

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.02.2020

Coram

The Honourable Mr. Justice G.K.ILANTHIRAIYAN

S.A.No.796 of 1997

1.Guruvammal

2.J.Thilakaraman

3.Chokkammal

...Appellants/Plaintiffs

Versus

1.Govindammal

2.Padmavathi

3.Krishnamurthi

4.Chandrabai

5.Chandrababu

6.Subramani

7.Gajendiran

8.Chandra

9.Jamuna

10.Anjali

11.Kanchana

(Respondents 10 & 11 were impleaded vide order dated 19.07.2019 made in C.M.P.No.166 of 2015 in S.A.No.796 of 1997)

...Respondents

This Second Appeal is filed under Section 100 of C.P.C as against the judgment and decree dated 07.10.1996 passed by the learned Sub Judge, Tiruvallur in A.S.No.7/92 and I.A.No.152/93 confirming the judgment and decree dated 06.01.1992 passed by the learned District Munsif, Tiruvallur in O.S.No.296/76.

For Appellants : Mr.A.V.Arun

For Respondent - 1 : Mr.M.Sriram

For Respondents - 2,
5, 6 & 7 : Notice Served

Respondents - 3, 4,
8 & 9 : Not ready in notice

Respondents - 10 & 11: Mr.Ramesh Venkatachalapathy

J U D G M E N T

The present Second Appeal has been filed challenging the judgment and decree dated 07.10.1996, passed by the learned Sub Judge, Tiruvallur in A.S.No.7 of 1992 and I.A.No.152 of 1993, in and by which, the learned Sub Judge confirmed the judgment and decree dated 06.01.1992 passed by the learned District Munsif, Tiruvallur in O.S.No.296 of 1976.

2. The plaintiffs in the suit O.S.No.296 of 1976 are the appellants herein.

3. The appellants/plaintiffs filed a suit in O.S.No.296 of 1976 seeking for permanent injunction restraining the defendants, their men, agents and servants from interfering in any manner with their peaceful possession and enjoyment of the suit item 2. However, the learned District Munsif, Tiruvallur dismissed said suit vide judgment and decree dated 06.01.1992. Aggrieved by the said judgment and decree passed in O.S.No.296 of 1976, the appellants/plaintiffs had filed a First Appeal in A.S.No.7 of 1992 on the file of the Subordinate Court, Tiruvallur. The learned Subordinate Judge, Tiruvallur by judgment and decree dated 07.20.1996 had confirmed the judgment and decree of the trial Court. Challenging the concurrent judgment and decree, the appellants/plaintiffs had filed the present Second Appeal before this Court.

4. The learned counsel for the appellants/plaintiffs submitted that the appellants/plaintiffs may be given liberty to withdraw the suit O.S.No.296 of 1976 and file a fresh suit for declaration. He has also made an endorsement to that effect.

5. The learned counsel appearing for the first respondent would submit that already the Courts below had concurrently held against the appellants/plaintiffs and therefore, the appellants/plaintiffs cannot file a fresh suit for declaration. In support of his contention, he relied on the judgment, Jharkhand State Housing Board Vs. Didar Singh reported in 2018 SCC Online SC 2170, wherein, the Honourable Supreme Court has held as follows:

"10. The issue that fall for our consideration is: "Whether the suit for permanent injunction is maintainable when the defendant disputes the title of the plaintiff?"

11. It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises

a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction.

12. In the facts of the case the defendant-Board by relying upon the land acquisition proceedings and the possession certificate could successfully raise cloud over the title of the plaintiff and in those circumstances plaintiff ought to have sought for the relief of declaration. The Courts below erred in entertaining the suit for injunction.

13. Hence, in view of the above discussion, we are of the considered opinion that the judgment and decree impugned in the appeal deserves to be set aside and accordingly we set aside the same. However, a request was made at the time of hearing on behalf of the plaintiff to direct the parties to maintain status quo for a period of three months to enable the plaintiff to avail the appropriate remedies available under law. In view of the long pending litigation, we deem it appropriate to direct the parties to maintain status quo with regard to possession for a period of three months. Resultantly, the appeal is allowed with the above observations by setting aside the judgment and decree dated 12.10.2001 but in the circumstances without costs."

6. Heard the learned counsel on both sides and perused the materials available on record.

7. Actually, the dispute involved in the present case is declaration of title over the property and therefore, the suit O.S.No.296 of 1976 filed by the appellants/plaintiffs for permanent injunction is not maintainable. Hence, this Court is of the opinion that it would be appropriate to grant liberty to the appellants/plaintiffs to withdraw the suit O.S.No.296 of 1976 and file a fresh suit for declaration.

8. Accordingly, this Court grants liberty to the appellants/plaintiffs to withdraw the suit O.S.No.296 of 1976 filed for permanent injunction and file a fresh suit for declaration in respect of the very same suit property, before appropriate Court, within a period of three months from the date of receipt of a copy of this judgment. Till such time, both the parties are directed to maintain status-quo as on date.

9. In the result, this Second Appeal is disposed of in the above manner. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

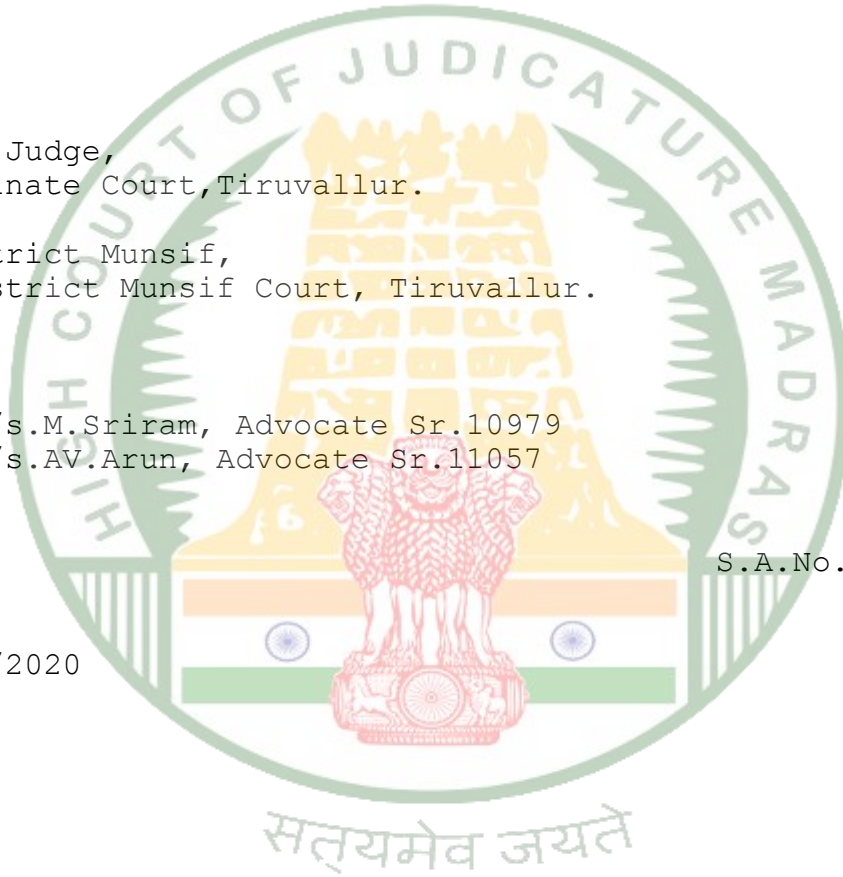
To

- 1.The Sub Judge,
Subordinate Court,Tiruvallur.
- 2.The District Munsif,
The District Munsif Court, Tiruvallur.

+1cc to M/s.M.Sriram, Advocate Sr.10979
+1cc to M/s.AV.Arun, Advocate Sr.11057

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