



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2022

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

S.A. (MD)No.659 of 2010

Madurai Veeran

... Appellant

**Vs.**

1.Irulayee (Died)  
2.Jeeva (Died)  
3.Karuppaiah  
4.Krishnamoorthy  
5.Vasanth  
6.A.Sathyalakshmi  
(RESPONDENTS 2 TO 4 WHO ARE ALREADY ON RECORD  
ARE RECORDED AS LRS OF THE Deceased 1<sup>st</sup> RESPONDENT)  
7.Rajeswari  
8.J.Cibi  
9.J.Alexander  
(RESPONDENTS 7 TO 9 ARE SUO MOTU  
IMPLEADED AS LRS OF THE DECEASED 2<sup>nd</sup> RESPONDENT)

... Respondents

**Prayer :** Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the first appellate Court in A.S.No.38 of 2008 on the file of the III Additional Sub Court, Madurai, dated 27.01.2009, confirming the judgment and decree passed in O.S.No.11 of 2002 on the file of the Principal District Munsif Court, Madurai Town, dated 08.01.2008.

For Appellant : Mr.J.Gunaseelan Muthiah

For Respondents : Mr.V.Meenakshmisundaram,  
For Mr.D.Nallathambi for R3 to R9

**JUDGEMENT**

The unsuccessful plaintiff in O.S.No.11 of 2002 on the file of the Principal District Munsif Court, Madurai Town is the appellant in this second appeal. The suit was filed for the relief of declaration and permanent injunction. The suit came to be dismissed. A.S.No.38 of 2008 filed by the plaintiff before the III Additional Sub Court, Madurai, questioning the decision of the trial



Court also suffered dismissal. Challenging the same, this second appeal came to be filed.

2.The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to frame the substantial question of law, admit the second appeal and take it up for disposal later.

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

4.I carefully considered the rival contentions and went through the evidence on record. The dispute is only about the superstructure. The land is an endowed property. The learned counsel for the respondents drew my attention to Ex.B10. Ex.B10 is the plaint filed by the plaintiff against Irulayee and Jeeva, the original defendants in the suit. The appellant herein had sought the relief of permanent injunction restraining the original defendants from dispossessing him except by due process of law. The plaintiff had admitted that he is a tenant under the defendants in respect of the superstructure. Though the learned counsel for the appellant would claim that the property covered in the suit schedule in O.S.No.777 of 2000 is different from the suit schedule, on a perusal, it is seen that both are one and same. It is a classic case in which Section 116 of the Indian Evidence Act would come into play. Section 116 of the Indian Evidence Act is follows:-

*"116.Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given. "*

5.Having admitted that he was inducted as a tenant by the defendants, the tenant cannot subsequently turn around and question the title of the defendants or set up an independent title in himself. Therefore, the suit is barred under Section 116 of the Indian Evidence Act. The Courts below were right in dismissing the same. No substantial question of law arises for consideration. However, whatever benefit that was conferred on the plaintiff under the judgment and decree made in O.S.No.777 of 2000, dated 27.02.2001 on the file of the District Munsif Court, Madurai Town, will not suffer any diminution on account of the dismissal of the present second appeal.



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6.With this observation and clarification in favour of the appellant, the second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To:

1.The III Additional Sub Judge,  
Madurai.

2.The Principal District Munsif,  
Madurai Town.

**Copy to:**

The Record Keeper,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.D.NALLATHAMBI, Advocate ( SR-11310 dated 10/03/2022 )

+1 CC to M/s.J.GUNASEELANMUTHAIH, Advocate ( SR-10882 dated  
09/03/2022 )

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MGJ(20.04.2022) 3P 7C