



S.A(MD).No.524 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 16.03.2023

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A(MD).No.524 of 2022

and

C.M.P(MD).No.7034 of 2022

P.Shanmugam (died)

1.S.Palanichamy

2.Sathyabama

3.Jamuna

4.Senthilvadivu

5.Parvathi

... Appellants/Appellants/Plaintiffs

Vs.

1.M.Rajakrishnasamy

2.M.Venkatesan

3.M.Krishnavelan

... Respondents/Respondents/defendants

Prayer: Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.01 of 2020 on the file of the Subordinate Court, Periyakulam dated 08.03.2022 confirming the judgment and decree dated 14.11.2017 passed in O.S.No. 142 of 2012 on the file of the District Munsif Court, Periyakulam.

For Appellants : Mr.N.Vallinayagam



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JUDGMENT

WEB COPY This second appeal has been filed challenging the concurrent findings of the Courts below. The appellant is the plaintiff in the suit. He has filed a suit before the District Munsif Court, Periyakulam against the defendants seeking for permanent injunction restraining them from interfering with their peaceful possession and enjoyment of the suit schedule property.

2. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

3. The plaintiff claimed that he is the cultivating tenant in the suit schedule property. According to the plaintiff, earlier his father Palanichamy Reddiar was in possession and enjoyment of the suit schedule property from 1952 onwards as a cultivating tenant and thereafter, in 1974, after his demise, the plaintiff became the cultivating tenant and he was cultivating crops in the suit schedule property. The plaintiff claims that the property belongs to 'Nalam Tharum Vinayagar' temple of Lakshmipuram, Thamaraikulam Village, Periyakulam Taluk. In the plaint, the plaintiff has alleged that the defendants are interfering



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with his peaceful possession and enjoyment of the suit schedule property as the cultivating tenant and they are attempting to alienate the same.

However, in the written statement filed by the respondents they have categorically denied that the plaintiff is a cultivating tenant. They have stated that the money borrowed from the plaintiff by the defendants was repaid by them and the plaintiff has misused the said relationship and has claimed falsely that he is a cultivating tenant.

4. Before the trial Court, the plaintiff has filed 8 documents, which are marked as Ex.A1 to Ex.A8. On his side, four witnesses were examined, namely P.W.1 to P.W.4. On the side of the defendants, 13 documents were filed, which are marked as Ex.B.1 to Ex.B.13 and one witness was examined, namely D.W.1 . The VAO Certificate was marked as Ex.C.1.

5. The documents marked as exhibits through the plaintiff was duly considered by the trial Court and the trial Court, after giving due consideration to Ex.A.2(Adangal) and other documents has rightly held that the plaintiff was unable to establish that he is a cultivating tenant in the suit schedule property. Admittedly, none of the exhibits marked on



the side of the plaintiff reveal that the plaintiff is a cultivating tenant in the suit schedule property. The documents do not stand in the name of the plaintiff. However, the documents marked as exhibits on the side of the defendants establish their title over the suit schedule property. The plaintiff has filed a suit for bare injunction and when he has failed to establish through oral and documentary evidence that he is a cultivating tenant, the trial Court has rightly dismissed the suit based on the oral and documentary evidence available on record.

6. A categorical finding has been given by the trial Court based on the oral and documentary evidence that the plaintiff is not a cultivating tenant. This Court does not find any infirmity in the findings of the trial Court. The Lower Appellate Court, namely, the Subordinate Court, Periyakulam, in A.S.No.01 of 2020 by its judgment and decree dated 08.03.2022 has also rightly confirmed the findings of the trial Court by dismissing the appeal filed by the plaintiff. There is no substantial questions of law involved in this second appeal. The questions of law raised by the appellants in the grounds of appeal are all factual issues, which have been rightly considered by the Courts below by rejecting the contentions of the plaintiff. There are no debatable issues of fact or law



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involved in this second appeal. This Court does not find any merit in the

second appeal. Accordingly, this Second Appeal is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

16.03.2023

NCC : Yes/No

Index : Yes / No

Rmk

To

- 1.The District Munsif, Periyakulam.
- 2.The Subordinate Judge, Periyakulam.



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ABDUL QUDDHOSE.J.,

Rmk

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