



S.A.(MD).No.250 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2023

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

S.A.(MD).No.250 of 2020

and

C.M.P.(MD).No.3235 of 2020

J.Michael

... Appellant/Appellant/Plaintiff

Vs.

1.Nibhi Realtors Private Limited,
Represented by its Director of Beemaraja,
Through its Power agent,
R.Suresh Kumar.

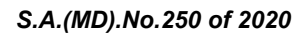
2.Xavier

...Respondents/Respondents/Defendants

Prayer: Second Appeal is filed under Section 100 of CPC to set aside the judgment and decree dated 03.09.2019 made in A.S.No.76 of 2013 on the file of Additional Subordinate Judge, Tirunelveli, confirming the judgment and decree dated 21.02.2013 made in O.S.No.111 of 2009 on the file of 2nd Additional District Munsif Court, Tirunelveli and to decree the suit with costs.

For Appellant : Mr.Mohamed Ibram Saibu
for M/s.Ajmal Associates.

For Respondents : Mr.K.Rajeshwaran



This Second Appeal has been filed challenging the concurrent findings of the Courts below. The appellant is the plaintiff in the suit in O.S.No.111 of 2009 on the file of the II Additional District Munsif Court, Tirunelveli. The suit was filed for permanent injunction restraining the respondents/defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property.

2. The Trial Court dismissed the suit on the ground that the appellant/plaintiff ought to have filed a suit for declaration as there is a cloud over his title. The Lower Appellate Court, namely, the Additional Sub Court, Tirunelveli by its judgment and decree dated 03.09.2019 in A.S.No.76 of 2013, has also confirmed the findings of the Trial Court by dismissing the first appeal filed by the plaintiff. Aggrieved by the concurrent findings of the Courts below, this Second Appeal has been filed.

3. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit. Before the Trial Court, both the plaintiff and the defendants have filed title deeds to substantiate their respective claims. Both of them claimed ownership over the very same suit schedule property. The



S.A.(MD).No.250 of 2020

plaintiff has produced title deeds, which have been marked as exhibits and similarly, the defendants have also produced title deeds, which have been marked as exhibits on their side, to substantiate their respective claims. Since there is a cloud over the title in respect of the suit schedule property, the Trial Court has rightly dismissed the suit as the suit has been filed only for a bare injunction and no declaratory relief has been sought for.

4. It is settled law as laid down by the decision of the Hon'ble Supreme Court in the case of *Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs and others* reported in **2008 (6) CTC 237** that if there is a cloud over the title to a property, a party claiming rights of ownership over the said property will have to necessarily file a suit for declaration and a bare injunction suit is not maintainable. The Trial Court has rightly dismissed the suit on the ground that the plaintiff has not sought for a declaratory relief.

5. The Lower Appellate Court, namely, the Additional Sub Court, Tirunelveli by its judgment and decree dated 03.09.2019 in A.S.No.76 of 2013 has also rightly confirmed the findings of the Trial Court by dismissing the first appeal filed by the plaintiff on the ground that the plaintiff has not filed a suit for declaration.



S.A.(MD).No.250 of 2020

6. This Court does not find any infirmity in the findings of the Courts below. There is no substantial question of law involved in this Second Appeal as the issues of law have been duly considered by the Courts below in a right manner. The learned counsel for the appellant has now sought for liberty for the appellant to file a suit for declaration. In *Anathula Sudhakar's* case referred to supra, in paragraph 12 of the said judgment, the Hon'ble Supreme Court has held that a suit for declaration with a consequential relief can be filed even after the suit for injunction is dismissed. Therefore, the liberty sought for by the appellant can be granted by this Court.

7. For the foregoing reasons, in view of the fact that a suit for declaration has not been filed by the plaintiff when there is a cloud over his title, this Second Appeal is dismissed. However, liberty is granted to the appellant to file a suit for declaration before the appropriate Court. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

29.03.2023

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



S.A.(MD).No.250 of 2020

To

- 1.The Additional Sub Court,
Tirunelveli.
- 2.The II Additional District Munsif Court,
Tirunelveli.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



S.A.(MD).No.250 of 2020

ABDUL QUDDHOSE, J.

Lm

S.A.(MD).No.250 of 2020

29.03.2023