



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2016

Coram:

THE HONOURABLE MS.JUSTICE R.MALA

S.A(MD)No.376 of 2016  
and C.M.P.(MD)No.4053 of 2016

WEB COPY

1.Rajammal  
2.Subramaniyan  
3.Kamalaveni  
4.Senthil Rajan

..Appellants/Appellant 3 to 6/  
L.Rs of the first Plaintiff

vs.

1.D.Srinivasan  
2.D.Ravi  
3.D.Selvam  
4.D.Rajavelu  
5.V.C.Duraisamy  
6.Baskaran

..Respondents/Respondents/Defendants  
..Respondent/2<sup>nd</sup> Appellant/2<sup>nd</sup> Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree passed in A.S.No.23 of 2006, on the file of the Subordinate Court, Pudukottai, dated 23.10.2007 confirming the Judgment and Decree passed in O.S.No.4 of 2002, on the file of the Principal District Munsif Court, Pudukottai, dated 17.10.2003.

For Appellants : Mr.B.Pugalendhi  
For Respondents 1 to 5: Mr.G.Sridharan

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### JUDGMENT

The plaintiffs, who lost the legal battle in both the Courts, have come forward with the Second Appeal, challenging the Decree and Judgment passed in A.S.No.23 of 2004, dated 23.10.2007 by the Subordinate Court, Pudukottai, by confirming the Decree and Judgment made in O.S.No.4 of 2002, dated 17.10.2003 by the Principal District Munsif Court, Pudukottai.

2. Heard the learned counsel for the appellants and perused the materials available on record.

3. The appellants as plaintiffs filed a suit in O.S.No.4 of 2002 for injunction restraining the defendants from interfering their peaceful possession and enjoyment of the suit property stating that the property is originally owned by one Ayyavoo, father of the first plaintiff and the grandfather of the second plaintiff. After the death of the said Ayyavoo, the first plaintiff inherited the property and they enjoyed the property. They divided all other properties except the suit property. Patta



also stands in their name and they are in possession, which was evidenced by Adangal. Now the defendants, without having any right, have attempted to interfere their possession and hence, they are constrained to file a suit for injunction.

4. Resisting the same, the respondents as defendants in the main suit filed a written statement stating that the suit property is owned by one Chinnan, father Ayyavoo, Duraisamy, Pappu and Rengan. Ayyavoo, father of the first plaintiff is none other than the elder brother of Duraisamy, Pappu and Rengan. This property was allotted to Duraisamy, in which the first plaintiff is one of the attestors. So, there are not in possession and enjoyment of the suit property. Patta has also been changed in their name. They also disputed the title to the suit property. Hence, they prayed for dismissal of the suit.

5. The trial Court, after considering the averments in plaint and written statement, framed necessary issues and also considering the oral and the documentary evidences dismissed the suit by stating that the plaintiffs have not proved their possession and they have not come to the Court with clean hands and hence, they are not entitled to injunction. Against which, the plaintiffs preferred an appeal in A.S.No.23 of 2006, in which the first Appellate Court has come to the extent on saying that once the title of the property has been disputed, the plaintiffs should file a suit for declaration and the suit for injunction is not maintainable. It further held that Ex.A.2 patta has been subsequently cancelled by the Revenue Authorities as per Ex.B.6. So, the first Appellate Court has confirmed the decree and judgment passed by the trial Court. Against which, the plaintiffs preferred the Second Appeal.

6. Once the plaintiffs have come forward with a suit for discretionary relief of injunction, they must come to the Court with clean hands. In the genealogy given by the plaintiffs itself is a false one. Ayyavoo had three brothers, but the plaintiffs have stated that the property is only allotted to Ayyavoo. The trial Court and the first Appellate Court have considered all the aspects and came to the correct conclusion. Hence, I am of the view that there is no substantial question of law arises for consideration in this second appeal and the second appeal is liable to be dismissed at the stage of admission.

7. Accordingly, this second appeal is dismissed in the admission stage itself. No costs. Consequently, the connected Civil Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CS-II)

/True copy/



To

1.The Subordinate Court, Pudukottai.

2.The Princiapl District Munsif Court, Pudukottai.

Copy to : The Section Officer, VR Section,  
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.G.Sridharan, Advocate in SR.37501

S.A (MD) No.376 of 2016  
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PBK/NGM-MP 28.07.2016 ::3P-5C: