

I. Krishniah Vs. Michael Raj and Another

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Court : Chennai Madurai

Decided On : Nov-04-2016

Judge : S.S. Sundar

Appeal No. : Second Appeal (MD) No. 679 of 2016 & C.M.P(MD)No. 10417 of 2016

Appellant : I. Krishniah

Respondent : Michael Raj and Another

Judgement :

(Prayer: - Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, to set aside the decree and judgment dated 15.03.2014 rendered in A.S.No.2 of 2013 on the file of the Subordinate Judge at Padmanabhapuram, confirming the decree and the judgment dated 30.11.2012 rendered in O.S.No.153 of 2005 on the file of the Principal District Munsif of Eraniel.)

The plaintiff is the appellant in the second appeal. The appellant/plaintiff filed a suit in O.S.No.153 of 2005 on the file of the Principal District Munsif Court, Eraniel, for declaration of the plaintiff's title over the suit schedule property and for recovery of the suit property from the first defendant. The suit is also for permanent injunction restraining the defendants from interfering with the plaintiff's right of way through/over the plaint schedule property or from altering the physical features of

the plaint schedule property. The suit property is an extent of 3 cents in Survey No.91 in Eraniel village which is abutting the plaintiff's property.

2. The case of the plaintiff is that he is the owner of the property in respect of extent of 7.5 Ares in Survey No.107/19 and another extent of 8 1/2 cents in Survey No.107/10. According to the plaintiff, the plaintiff and his predecessor in interest came into possession over the plaint schedule property which is nothing but the portion of channel bund adjoining the plaintiff's patta land. According to the plaintiff, from the year 1965 onwards, they were in enjoyment of the property and the plaintiff also had planted trees apart from putting up construction.

3. It is the further case of plaintiff that his mother was in occupation of the suit property by residing there and that recently she shifted to the new house put up by the plaintiff in his patta land. The plaintiff also pleaded that taking advantage of the fact that there was no one occupying the building constructed by the plaintiff, the defendants forcibly took possession of the old thatched house, which was constructed by the plaintiff in the suit property.

4. Describing the possession of the first defendant as unauthorised and encroachment, the plaintiff further pleaded that the plaint schedule property is the only property which serves as a pathway for the plaintiff's free ingress and egress to have access from his property to the road, which is on the north of the suit property. Since the plaintiff is in continuous, uninterupted and long enjoyment for a period of several decades, he also claimed title by prescription.

5. The suit was contested by the first respondent/first defendant mainly on the ground that the suit property was in the enjoyment of his grandfather Late Appavu and grandmother Late Thangammal with the construction of a thatched house in the suit property. It was his further case that the suit property was in the possession and enjoyment of the defendant's father after the life time of his grandparents and that thereafter, he was in possession by paying the property tax to the local body. He also stated that he has obtained electricity service connection. He specifically denied each and every averment that was made in the plaint. With regard to the plaint averment that the suit property serves as a pathway to the plaintiff to reach the main road, the case of the first defendant is

that the plaint schedule property lies separately and it does not form part of the plaintiff's property. Further, the first defendant also contended that there is sufficient space available for ingress and egress.

6. The trial Court as well as the appellate Court after considering the pleadings and evidence on both sides came to the conclusion that the plaintiff/appellant has not proved his case of title by prescription.

7. Having regard to the fact that the plaintiff/appellant has produced only a few tax receipts without connectivity, the Courts below have categorically found that there is no proof to show that the plaintiff was in possession and enjoyment of the property for more than the statutory period. Since it is also admitted that the suit property is part of the channel bund, the contentions of the plaintiff with regard to title and enjoyment were not accepted by Courts below. However, the trial Court found that the plaintiff has no alternative pathway to have access to the main road from his house and decreed the suit for injunction restraining the defendants from interfering into the plaintiff's right to use the suit property as a pathway. Aggrieved by the Judgment and Decree of the trial Court, the plaintiff filed an appeal in A.S.No.2 of 2013 before sub-Court, Padmanabhapuram. As against the concurrent findings of the Courts below, the present appeal is filed by the plaintiff/appellant.

8. I find that the Courts below have considered the pleadings and evidence both oral and documentary in a proper perspective and dismissed the suit after applying their minds with regard to all issues. I find no reason to interfere with the findings of the Courts below, especially, when the findings of the lower appellate Court are on the basis of the material evidence and supported by reasons.

9. In view of the same, no question of law much less a substantial question of law arises for consideration in this second appeal. Hence, the second appeal is dismissed. No costs. Consequently, connected Miscellaneous petition is also dismissed.