



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.581 of 2010

WEB COPY

1.G.Lawrance
2.Elcy @ Espi

... Appellants/Respondents/
Defendants

-Vs-

1.U.Xavier Muthu
2.Jesintha Rani

... Respondents/Appellants/
Plaintiffs

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 10.09.2008 passed in A.S.No.87 of 2006 by the First Additional Sub Court, Nagercoil reversing the judgment and decree made in O.S.No.32 of 2004, dated 07.02.2006 passed by the learned Principal District Munsif, Nagercoil.

For Appellants : Mr.B.Brijesh Kishore
For R1 & R2 : Mr.V.Balaji
for Mr.S.Suresh Kumar

JUDGMENT

The defendants in O.S.No.32 of 2004 on the file of the Principal District Munsif Court, Nagercoil are the appellants in this second appeal.

2.The suit was filed by the respondents herein seeking permanent injunction restraining the defendants from trespassing or constructing any wall in any portion of the plaint schedule land. The trial court dismissed the suit on the ground that no cause of action had arisen. Aggrieved by the same, the plaintiffs filed A.S.No.87 of 2006 before the first Additional Sub Court, Nagercoil. By the impugned judgment and decree dated 10.09.2008, the first appellate court reversed the decision of the trial court and allowed the appeal and decreed the suit as prayed for. Challenging the same, this second appeal came to be filed. The second appeal had not been admitted till date.

3.The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to frame the substantial question of law and admit the second appeal and then take it up 'for disposal'.



4.Per contra, the learned counsel appearing for the respondents submitted that no substantial question of law arises for consideration.

5.I carefully considered the rival contentions and went through the evidence on record.

6.The suit property is comprised in R.S.No.J3/29-23 in Nagercoil Village in Agatheeswaram Taluk. It measures 4 cents. The boundaries are as follows:-

North	: Rajakkamangalam Road
East	: Defendant's land
South	: Chinkarayan, Anthony Sulian Property
West	: Plaintiff's land

7. The plaintiffs have marked Ex.A4-sale deed dated 26.05.1980 executed by one Therassammal in favour of the second plaintiff Jesintha Rani. In Ex.A4, the four boundaries have been described. The trial court had given a specific finding that the defendants have not questioned the plaintiff's possession over the suit property. If according to the defendants this was an incorrect finding, the defendants should have filed cross objection before the first appellate court. They have not filed any cross objection. The trial court chose to dismiss the suit only on the ground that there was no cause of action for filing the suit. But as rightly observed by the first appellate court, the fact that a police complaint was lodged indicated that there was strain in the relationship between the parties. Therefore, I decline to interfere with the grant of permanent injunction by the first appellate court. No substantial question of law arises for consideration. However, I make it clear that the grant of permanent injunction against the defendants will not in any way cast aspersion on them or lead to any conclusion that there was any encroachment committed by them.

8. With this observation and clarification in favour of the appellants, the impugned judgment and decree is confirmed. The second appeal is dismissed. No cost.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



To

1. The First Additional Sub-Judge,
Nagercoil.

2. The Principal District Munsif,
Nagercoil.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.SURESH KUMAR, Advocate (SR-16304[F] dated
04/04/2022)

Judgment made in
S.A. (MD) No.581 of 2010
31.03.2022

USK/19.04.2022/3P/6C