



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.871 of 2010

WEB COPY

Durai ... Appellant / Appellant / Defendant

-Vs-

Dhanamalli ... Respondent / Respondent / Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 20.04.2010 passed in A.S.No.24 of 2007 on the file of the Principal Sub Court, Sankarankoil, confirming the judgment and decree dated 31.07.2006 passed in O.S.No.307 of 2005 on the file of the Principal District Munsif Court, Sankarankoil.

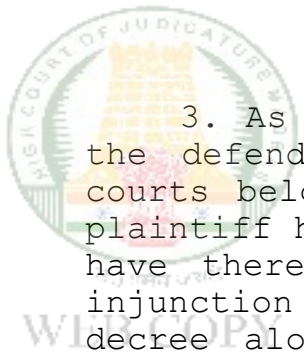
For Appellant : Mr.V.Meenakshi Sundaram

For Respondent : Mr.R.J.Karthick
for Mr.R.Subramanian

JUDGMENT

The defendant in O.S.No.307 of 2005 on the file of the Principal District Munsif Court, Sankarankoil is the appellant in this second appeal.

2. The suit was for permanent prohibitory injunction. The defendant contested the case by pleading that the suit property had been purchased by him under Ex.B1 & Ex.B2 dated 22.11.2004 and 13.10.2005. The courts below have rightly found that only vacant site was purchased by the defendant and that even before that, the suit house had been put up and that the plaintiff was in exclusive possession and enjoyment of the same. Ex.A1 is the house tax receipt in the name of the plaintiff. Ex.A2 is the electricity bill receipt indicating that electricity connection for the suit house is standing in the name of the plaintiff. Interestingly, Ex.B1 as well as Ex.B2 standing in the name of the defendant described the property conveyed thereunder as vacant site. Therefore, the courts below rightly granted relief in favour of the plaintiff. Whether the decree for permanent prohibitory injunction passed by the courts below can be sustained as such is the substantial question of law formulated in this appeal.



3. As rightly pointed out by the learned counsel appearing for the defendant, when the defendant had filed Ex.B1 & Ex.B2, the courts below could not have granted decree in blanket terms. The plaintiff had also not sought any declaratory relief. She could not have therefore maintained the suit with the relief of permanent injunction alone. Since she was settled possession, a limited decree alone could have been passed in her favour. Therefore, answering the substantial question of law in favour of the appellant, the impugned judgment and decree passed by the courts below are modified and the plaintiff is held entitled to a decree for permanent injunction that she shall not be dispossessed from the suit house except by due process of law.

4. With this modification, the second appeal is partly allowed.
No cost.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Principal Sub Court, Sankarankoil.

2.The Principal District Munsif Court, Sankarankoil.

Copy To

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

+1 CC to M/s.R.J.KARTHICK, Advocate (SR-16447[F] dated 04/04/2022)

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