



S.A(MD).No.153 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 16.03.2023

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A(MD).No.153 of 2023
and
C.M.P(MD).No.3182 of 2023

Soosairaj

... Appellant/Appellant/Plaintiff

Vs.

Soosaimanickam

... Respondent/Respondent/defendant

Prayer: Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the impugned judgment and decree passed dated 30.11.2022 in A.S.No.9 of 2022 on the file of the Subordinate Court, Keeranur confirming the judgment and decree passed in O.S.No.191 of 2013 on the file of the District Munsif Court, Keeranur, dated 11.10.2018.

For Appellant : Mr.T.Indrachithu

JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below. The appellant is the plaintiff in the suit. He filed a suit for bare injunction restraining the respondent/defendant



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from interfering with his peaceful possession and enjoyment of the suit schedule property.

2. Before the trial Court, the appellant/plaintiff has filed 12 documents, which are marked as Ex.A1 to Ex.A12 including the sale deed standing in the name of the appellant/plaintiff's father, which is dated 30.05.1970 and marked as Ex.A1. On the side of the respondent/defendant, four documents were filed, which are marked as Ex.B.1 to Ex.B4. The respondent/defendant relied upon the sale deed dated 26.09.1974, marked as Ex.B1, in order to substantiate his title over the suit schedule property.

3. Admittedly, as seen from the exhibits marked on the side of the appellant/plaintiff as well as the respondent/defendant, the respondent/defendant has disputed the title of the appellant/plaintiff over the suit schedule property by producing a sale deed. When there is a cloud over the title and that too, when the respondent/defendant has produced a sale deed in support of his stand that the appellant/plaintiff is not the absolute owner, necessarily, the appellant/plaintiff ought to have filed a suit for declaration, but instead he has chosen to file a suit merely



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for bare injunction. Both the Courts below have dismissed the suit of the appellant/plaintiff only on the ground that a suit for declaration has not been filed by the appellant/plaintiff. This Court is in agreement with the view taken by the Courts below.

4. The learned counsel for the appellant, on instructions, would now submit that liberty may be granted to the appellant/plaintiff to file a suit for declaration to declare that the appellant/plaintiff is the absolute owner of the suit schedule property. He has also made an endorsement in the Court bundle seeking for such a liberty.

5. The said endorsement is also recorded by this Court. No prejudice will be caused, if such a liberty is granted. Accordingly, this Second Appeal is dismissed as withdrawn. However, liberty is granted to the appellant/plaintiff to file a separate suit for declaration to declare that he is the absolute owner of the suit schedule property. No costs. Consequently, connected Miscellaneous Petition is closed.

16.03.2023

NCC : Yes/No

Index : Yes / No

Rmk



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WEB COPY **To**

- 1.The Subordinate Judge, Keeranur.
- 2.The District Munsif, Keeranur.



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ABDUL QUDDHOSE.J.,

Rmk

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