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S.A.Nos.1068 & 1075 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.01.2023

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.Nos.1068 & 1075 of 2022

and

C.M.P.Nos.22977, 22980, 23164 & 23167 of 2022

1. S. Eswaran  
2. E.Vijayakumar  
3. E.Gopi ... Appellants in both appeals

Vs

1. N.Shanmugam  
2. The Tahsildar,  
Modakkurichi  
Modakkurichi Taluk,  
Erode District. ... Respondents in both appeals

**Prayer :-** These Second Appeals are filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 02.08.2022 made in A.S.Nos.44 & 45 of 2020 on the file of the I Additional Subordinate Judge, Erode, confirming the Judgment and Decree dated 16.03.2020 in O.S.No.175 of 2014 on the file of the Principal District Munsif, Erode.

**In both appeals**

For Appellants : Mr.K.S.Karthik Raja  
For R2 : Mr.C.Sathish  
Government Advocate



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**COMMON JUDGMENT**

S.A.No.1068 of 2022 is directed as against the Judgment and

Decree dated 02.08.2022 made in A.S.No.45 of 2020 on the file of the I Additional Subordinate Judge, Erode, confirming the Judgment and Decree dated 16.03.2020 made in O.S.No.175 of 2014 on the file of the Principal District Munsif, Erode, thereby dismissing the suit.

2. S.A.No.1075 of 2022 is directed as against the Judgment and Decree dated 02.08.2022 made in A.S.No.44 of 2020 on the file of the I Additional Subordinate Judge, Erode, confirming the Judgment and Decree dated 16.03.2020 made in O.S.No.175 of 2014 on the file of the Principal District Munsif, Erode, thereby allowing the counter claim.

3. The appellants are the plaintiffs and the respondents are the defendants. The appellants filed a suit for permanent injunction in respect of the suit property. The case of the appellants is that from the year 1996, they are in possession and enjoyment of the suit property and the property originally belonged to Tamil Nadu Boomidhana Board and thereafter, they had spent several lakhs to level the land for cultivation. They dugged up a well and cultivating the land. They also constructed a house in the suit



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property and they are residing in the said house. They obtained electricity connection for their house. While being so, the first respondent herein attempted to trespass into the land on 30.03.2014. Hence, the suit.

4. The first respondent resisted the suit by way of filing written statement and also made counter claim of declaration and recovery of possession in respect of the suit property. The suit property is an agricultural land and it originally belonged to Tamil Nadu Boomidhana Board. In the year 1997, the suit property was gifted by Tamil Nadu Boomidhana Board in favour of the first respondent herein. Thereafter, the first respondent dugged up a well and cultivating the said land. In the year 1990, the first respondent also obtained electricity connection in S.C.No.137. Due to his avocation, he went out of the village and also in the year 2003 there was no water and due to dry weather he was not able to cultivate the said land. Therefore, in order to maintain the suit property, the first plaintiff was requested to maintain the suit property. He also borrowed a sum of Rs.1,50,000/- as loan from the first plaintiff and permitted him to maintain the suit property. Thereafter, though the first respondent is ready and willing to return the amount even then, the appellants herein refused to hand over the said land. Therefore, he made counter claim for declaration and recovery of possession.



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5. On the side of the appellants, they had examined P.Ws.1 to 3 and marked Exs.P1 to P22. On the side of the respondent, they had examined D.Ws.1 to 4 and marked Exs.D1 to D14. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit filed by the appellants and decreed the counter claim filed by the first respondent herein and declared the suit property in favour of the first respondent and ordered for recovery of possession as against the appellants. Aggrieved by the same, the appellants filed two appeal suits in A.S.Nos.44 & 45 of 2020. The First Appellate Court has also dismissed both the appeals and the Judgement and Decree passed by the Trial Court was confirmed. Hence, the present second appeals.

6. In both second appeals, the learned counsel for the appellants has raised the following substantial questions of law:

a) Are the Courts below right in dismissing the suit for injunction filed by the appellants especially when the 1<sup>st</sup> respondent have admitted the appellants possession over the suit property ?

b) When the 1<sup>st</sup> respondent has failed to establish his title over the suit property by



producing the original title document, are the Courts below right in allowing the counter claim for declaration sought by the 1<sup>st</sup> respondent ?

c) Are not the judgments of the Courts below perverse in allowing the counter claim in the absence of any oral and documentary evidence to substantiate ?

7. Heard, Mr.K.S.Karthik Raja, the learned counsel appearing for the appellants and Mr.C.Sathish, learned Government Advocate appearing for the second respondent and perused the materials available on record.

8. The learned counsel appearing for the appellants would submit that the appellants marked Exs.A1 to A22. Ex.A12 is the kist receipt for the suit property and thus it is clear that they are in possession and enjoyment of the suit property. The suit property belonged to Tamil Nadu Boomidhana Board and it is also evident from the report of the Tahsildar. Though, the first respondent claimed that the suit property was handed over to the appellants in the year 2003, no document was produced by them to prove the same.



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9. A perusal of the documents reveals that admittedly, the suit property belonged to Tamil Nadu Boomidhana Board. Thereafter, the suit property was gifted in favour of the first respondent herein. In order to prove the same, the first respondent marked Ex.D1 dated 17.12.1990. It was issued by the Tamil Nadu Boomidhana Board, Madurai for the suit property in favour of the first respondent. Thereafter, the first respondent dug up a well and applied for electricity service connection, which was marked as Ex.P2. On 28.03.2014, when the first respondent requested the appellants to return the land for which he lodged a complaint and the same was marked as Ex.D3. Therefore, the first respondent proved that the suit property was allotted by the Tamil Nadu Boomidhana Board and thereafter, he dug up a well and obtained electricity connection. At one point of time, the appellants were gifted or assigned the suit property by Tamil Nadu Boomidhana Board. However, they were permitted to occupy the land. The first respondent, in order grab the land, had filed a suit for permanent injunction in respect of the suit property as against the respondents herein.

10. As such the Courts below have analyzed the evidences adduced by the parties both the documentary and oral in detail and by giving cogent reasons, concluded rightly and dismissed the suit filed by the



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appellants and decreed the counter claim made by the first respondent herein. Accordingly, this Court is of the considered opinion that no substantial question of law is involved in these appeals.

11. In view of above, these Second Appeals are dismissed and the Judgment and Decree dated 02.08.2022 made in A.S.Nos. 44 & 45 of 2020 on the file of the I Additional Subordinate Judge, Erode, confirming the Judgment and Decree dated 16.03.2020 made in O.S.No.175 of 2014 on the file of the Principal District Munsif, Erode, is confirmed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

05.01.2023

Index : Yes/No  
Internet : Yes/No  
Speaking order/Non-speaking order  
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To

- 1.The I Additional Subordinate Judge, Erode.
- 2.The Principal District Munsif, Erode.



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**G.K.ILANTHIRAIYAN, J.**

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