



WEB COPY



SA(MD)No.137 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

SA(MD)No.137 of 2022
and
CMP(MD)No.1611 of 2022

R.Pandian : Appellant

Vs.

K.S.Palanisamy : Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to call for the records relating to the judgment and decree passed in A.S.No.95 of 2017, dated 16.09.2021, on the file of the Principal Sub Court, Dindigul, confirming the judgment and decree passed by the District Munsif Court, Nilakottai, in O.S.No.61 of 2012, dated 01.09.2017 and set aside the same.

For Appellant : Mr.A.P.Muthupandian

For Respondent : Mr.R.L.Dhilipan Pandian



WEB COPY

JUDGMENT

The appellant, as plaintiff, has filed a suit in O.S.No.61 of 2012 before the District Munsif Court, Nilakottai, for a bare injunction as against the respondent / defendant that he is interfering with his peaceful enjoyment of the suit schedule Bolero Car, bearing registration no.TN-64-C-0001. The suit was dismissed by the trial Court on 01.09.2017 and the appeal preferred by the appellant in A.S.No.95 of 2017 before the Principal Sub Court, Dindigul, was also dismissed on 16.09.2021.

2.As against the concurrent findings of the Courts below, the appellant filed this second appeal on the following substantial questions of law:-

“a) Whether the findings of the Courts below in holding the suit property to be possession and enjoyment of the property on the basis of written document executed by the defendant and its marked as Ex.P1, the defendant cannot establish his right?

b) Whether the findings of the Courts below are legally right, the equitable relief cannot be granted in favour of the appellant?

c) Whether the findings of the Courts below are legally right in view of the provisions of Section 38 of Specific Relief Act?

d) Whether the Courts below are right in disCarding the claim of



the appellant that the schedule property to be belongs to defendant and further in the absence of evidence by the defendant to substantiate his right?”

3.Learned Counsel for the appellant submitted that the suit schedule Bolero Car belongs to the respondent's company, namely, Global Capital Theni Services and the respondent has handed over the Car to the appellant on 17.02.2010 along with a letter [Ex.P1], as a security. Since then, the appellant has been in possession and enjoyment of the property. Without appreciating the same, both the Courts below have rejected his plea.

4.Learned Counsel for the respondent / caveator submitted that the suit schedule Bolero Car, bearing registration no.TN-64-C-0001, belongs to the respondent's company. However, in a criminal case registered by the Economic Offences Wing, Madurai, as against the respondent's Company for default of payment to the depositors, all the properties of the Company including the suit schedule Bolero Car has been attached. Final report has also been filed and taken on file by the concerned Court.



5.This Court paid it's anxious consideration to the rival submissions.

WEB COPY

6.No doubt, the suit schedule Car is in the possession of the appellant / plaintiff and the respondent / defendant has not expressly denied the same. However, as rightly held by the Courts below, it is quite unbelievable to note that the suit schedule Car, which is of a value of Rs.6,00,000/-, was obtained as a security for a huge sum of Rs.40,00,000/-. Even accepting without admitting this analogy, when a person obtains a Car as a security, the very first document to be collected is the registration certificate of the Car. Here, the original registration certificate [Ex.B4] was produced by the respondent. Moreover, the appellant / plaintiff has not proved the alleged interference by the respondent / defendant. He has not filed any complaints nor produced any CSR receipts to show that the respondent interfered with his peaceful possession of the suit schedule Car, which gave rise for the filing of the suit. Under such circumstances, both the Courts below have rightly rejected the plea of the appellant and the substantial questions of law raised by the appellant lack merits.

7.Even otherwise, it is represented by the respondent / defendant that the suit schedule Bolero Car, bearing registration no.TN-64-C-0001, was attached by



SA(MD)No.137 of 2022

the Economic Offences Wing, Madurai, in a criminal case registered as against the respondent's Company for default of payment to the depositors.

For the foregoing reasonings, this Court is not inclined to entertain this second appeal and the same is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
gk

15.11.2022

To

1.The Principal Subordinate Judge,
Dindigul.

2.The District Munsif,
Nilakottai.



WEB COPY



SA(MD)No.137 of 2022

B.PUGALENDHI, J.

gk

SA(MD)No.137 of 2022

15.11.2022