



S.A.No.869 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.869 of 2022

T.K.Loganathan

...Appellant

Vs

1.K.C.Kandasamy

2.P.Elango

... Respondents

Prayer: The appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 20.12.2021 made in A.S.No.20 of 2021 on the file of III Additional District and Sessions Court, Gobichettipalayam, Erode confirming the fair and final order dated 15.02.2021 made in I.A.No.8 of 2021 in O.S.No.92 of 2019 on the file of the Subordinate Judge, Gobichettipalayam.



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For Appellant : Mr.S.Kaithamalai Kumaran.

JUDGEMENT

Challenging the rejection of his plaint by the Subordinate Judge, Gobichettipalayam, which is confirmed by the learned III Additional District and Sessions Judge, Erode, the plaintiff has filed the above Second Appeal. The facts in brief are as follows.

2. The plaintiff has filed the suit against the defendants before the Subordinate Court, Gobichettipalayam, in O.S.No.92 of 2019 for declaration and injunction based on a settlement deed executed by his wife Easwari on 11.02.2005.

3. The defendants on entering appearance had filed a petition



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invoking the provisions of Order VII Rule 11 of the Code of Civil Procedure to reject the plaint. The application for rejecting the plaint has been filed by the defendants stating that they have obtained a decree for specific performance in O.S.No.328 of 2003 on the file of the Sub Court, Gobichettipalayam against the said Easwari on 02.04.2008. Thereafter, execution proceedings were initiated in E.P.No.47 of 2010 on the file of the Sub Court, Sathyamangalam. The plaintiff had then filed an application under Section 47 of the Code of Civil Procedure in E.A.No.61 of 2014 for determining his right over the suit property on the basis of documents that have been now produced in this suit. This petition was dismissed on 31.08.2005.

4. It is the contention of the defendants that possession was already delivered to them through Court on 23.10.2018. Thereafter, in the year 2019, this suit has been filed.



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5. The Trial Court after full fledged trial was pleased to allow I.A.No.8 of 2021 and consequently rejected the plaint in O.S.No.92 of 2019.

6. Challenging the said order, the plaintiff has filed A.S.No.20 of 2021 on the file of the learned III Additional District and Sessions Judge, Erode.

7. The learned III Additional District and Sessions Judge, Erode also concurred with the findings of the learned Subordinate Judge, Gobichettipalayam and consequently dismissed the appeal, as against which the present appeal is filed.

8. The suit O.S.No.92 of 2019 is nothing but an abuse of process of Court. The wife of the appellant who has settled the property on the appellant on 11.02.2005 had suffered a decree for specific

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performance in O.S.No.328 of 2003. The settlement deed, from the facts set out appears to have been created after the filing of the suit for specific performance. The said decree was also put into execution and possession taken.

9. The appellant has also filed Section 47 petition in the Execution Proceedings, which was also dismissed and after the possession had been delivered, the present suit has been filed. The Courts below have rightly considered the facts and rejected the plaint and I see no reason to disagree with the well considered Judgement of the Courts below.

10. In the result, the Second Appeal is dismissed. No costs.

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Index : Yes/No

Speaking order/non-speaking order

To,

1.The III Additional District and Sessions Court,
Gobichettipalayam,
Erode

2.The Subordinate Judge,
Gobichettipalayam.



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P.T.ASHA, J.,

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