

Arulraj Vs. Shanthi

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Court : Chennai Madurai

Decided On : Feb-01-2017

Judge : M. Duraiswamy

Appeal No. : S.A.(MD) Nos. 424, 427, 475 of 2013 & 96, 113, 293, 312 of 2014 & M.P.(MD)Nos. 1, 1 & 1 of 2013 & 1, 1 & 1 of 2014

Appellant : Arulraj

Respondent : Shanthi

Judgement :

(Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Principal Subordinate Court, Thanjavur, in A.S.No.43 of 2012, dated 31.10.2012 confirming the decree and judgment of the District Munsif, Thanjavur in O.S.No. 170 of 2010, dated 26.06.2012.)

Common Judgment:

1. S.A.(MD)No.424 of 2013 arises against the judgment and decree passed in A.S.No.43 of 2012, on the file of the Principal Subordinate Court, Thanjavur, confirming the judgment and decree passed in O.S.No.170 of 2010, on the file of the District Munsif Curt, Thanjavur.
2. S.A.(MD)No.427 of 2013 arises against the judgment and decree passed in A.S.No.44 of 2012, on the file of the Principal Subordinate Court, Thanjavur,

confirming the judgment and decree passed in O.S.No.171 of 2010, on the file of the District Munsif Court, Thanjavur.

3. S.A.(MD)No.475 of 2013 arises against the judgment and decree passed in A.S.No.41 of 2012, on the file of the Principal Subordinate Court, Thanjavur, confirming the judgment and decree passed in O.S.No.168 of 2010, on the file of the District Munsif Court, Thanjavur.

4. S.A.(MD)No.96 of 2014 arises against the judgment and decree passed in A.S.No.46 of 2012, on the file of the Principal Subordinate Court, Thanjavur, confirming the judgment and decree passed in O.S.No.173 of 2010, on the file of the District Munsif Court, Thanjavur.

5. S.A.(MD)No.113 of 2014 arises against the judgment and decree passed in A.S.No.45 of 2012, on the file of the Principal Subordinate Court, Thanjavur, confirming the judgment and decree passed in O.S.No.172 of 2010, on the file of the District Munsif Court, Thanjavur.

6. S.A.(MD)No.293 of 2014 arises against the judgment and decree passed in A.S.No.42 of 2012, on the file of the Principal Subordinate Court, Thanjavur, confirming the judgment and decree passed in O.S.No.169 of 2010, on the file of the District Munsif Court, Thanjavur.

7. S.A.(MD)No.312 of 2014 arises against the judgment and decree passed in A.S.No.47 of 2012, on the file of the Principal Subordinate Court, Thanjavur, confirming the judgment and decree passed in O.S.No.174 of 2010, on the file of the District Munsif Court, Thanjavur.

8. The above Second Appeals are filed by the defendant in the suits. The respondent in all these appeals are the plaintiffs. Since the facts and the relief sought for in the suits and also the issues involved in all the suits are one and the same, all the Second Appeals are disposed of by this common judgment.

9. The brief case of the plaintiffs is as follows:

The suit property was assigned to the plaintiffs by the Government as per the proceedings of the Tahsildar, Thanjavur, dated 19.10.2009. The said assignment was made in favour of the plaintiffs instead of the land acquired by the Government for widening the road for National Highways. Since the defendant claimed that he is in possession of the suit property and tried to trespass into the suit property, the plaintiffs have filed the suits for permanent injunction.

10. The brief case of the defendant is as follows:

According to the plaintiff, the suit property is a Natham property which belonged to his father Santhanam. The said Santhanam had died intestate on 22.11.1988 leaving behind the defendant as his legal heir. According to the defendant, he is in possession and enjoyment of the suit property. Further the defendant contended that he filed an application before the Revenue Divisional Officer, Thanjavur against the order of assignment passed by the Tahsildar, Thanjavur, dated 19.10.2009. Mere obtaining assignment patta will not confer title in favour of the plaintiffs. According to the defendant, he is in continuous possession of the property ancestrally. In these circumstances, the defendant prayed for dismissal of the suits.

11. Before the trial Court, on the side of the plaintiffs, two witnesses were examined and 2 documents viz., Exs.A.1 and A.2 were marked and on the side of the defendant, three witnesses were examined and 8 documents viz., Exs.B.1 to B.8 were marked. The trial Court, after taking into consideration the oral and documentary evidences let in by the parties, decreed the suit. Aggrieved over the same, the defendant preferred the first appeals before the lower Appellate Court and the lower Appellate Court also confirmed the judgment and decree of the trial Court and dismissed the appeals. Aggrieved over the concurrent findings of the Courts below, the defendant has filed the above Second Appeals.

12. Heard Mr.A.Haja Mohideen, learned Counsel appearing for the appellant.

13. Though notices sent to the respondents/plaintiffs were duly served on them and their names have been printed in the cause list, none appeared for the respondents.

14. The appellant has raised the following Substantial Questions of Law in the above Second Appeals:

1. Is the Courts below are correct in placing the records cogent and convincing reasons for decreeing the suit in toto without considering the documentary and oral evidence in this case?

2. Whether both the Courts below is correct in holding that the appellant has not proved his title when the documentary evidence for proving possession in his favour on the date of filing of the suit was placed as Exs.B.1 to B.6?

3. Whether the judgment and decree of the Courts below are sustainable since the respondent/plaintiff has not proved her right, title, possession by placing relevant records both oral and documentary evidence except Exs.A.1 and A.2?

4. Whether both the Courts below erred in law in declining to go into the question of title even though the suit is one for bare injunction?

5. When the respondent/plaintiff had failed to produce any relevant document to prove her alleged possession over the suit property on the date of filing of the suit, whether the Courts below are correct in law in granting decree for permanent injunction in favour of the respondent/plaintiff by misconstruing the documents on record?

6. Whether the Courts below are correct in law in placing the burden of proof upon the appellant especially when it is incumbent upon the respondent/plaintiff to establish his case?

7. Whether the Courts below are correct in law is discarding Exs.B.1 to B.8 filed by this appellant without assigning any legally valid reasons?

8. Whether the Courts below are right in rejecting Exs.B. 1 to B.8 which show that the appellant is in occupation of the scheduled Natham land of which he is entitled to preserve his possession as against any individual?

15. In order to prove that the suit property was assigned in their favour, the plaintiffs produced Ex.A.1 assignment deed dated 19.10.2009 issued by the

Government. Ex.A.2 is the chitta issued in favour of the plaintiffs. Apart from producing these two documents, the plaintiffs also examined the Deputy Tahsildar, as P.W.2 to prove their case. From the oral and documentary evidences let in by the plaintiffs it is evident that the suit property was assigned in favour of the plaintiffs by the Government under Ex.A.1 document. That apart, the defendant has also challenged the said order before the Revenue Divisional Officer, Thanajvur. P.W.2 Deputy Tahsildar deposed that the defendant is not in possession of the property. Even the defendant in his evidence has admitted that the plaintiffs are in possession and enjoyment of the suit property. D.W.2 also deposed that the plaintiffs are in possession and enjoyment of the suit property. When D.W.1 and D.W.2 themselves admitted that the plaintiffs are in possession and enjoyment of the suit property, the Courts below have rightly decreed the suit. The evidence let in by D.W.1 and D.W.2 is also supported by the evidence of P.W.2 Deputy Tahsildar, Thanjavur.

16. When the present suits have been filed for permanent injunction, the only issue that has to be decided is whether the plaintiffs have established their possession over the suit property. As already stated, when the defendant himself admitted that the plaintiffs are in possession and enjoyment of the suit property, no more evidence is required to decree the suit. I do not find any error or irregularity in the judgments of the Courts below.

17. In these circumstances, I do not find any ground much less any substantial question of law to interfere with the concurrent findings of the Courts below. The Second Appeals are liable to be dismissed. Accordingly, the same are dismissed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

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