



S.A.(MD).No.500 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2023

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

S.A.(MD).No.500 of 2022

and

C.M.P.(MD).Nos.6528 of 2022 and 4644 of 2023

Joseph Mary (died)

1.Gnanaraj

2.Joseph Felix Jerald

3.Jerome

... Appellants/LRs of Appellants/
LRs of Plaintiffs

(1st appellant Gnanaraj is recognized as Power Agent of the 2nd and 3rd appellants vide Court order dated 08.07.2022 made in C.M.P.(MD).No.8996 of 2021 in S.A.(MD).SR.No.19847 of 2020)

Vs.

1.Alagu Nachi

2.Balamurugan

...Respondents/Respondents/Defendants

Prayer: Second Appeal is filed under Section 100 of CPC to set aside the judgment and decree dated 26.08.2019 made in A.S.No.33 of 2017 on the file of the II Additional Subordinate Court, Madurai, confirming the judgment and

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decree dated 07.12.2016 made in O.S.No.235 of 2010 on the file of the District Munsif Court, Madurai Taluk, Madurai and allow this Second Appeal.

For Appellants : Mr.S.Hameed Ismail

For Respondents : Mr.M.Arjun Varman

for M/s.Lajapathi Roy and Associates

JUDGMENT

This Second Appeal has been filed challenging the concurrent findings of the Courts below. The appellants are the legal representatives of the deceased plaintiff in the suit.

2. The plaintiff had filed a suit O.S.No.235 of 2010 on the file of the District Munsif Court, Madurai Taluk, Madurai for a bare injunction restraining the respondents/defendants from interfering with her peaceful possession and enjoyment of the suit schedule property. The plaintiff claims that she is the absolute owner of the suit schedule property having purchased the same under a sale deed dated 19.11.1991 (Ex.A1).

3. However, the ownership of the plaintiff was disputed by the respondents/defendants as seen from their written statement. They claim that



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Alagu Nachi and Chinnaponnu, who are also the co-owners of the suit schedule property, never executed a power of attorney in favour of Duraipandian under a power of attorney dated 11.11.1991 registered as Document No.1208 of 1991, SRO Mahal. According to the defendants, the suit schedule property originally belonged to one Malaiyan. He had one daughter by name, Malaiyakkal. After the death of Malaiyan, his daughter has succeeded his property. According to the defendants, the said Malayakal had four sons and three daughters, by name, a) Alagu, b) Perumal, c) Chinnaperumal, d) Machakalai, e) Alagi, f) Alagu Nachi and g) Chinnaponnu. According to the defendants, Malaiyakkal is still alive. According to the defendants, Alagu Nachi and Chinnaponnu did not join in the execution of the power of attorney in favour of Duraipandian along with Alagu, Perumal, Chinnaperumal, Machakalai, Alagi and her son Malaiyan. According to the defendants, Alagu Nachi and Chinnaponnu also claimed that the power of attorney was executed only to manage the suit property and not to sell the same. However, according to the defendants, by misusing the power of attorney, Duraipandian had executed a sale deed dated 19.11.1991 (Ex.A1) in favour of the plaintiff (late L.Joseph Mary). Hence, according to the defendants, the plaintiff is not the absolute owner of the suit schedule property and the defendants continued to be its absolute owner.



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4. The Trial Court, namely, the District Munsif Court, Madurai Taluk, Madurai based on the pleadings of the respective parties framed issues including the issue as to whether the suit is maintainable as the plaintiff has not filed a suit for declaration despite the fact that the defendants have categorically contended that the plaintiff is not the absolute owner. Before the Trial Court, the plaintiff had filed 11 documents which were marked as exhibits A1 to A11 and the husband of the plaintiff, by name, Gnanaraj was examined as P.W.1. On the side of the defendants, eight documents were filed which were marked as exhibits B1 to B8. Three witnesses were also examined on the side of the defendants, namely, D.W.1 to D.W.3.

5. After giving due consideration to the oral and documentary evidence available on record, the Trial Court by its judgment and decree dated 07.12.2016 in O.S.No.235 of 2010 on the file of the District Munsif Court, Madurai Taluk, Madurai dismissed the suit filed by the plaintiff on the ground that since there is a cloud over the title, a suit for bare injunction is not maintainable without filing a suit for declaration to declare the plaintiff's title over the suit schedule property.



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6. Aggrieved by the judgment and decree of the Trial Court dated 07.12.2016 passed in O.S.No.235 of 2010, the plaintiff in the suit filed a first appeal before the II Additional Sub Court, Madurai in A.S.No.33 of 2017. The Lower Appellate Court by its judgment and decree dated 26.08.2019 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 by the legal representatives of the plaintiff in the suit.

7. Along with this Second Appeal, the appellants have now filed an application in C.M.P.(MD).No.4644 of 2023 to receive additional documents as additional evidence under Order 41 Rule 27 CPC. The additional documents filed by the appellants are as follows:

a) certified copy of the power of attorney registered as Document No.1208/1991,

b) Old Patta No.1875 and New Patta No.1875 in respect of the suit schedule property.



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8. Admittedly, Alagu Nachi and Chinnaponnu, who are also the legal heirs of the deceased Malaiyakkal who was the original owner of the suit schedule property, are not parties to the power of attorney registered as Document No.1208/1991 in favour of one Duraipandian, who has executed the sale deed dated 19.11.1991 (Ex.A1) in favour of the plaintiff. A categorical stand has been taken in the written statement filed by the defendants that two of the legal heirs of the deceased Malaiyakkal, who are also the co-owners, never executed a power of attorney to enable Duraipandian to execute a sale deed in favour of the plaintiff. The defendants have also contended that the power of attorney executed in favour of Duraipandian was only to empower him to manage the suit schedule properties and not for effecting sale.

9. Based on the oral and documentary evidence available on record, both the Courts below have concurrently held that the evidence available on record will clearly establish that there is a cloud over the title of the plaintiff over the suit schedule property and hence, a bare injunction suit is not maintainable without seeking for a declaratory relief to declare the plaintiff as the absolute owner of the suit schedule property. This Court does not find any infirmity in the findings of the Courts below as it is well settled law as laid down by the



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various decisions of the Hon'ble Supreme Court as well as this Court that whenever there is a cloud over the title, a bare injunction suit is not maintainable without seeking for a declaratory relief as aforesaid. Hence, the application filed by the appellant in C.M.P.(MD).No.4644 of 2023 to receive additional documents, which includes the certified copy of the power of attorney registered as Document No.1208/1991 in favour of Duraipandian, Old Patta No.1875 and New Patta No.1875, cannot be entertained in view of the fact that the very suit filed by the plaintiff for bare injunction is not maintainable, since there is a cloud over the plaintiff's title over the suit schedule property. Without filing a suit for declaration, the plaintiff has filed a suit for bare injunction despite the fact that there is a cloud over her title in respect of the suit schedule property as seen from the pleadings of the defendants and the evidence available on record.

10. For the foregoing reasons, this Court is of the considered view that the substantial questions of law raised by the appellants in the grounds of appeal are all issues which have already been considered by the Courts below and the Courts below have correctly held that the suit for bare injunction is not maintainable in view of the cloud over the title of the plaintiff in respect of the



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suit schedule property and that the plaintiff ought to have filed a suit for declaration to declare that she is the absolute owner of the suit schedule property. Hence, there is no merit in this Second Appeal. There is no substantial question of law involved for further consideration by this Court under Section 100 CPC. In the result, this Second Appeal is dismissed. However, liberty is granted to the appellants to file a suit for declaration, if so advised, to declare that they are the absolute owners of the suit schedule property before the appropriate Civil Court. The defendants are also granted liberty to raise whatever objections available to them under law in the proposed suit to be filed by the appellants. There shall be no order as to costs. Consequently, C.M.P.(MD).No.4644 of 2023 filed by the appellants to receive additional documents as additional evidence is also dismissed. The connected C.M.P.(MD).No.6528 of 2022 stands closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To

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



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ABDUL QUDDHOSE, J.

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