

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated: 13.09.2017****Coram****WEB COPY****The HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA****S.A(MD)No.331 of 2017****and****C.M.P(MD)No.7126 of 2017**

Valliammai .. Appellant/Appellant/Defendant

Vs.

Thangavelu .. Respondent/Respondent/Plaintiff

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 02.02.2016 made in A.S.No.16 of 2015 on the file of the Sub Court, Sankarankovil, confirming the Judgment and Decree, dated 16.07.2014 made in O.S.No.163 of 2011, on the file of the Additional District Munsif Court, Sankarankovil.

For Appellant : Mr.N.Ga.Natraj

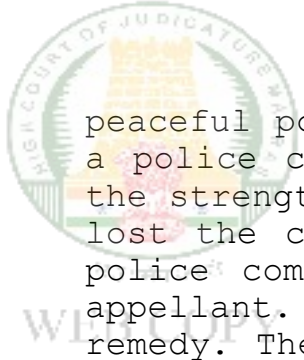
For Respondent : Mr.M.Thirunavukkarasu

JUDGMENT

The second appeal arises against the Judgment and Decree, dated 02.02.2016 passed in A.S.No.16 of 2015 on the file of the Sub Court, Sankarankovil, confirming the Judgment and Decree, dated 16.07.2014 passed in O.S.No.163 of 2011, on the file of the Additional District Munsif Court, Sankarankovil.

2.The defendant, who is the appellant having lost before the Courts below, has filed the above Second Appeal.

3.The relationship between the parties are not disputed and the identification of the properties is also not in dispute. Admittedly, the appellant herein, in an earlier litigation, instituted a suit in O.S.No.501 of 1991 on the file of the District Munsif, Sankarankovil, as seen from Ex.A.4. The said suit was filed by the appellant for the relief of declaration and injunction, which was originally decreed by the trial Court and on appeal in A.S.No.36 of 2001 on the file of the Sub Court, Sankarankovil, as seen from Ex.A.5, the same was reversed dismissing the suit of the appellant ~~reversed from~~ above Ex.A.4 and Ex.A.5, the rights of the parties are already determined. The present suit is filed once again for bare injunction restraining the defendant from interfering with the



peaceful possession based on the subsequent cause of action, namely a police complaint alleged to have been given by the defendant on the strength of the earlier Judgment. The present appellant, who had lost the case in the earlier proceedings could not have given the police complaint is the argument of the learned counsel for the appellant. The relief is one for injunction, which is an equitable remedy. The plaintiff only has to prove his possession of the suit property in this case, but already the earlier proceedings have declared the right of the plaintiff and also confirmed his possession. That being so, the defendant, who was also a party to the earlier proceedings cannot have any right to disturb the peaceful possession of the plaintiff by giving a police complaint. Accordingly, the Courts below have held that the plaintiff is entitled for the relief of injunction.

4.The learned counsel appearing for the appellant contended that the cause of action alleged did not happen and hence, the suit is not maintainable.

5.The said cause of action pointed by the learned counsel is only with respect to the police complaint, however, the cause of action paragraph also indicates that there were interference by the defendant/appellant with the peaceful possession of the plaintiff. The lower Appellate Court also found that as per Ex.A.11, there was a complaint given by the plaintiff which is in respect to the disturbance caused by the defendant, dated 01.06.2011, which is subsequent to the earlier suit. When the possession is confirmed and disturbance is also proved, the plaintiff is entitled for the decree which has been granted rightly by the Courts below and there is no question of law arising for consideration out of the Judgment of the Courts below. Hence, the Second Appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RECORD)

/True Copy/

Sub Assistant Registrar

To

1.The Subordinate Judge,
Sankarankovil.

2.The Additional District Munsif,
Sankarankovil.

+1cc to Mr.M.Thirunavukkarasu Advocate in SR. No. 78434

+1cc to Mr.N.GA.NATRAJ Advocate in SR. No. 78682

PS

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S.A(MD)No.331 of 2017

13.09.2017