



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Friday, the Second day of July Two Thousand Twenty One

PRESENT

THE HON`BLE MR JUSTICE M. SUNDAR

CMP No.9675 of 2021 in

SA.NO.495/2021

1 THIRUNAVUKKARASU

[PETITIONERS]

2 RAVI

Vs

1 GOWRI

[RESPONDENTS]

2 KANNIAPPAN

3 AMUDHA

4 DEIVAYANAI

5 MANIVANNAN

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant an order of stay of operation of the Judgement and Decree dated 18.02.2019 passed in AS No.6 of 2012 by the Hon'ble Subordinate Court, Ponneri as well as the judgement and decree, dated 17.02.2011 passed in OS No.340 of 2004 by the Hon'ble District Munsif Court, Ponneri (CMP.NO.9675/2021) pending disposal of the above SA.NO.495/2021

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.R.MUNUSWAMY, Advocate for the petitioner the court made the following order:-

Read this in conjunction with and in continuation of separate proceedings made in main second appeal today, which reads as follows:

' Mr.R.Munuswamy, learned counsel on record for appellants is before this Second Appeal Court.



2. A suit for bare injunction qua agricultural lands ad-measuring 1 acre 43 cents or thereabouts comprised in 'S.No.121/1, Perumbedu Village, Minjur Firka, Ponneri Taluk, Thiruvallur District' (hereinafter 'suit property' for the sake of convenience) had led to the captioned second appeal. Notwithstanding the pleadings of the defendants predicated on perfecting title by adverse possession, learned counsel for appellants pointed out that plaintiffs should be able to establish possession of suit property on the date of the suit for succeeding in a suit for bare injunction qua possession. Learned counsel submits that plaintiffs have marked only three exhibits, namely judgment in O.S.No.200 of 1958 and judgment in A.S.No.354 of 1961 (Exs.A1 and A2) besides legal heir certificate (Ex.A3). Learned counsel advertent to trial Court judgment submits that the title has not been proved in a manner known to law, but the suit has been decreed and concurrently sustained by the first Appellate Court. In a suit property of this nature possession follows title is learned counsel's say. Learned counsel also argued that the onus to prove perfecting title by adverse possession does not shift on the defendants unless the initial burden is discharged by the plaintiffs and the trial Court and first Appellate Court fell in error in this regard.

3. The following substantial question of law arises:

'In a suit for bare injunction qua agricultural land can a trial Court and first Appellate Court decree the suit after returning a finding that the title of the plaintiffs has not been established / proved in a manner known to law by shifting the onus to the defendants and if yes, whether this would tantamount to disregarding the well settled principle that possession follows title in a suit property of this nature?

4. Though obvious, the above is a prima facie view at the admission stage and therefore, it is subject to rights of the respondents under sub-section (5) of Section 100 CPC.

5. Admit.

6. Issue notice to the respondents returnable by 13.08.2021. Private notice permitted. Private notice through all available electronic modes of communications also permitted. Private notice to set out with clarity and specificity the aforementioned substantial question of law on which captioned second appeal has been admitted.

List on 13.08.2021'

2. Suit in the trial Court, which culminated in the captioned second appeal, is one for bare injunction. Two Courts below, namely trial Court and first Appellate Court have concurrently non-suited the plaintiffs and therefore, a prayer for stay of the decree does not arise.



3. This captioned Civil Miscellaneous Petition is clearly misconceived and the same cannot be entertained. It is, therefore, dismissed as misconceived, however preserving the rights of the appellants to take out a suitable / appropriate application if the need arises.

-sd/-
02/07/2021
/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE SUBORDINATE JUDGE,
PONNERI.

2 THE DISTRICT MUNSIF,
PONNERI.

Order

in
CMP.NO.9675/2021 in
SA.NO.495/2021
Date :02/07/2021

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