



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.10.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.692 of 2006 and

M.P.(MD)No.1 of 2006

WEB COPY

Thennarasu

... Appellant/Appellant/3rd Defendant

Vs.

1.Chellakkannu Ammal

Through her Power of Attorney Govindaraju.

... 1st Respondent/1st Respondent/Plaintiff

2.Ramaian

3.Thirunavukkarasu

4.Senthil

5.Alagappan

6.Thangappan

7.Ayyasamy

... Respondents 2 to 7/Respondents 2 to 7/
Defendants 1,2,4 & 5 to 7

Prayer: Second appeal filed under Section 100 of C.P.C., against the judgment and decree dated 24.02.2004 made in A.S.No.67 of 2003 on the file of the Principal District Judge, Pudukkottai, confirming the judgment and decree dated 11.12.2002 made in O.S.No.68 of 2000 on the file of the Principal District Munsif, Pudukkottai.

For Appellant	: Mr.Anand Chandrasekar, for M/s.Sarvabhauman Associates.
For R-1	: Mr.G.Sridharan
For R-2 to R-7	: No appearance.

J U D G M E N T

The third defendant in O.S.No.68 of 2000 on the file of the Principal District Munsif Court, Pudukkottai, is the appellant in this second appeal.

2.The first respondent herein, namely, Chellakkannu Ammal was the plaintiff in the suit. The suit was filed for the relief of permanent injunction. The case of the plaintiff was that the suit properties which are agricultural lands were assigned in favour of her husband in the year 1972. Perumal passed away some 15 years later and the plaintiff, his wife inherited the suit properties. She was in possession and enjoyment of both the suit items. She claimed that defendants 1 to 4 attempted to commit trespass into suit item No.1 on 04.02.2000 and defendants 5 to 7 attempted to trespass into suit second item on some other date. In order to



protect her possession, the injunction suit came to be filed.

3.Except the appellant who was shown as the third defendant, the other defendants remained ex-parte. The plaintiff's power agent was examined as P.W.1 and two other witnesses were examined on the side of the plaintiff. Ex.A.1 to Ex.A.12 were marked. The appellant examined himself as D.W.1. Ex.B.1 to Ex.B.5 were marked. Two court exhibits were marked. The trial Court after a consideration of the evidence on record, by judgment and decree dated 11.12.2002 decreed the suit as prayed for. The appellant herein filed A.S.No.67 of 2003 before the Principal District Judge, Pudukkottai. The first appellate Court by judgment and decree dated 25.02.2004 confirmed the decision of the trial Court and dismissed the appeal. Challenging the same, this second appeal came to be filed.

4.Even though the second appeal was filed way back in the year 2005 itself, till date, it had not been admitted.

5.Heard the learned counsel on either side.

6.The learned counsel appearing for the appellant pointed out that the appellant did not contest the claim of the plaintiff that she is having title over both the suit items. In the written statement, the appellant stated that on 04.02.2000, no such occurrence as claimed by the plaintiff, took place and that the appellant was employed as Cane Officer in Arignar Anna Sugar Mill, at Kurungulam. The specific stand of the appellant is that he was an unnecessary party to the suit proceedings. When such a categorical stand was taken by the appellant, I am of the view that the question of passing decree against the appellant does not arise at all. The appellant had categorically stated that he is not the owner of the suit property. The appellant stated that he is not challenging the plaintiff's title over the suit property. Therefore, recording the said submission, the suit itself could have been closed on that basis.

7.In this view of the matter, the judgment and decree passed by the Courts below are modified. This second appeal is disposed of by recording the submission of the appellant that he does not challenge the title or possession of the plaintiff over the suit property. The learned counsel on either side inform this Court that it is only the third defendant who has challenged the decree passed by the Courts below and the other defendants had chosen to accept the same. In this view of the matter, the impugned judgment and decree is set aside as regards the appellant alone. The categorical statement made by the appellant is also recorded and that should redress the concerns and apprehension of the plaintiff. The judgment and decree passed by the Courts below shall stand as against the other defendants.



WEB COPY

S.A.(MD)No.692 of 2006

8.This second appeal is disposed of on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The Principal District Judge,
Pudukkottai.
- 2.The Principal District Munsif,
Pudukkottai.

Copy to:

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.G.SRIDHARAN, Advocate (SR-32181[F] dated 21/10/2021)

+1 CC to M/s.SARVABHAUMAN ASSOCIATES, Advocate (SR-32210[F] dated 22/10/2021)

S.A. (MD)No.692 of 2006

21.10.2021

—
RS (07.12.2021) 3P 7C