



S.A.(MD).No.445 of 2022

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 21.03.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE**

**S.A.(MD).No.445 of 2022**

**and**

**C.M.P.(MD).No.5459 of 2022**

S.Vasudevan @ Rajendran

... Appellant/Appellant/Defendant

**Vs.**

S.Gunasekaran

...Respondent/Respondent/Plaintiff

**Prayer:** Second Appeal is filed under Section 100 of CPC to call for the records and set aside the judgment and decree dated 04.12.2021 in A.S.No.211 of 2018 on the file of the II Additional Subordinate Judge of Tiruchirappalli confirming the judgment and decree dated 24.07.2018 in O.S.No.928 of 2007 on the file of the III Additional District Munsif Court, Tiruchirappalli and allow this second appeal.

For Appellant : Mr.S.Vinod Sathya Lazar

For Respondent : Mr.P.Vinoth



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## **JUDGMENT**

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This Second Appeal has been filed challenging the concurrent findings of the Courts below. The defendant in the suit is the appellant herein. The appellant/defendant is the brother of the respondent/plaintiff. The suit was filed for declaration and for recovery of possession based on a settlement deed dated 10.12.2004 (Ex.A2) executed in favour of the respondent/plaintiff by his mother.

2. Before the Trial Court, the respondent/plaintiff filed 23 documents on his side, which were marked as exhibits A1 to A23, which included the settlement deed (Ex.A2) dated 10.12.2004. On the side of the appellant/defendant, he had filed only one document, namely, the caveat, which was marked as Ex.B1, dated 15.02.2007. The appellant/defendant claimed in his written statement that he is also a legal heir of his deceased mother along with the respondent/plaintiff and therefore, he is also entitled for a share in the suit schedule property. He also claimed that he is in lawful possession of the suit schedule property for several years.



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3. Based on the oral and documentary evidence, the Trial Court has decreed the suit in favour of the respondent/plaintiff on the ground that the appellant/defendant has been unable to establish that he is also entitled for a share in the suit schedule property, being a legal heir of his deceased mother. The Trial Court relying upon Ex.A2, namely, the settlement deed dated 10.12.2004 executed in favour of the respondent/plaintiff by his mother and other documents, which were filed and marked as exhibits on the side of the respondent/plaintiff, held that the respondent/plaintiff is the absolute owner of the suit schedule property and therefore, granted the reliefs as prayed for in the plaint.

4. Admittedly, the settlement deed dated 10.12.2004 (Ex.A2) executed in favour of the respondent/plaintiff has not been challenged by the appellant/defendant till date. The mother of both the parties, who had executed the settlement deed dated 10.12.2004 (Ex.A2), died in the year 2007 itself. Even during her lifetime, the settlement deed dated 10.12.2004 (Ex.A2) was never challenged by the appellant/defendant, though he has contended before the Trial Court that the said settlement deed was never executed by his mother in favour of the respondent/plaintiff. No counter claim was also filed by the appellant/defendant in the suit filed by the respondent/plaintiff, to declare the



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settlement deed dated 10.12.2004 (Ex.A2) as null and void. Therefore, the Trial Court was right in decreeing the suit in favour of the respondent/plaintiff by granting the reliefs as prayed for in the plaint. The revenue records have also been filed by the respondent/plaintiff, which have been marked as exhibits before the Trial Court, which stands only in the name of the respondent/plaintiff. The Lower Appellate Court has also confirmed the findings of the Trial Court by dismissing the first appeal filed by the appellant/defendant. There is no substantial question of law involved in this Second Appeal as the Courts below have rightly rejected the contentions of the appellant/defendant only based on the oral and documentary evidence available on record. There is no merit in this Second Appeal.

5. At this stage, when this Court has taken a decision to dismiss the Second Appeal, the learned counsel for the appellant/defendant would submit, on instructions, that if sufficient time is granted to the appellant/defendant to vacate the suit schedule property, he shall hand over the vacant possession of the suit schedule property to the respondent/plaintiff. This Court is of the considered view that since the dispute involves two brothers, six (6) months' time can be granted to the appellant/defendant for handing over possession of the suit schedule property to the respondent/plaintiff and for this suggestion,



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the learned counsel for the respondent/plaintiff has also not raised any serious objection. However, the appellant/defendant will have to file an affidavit of unconditional undertaking before this Court to that effect.

6. For the foregoing reasons, this Second Appeal is dismissed with a direction to the appellant/defendant to file an affidavit of unconditional undertaking that the appellant/defendant would hand over possession of the suit schedule property to the respondent/plaintiff within a period of six (6) months from today. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

7. Post the matter for filing of affidavit of unconditional undertaking by the appellant/defendant on 28.03.2023.

**21.03.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes/ No  
Lm



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To

- 1.The II Additional Sub Court,  
Tiruchirappalli.
- 2.The III Additional District Munsif Court,  
Tiruchirappalli.
- 3.The Section Officer,  
V.R.Section,  
Madurai Bench of Madras High Court, Madurai.



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**ABDUL QUDDHOSE, J.**

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