



S.A.(MD).No.576 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2023

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

S.A.(MD).No.576 of 2022

1.Sam Chandra Mohan Singh

2.Samraj ... Plaintiffs/Appellants/ Appellants

Vs.

1.Nagercoil Municipality
represented by its
Commissioner,
Nagercoil.

...6th Defendant/1st Respondent /Respondent

2.M.Shanmugasundaram @ Ganesan

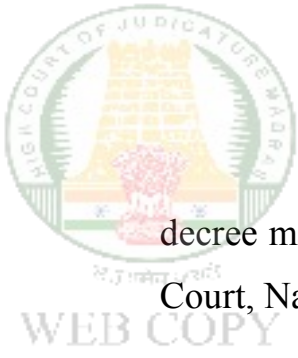
3.Sadasivam

4.Seeniappan

5.Vishnuram

6.Sivaprakasam ...Defendants 1 to 5/Respondents 2 to 6/
Respondents 2 to 6

Prayer: Second Appeal is filed under Section 100 of CPC to set aside the Judgment and Decree made in A.S.No.71 of 1997 on the file of the Principal Subordinate Court, Nagercoil dated 28.02.2001 confirming the judgment and



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decree made in O.S.No.929 of 1995 on the file of the Principal District Munsif Court, Nagercoil dated 15.03.1997.

For Appellants : Mr.Thirunavukkarasu

Legal Aid Counsel

For R-3 : No appearance

For R-4 and R-5 : Mr.N.Dilip Kumar

JUDGMENT

This Second Appeal has been filed challenging the concurrent findings of the Courts below. The appellants are the plaintiffs in the suit. They had filed a suit in their representative capacity for and on behalf of the CSI church, who is the owner of the suit A schedule property.

2. The dispute pertains to the suit B schedule property. The suit was filed for permanent injunction as well as for mandatory injunction. In the permanent injunction relief, the appellants/plaintiffs had sought to restrain the respondents 2 to 6/defendants 1 to 5 from putting up any construction in the suit B schedule property as the said property does not belong to them. It is also the case of the appellants/plaintiffs that if construction is put up by the respondents 2 to 6 (defendants 1 to 5), the entry to the church which is situated in the suit A



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schedule property will get affected. Apart from seeking the relief of permanent injunction, the appellants/plaintiffs also sought for the relief of mandatory injunction to direct the respondents 2 to 6/defendants 1 to 5 to demolish the alleged unauthorized construction put up by them in the suit B schedule property.

3. A written statement was also filed by the defendants 1 to 5 denying the contentions of the appellants/plaintiffs. The sixth defendant Municipality also filed a separate written statement in the suit claiming that they are the owners of the suit B schedule property.

4. The Trial Court after framing issues and after giving due consideration to the oral and documentary evidence partly decreed the suit in favour of the appellants/plaintiffs by granting the relief of permanent injunction alone and rejecting the relief of mandatory injunction sought for by the appellants/plaintiffs.

5. Before the Trial Court, the appellants/plaintiffs filed 17 documents, which were marked as exhibits A1 to A17. On the side of the appellants/plaintiffs, two witnesses were examined, namely, P.W.1 and P.W.2.



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On the side of the respondents/defendants, 16 documents were filed, which were marked as exhibits B1 to B16 and two witnesses have also been examined on their side, namely, D.W.1 and D.W.2.

6. The Trial Court after giving due consideration to the oral and documentary evidence has held that the suit B schedule property belongs to the first respondent/sixth defendant Municipality and therefore, the respondents 2 to 6/defendants 1 to 5 do not have any right to put up construction in the suit B schedule property. However, the Trial Court has observed that the plaintiffs have not been able to establish that the defendants 1 to 5 have put up any unauthorized construction over the suit B schedule property. Accordingly, the Trial Court partly decreed the suit in favour of the appellants/plaintiffs by granting the relief of permanent injunction alone and rejecting the relief of mandatory injunction.

7. This Court does not find any infirmity in the findings of the Trial Court. The Lower Appellate Court has also confirmed the findings of the Trial Court by dismissing the first appeal filed by the appellants/plaintiffs in A.S.No.71 of 1997 on 28.02.2001, which is put to challenge in this Second Appeal. The contentions raised in this Second Appeal are all factual issues



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which have been correctly considered by the Courts below based on oral and documentary evidence available on record. There are no substantial questions of law involved in this Second Appeal and therefore, there is no merit in this Second Appeal. Accordingly, this Second Appeal is dismissed. There shall be no order as to costs.

21.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Lm

To

- 1.The Principal District Munsif Court,
Nagercoil.
- 2.The Principal Subordinate Court,
Nagercoil.
- 3.The Commissioner,
Nagercoil Municipality,
Nagercoil.
- 4.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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