



S.A(MD)No.90 of 2007

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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- 1.S.M.Swamy (died)
- 2.Ramiah(Died)
- 3.Lalitha
- 4.Sundararajan
- 5.Subramaniam
- 6.Anandhavalli
- 7.Ravikumar
- 8.Varadhasubramanian
- 9.Ganesan

...Defendants 3 & 4/

Respondents 2 & 3/Appellants

*(Appellants 3 to 9 are brought on record
as LRS of the deceased A1&A2 as per
order dated 26.11.2018 in C.M.P(MD)No.11473 of 2018)*

-Vs-

- 1.Kathoon Beevi

... Plaintiff/Appellant/ 1st

Respondent

- 2.Azhagammal

- 3.Sivaraj

1/6



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4.Swaroopo Rani

...Defendants 5 to 7/

Respondents 4 to 6/Respondents 2to4

5.Sundari

6.Vanaja

...Defendants/Respondents

7&8/Respondents 5 &6

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the decree and judgment in A.S.No.25/2004 dated 28.10.2004 on the file of the I Additional Sub-Court, Nagercoil, reversing the decree and judgment in O.S.No.703 of 1983 dated 23.10.2003 on the file of the II Additional District Munsif Court, Nagercoil.

For Appellants	: Mr.P.Saravanan for Mr.D.Rajagopal
For R1	: Mr.P.Thiagarajan for Mr.T.R.Rajaram
For R2 to R6	: No appearance

JUDGMENT

The defendants 3 and 4 in the suit are the appellants. The first respondent herein filed a suit for bare injunction restraining the appellants and the respondents 2 to 6 herein from interfering with her possession. The suit was dismissed by the trial Court and on appeal it was allowed and the suit was



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decreed. Aggrieved by the same, the defendants 3 and 4 have come up by way of this second appeal.

2.The first respondent purchased the suit property from one Madasamy under Ex.A.1. He claimed right and possession over the suit property under Ex.A.1 executed by Madasamy. The appellants, as representatives of Swaharagapathy Vinayagar Samudhayam alias Chaykkaran Samudhayam of Parasuraman Peruntheru Edalakudy, filed a suit against the vendor of the first respondent viz., Madasamy and others seeking various reliefs including the relief of recovery of possession of the suit property and other properties. The first respondent/plaintiff was arrayed as 11th defendant in that suit. In the suit filed by the appellants in O.S.No.102 of 1983 on the file of the Sub-Court, Nagercoil, the appellants admitted the possession of the first respondent and prayed for recovery of possession. The said suit was decreed. The Appellate Court treating the first respondent as a person in settled possession of the property, granted a decree for limited injunction restraining the appellants and other respondents from interfering with the possession of the first respondent till the disposal of the appeal pending against the judgment passed in O.S.No.102 of 1983. The First



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Appellate Court also imposed a condition that the first respondent shall not put up any construction in the suit property.

3. When the second appeal is taken up for consideration, it is brought to the notice of this Court that the first appeal filed by the first respondent vendor Madasamy in A.S.No.153 of 2001 was allowed and the judgment and decree passed in O.S.No.102 of 1983 on the file of the Sub-Court Nagercoil, was set aside by this Court and challenging the same, the appellants have filed Special Leave Petition before the Hon'ble Apex Court in S.L.P(C).Nos.14998, 14999 and 15000 of 2016 and the same are pending. The learned counsel for the appellants submitted that the second appeal may be adjourned till the disposal of the Special Leave Petition.

4. The Second Appeal is arising out of the suit for bare injunction filed by the first respondent. Even as per the admitted case of the appellants in the plaint filed in O.S.No.102 of 1983, which was marked as Ex.A.3, the appellants have admitted the possession of the first respondent. The specific case of the appellants in that suit was that, the vendor of the first respondent viz., Madasamy,



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had no right to alienate the suit property to the first respondent and hence, the title document of the first respondent was a void document.

5. In view of the admitted case of the appellants that the first respondent had been in possession and enjoyment of the suit property for quite a long time, as a person in settled possession of the suit property, the first respondent is entitled to a decree for limited injunction till he is evicted by following due process of law. In fact, the First Appellate Court granted a limited injunction till the disposal of the appeal before the High Court and the said appeal is already disposed of. Therefore, as on today, no decree for injunction is operating against the appellants. Therefore, nothing survives in this Second Appeal and hence, the same is closed. In the event of the appellants' success in the Special Leave Petitions, it is open to them to follow the due process of law to recover the possession of the suit property from the first respondent in the manner known to law. No costs.

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Index : Yes / No

Internet : Yes / No

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To

1. The I Additional Sub-Court,
Nagercoil,
- 2.The II Additional District Munsif Court,
Nagercoil.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.

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