy of Ex.B2).

9.As stated supra, the case of the plaintiff seeking relief of possession, he has to plead and prove his case. He cannot rely upon the weakness of the defendants. The case of the plaintiff solely rest upon Ex.A1/release deed dated 04.06.2002 & Ex.A4/xerox of the sale deed dated 06.12.1967 and it appears to have been marked through PW2/Subramaniam, who is the neighbour. According to PW2/Subramaniam, the property mentioned in Ex.A4/sale deed lies on the South of the property in possession of the said Poosappa Gounder. But the identity of the said Poosappa Gounder as that of the ancestor or grand father of the Palaniappa Gounder is not proved. Further Ex.A4 is not between inter parties in the suit. Admittedly, executant of Ex.A4/sale deed has not been examined.

10.As rightly relied upon by the Lower Appellate Court that the classification of the land as Natham Poramboke and therefore, the Trial Court has rightly relied upon the decision reported in 2007 (4) CTC 125 and 2010 (3) LW 846 to non suit the plaintiff. As stated supra, even PW3 has admitted in the cross examination that she has not aware of the survey number, extent of the land and boundaries of the suit property and further, she admitted that existence of the Karuppannan Temple situated in the suit property. Hence, I find that PW3/Marayamman supports the case by the official defendants viz., R6 & R7 herein and hence, in the absence of any document to show that the alleged possession of the plaintiff, on the date of the suit and in the



absence of identification of Poosappa Gounder is the relation of the said plaintiff, in the absence of any ancestral document or parent document of Ex.A1/release deed dated 04.06.2002, the Lower Appellate Court has rightly held that Exs.A1 & A4 are not sufficient to prove the possession of the plaintiff and hence, this Court finds that the substantial questions of law and appreciation of evidence does not arise for consideration and the the Lower Appellate Court has rightly held that the plaintiff does not proved his case. Hence, the finding rendered by the Lower Appellate Court does not suffer from any illegality or irregularity, which does not warrant any interference at this appellate stage.

11.Accordingly, this Second Appeal stands dismissed and the judgment and decree made in A.S.No.16 of 2011, by the learned I Additional Subordinate Judge, Erode, dated 10.01.2012, by reversing the judgment and decree made in O.S.No.264 of 2002, by the I Additional District Munsif, Erode, dated 31.01.2011, is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

1.The I Additional Subordinate Judge,
Erode.

2.The I Additional District Munsif,
Erode.



Copy to

The Section Officer,
VR Section,
High Court, Madras.

+1cc the Special Government Pleader Sr.67784
+1cc to Mr.S.Chandrasekaran, Advocate Sr.67252
+1cc to Ms.T.P.Savitha, Advocate Sr.67362

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