



S.A(MD).No.449 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 17.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD)No.449 of 2020
and C.M.P(MD)No.5242 of 2020

P.Vanniaperumal (Died) Appellant/Appellant/Defendant

2.V.Ponnuthai

3.Leela

4.Chithiralingam

5.Shantha

6.Kamathenu

7.Amirthalingam

8.Kaleeswari

... Appellants 2 to 8/Legal Heirs of the
deceased defendant

(Appellants 2 to 8 are brought on records as LRS of the deceased sole
appellant Vide court order dated 11.01.2022 made in C.M.P(MD)No.6769
of 2021 in S.A(MD)No.449 of 2020)

Vs.

1.P.Joseph

2.P.Omana

3.P.Babu

... Respondents/Respondents/Plaintiffs

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 15.06.2016 passed in A.S.No.86 of 2012 on the file of the 1st Additional Sub Court, Madurai (Melur Camp) confirming the judgment and decree dated 07.08.2012 passed in O.S.No.83 of 2009 on the file of the District Munsif Court, Melur.



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For Appellants : Ms.Shanthini
for Mr.C.Prabhu Rajadurai

For Respondents : Mr.V.Palani

J U D G M E N T

This Second Appeal has been filed challenging the concurrent findings of the courts below. Initially, the defendant in the suit in O.S.No.83 of 2009 on the file of the District Munsif Court, Melur, has filed the present Second Appeal. After his death, his legal heirs were impleaded as the appellants 2 to 8.

2. The suit was filed for permanent injunction in respect of the suit schedule property i.e Plot No.11, comprised in R.Survey No.80/4 of Vandiyur Bit-1 Village, Madurai North Taluk. The respondents are the plaintiffs in the suit. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

3. The suit was decreed in favour of the plaintiffs by the trial court namely, the District Munsif Court, Melur in O.S.No.83 of 2009 by its judgment and decree dated 07.08.2012. The trial court decreed the suit in favour of the plaintiffs on the ground that the defendant has not produced



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any documentary evidence to show that he was the owner of Plot No.11 and he was in possession of the same. Before the trial court, the plaintiffs filed 5 documents which are marked as Ex.A.1 to Ex.A.5 which includes the settlement deed dated 19.11.2008 executed by the second plaintiff in favour of the first plaintiff and the Village Administrative Officer's certificate (Ex.A.2) to show that they are in possession of the suit schedule property. The plaintiffs have also examined 2 witnesses on their side namely the first plaintiff (P.Joseph) as P.W.1 and P.Omana, the second plaintiff as P.W.2. On the side of the defendants, 3 documents are filed namely, Ex.B.1 to Ex.B.3 and they are as follows:

- a) The settlement deed of the year 2001 executed by the defendant's wife;
- b) UDR survey notice standing in the name of the defendant's daughter Leela
- c) The assignment patta in respect of Plot No.18.

Two witnesses were also examined on the side of the defendants namely the defendant Vanniaperumal and her daughter Leela as D.W.1 and D.W.2 respectively.

4. Admittedly, as seen from the documents produced by the defendant, they do not pertain to the suit schedule property which is plot



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No.11 whereas the document produced by the defendant pertains to Plot No.

18. The plaintiffs have also traced their title to the suit schedule property by virtue of the settlement deed dated 19.11.2008 executed by the second plaintiff in favour of the first plaintiff (Ex.A.1) and they have also filed documentary evidence in the form of the Village Administrative Officer's certificate (Ex.A.2) to show that they are in possession of the suit schedule property. They have also sent legal notice to the defendant dated 05.01.2009 prior to the institution of the suit, which has been marked as Ex.A.3. Though the same has been replied by the defendant on 12.01.2009 (Ex.A.4), the defendant has not produced any documentary evidence before the trial court to show that he is entitled to Plot No.11 also and he has also not produced any evidence to show that he was in possession of the said property. Only based on oral and documentary evidence available on record, this Court is of the considered view that the trial court has rightly decreed the suit for permanent injunction as prayed for by the plaintiffs in O.S.No. 83 of 2009. There is no necessity for the plaintiffs to seek the relief of recovery of possession as claimed by the learned counsel for the appellants as through their oral and documentary evidence produced by them they have been able to establish that they are in possession of the suit schedule property. They have also filed the documentary evidence to trace their title



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over the suit schedule property but on the other hand, the defendant has not produced any documentary evidence with regard to Plot No.11 which is the property in dispute in the suit in O.S.No.83 of 2009. The defendant has produced only documentary evidence with regard to Plot No.18 and not Plot No.11. Therefore, there is no necessity for the plaintiffs to seek the relief of recovery of possession in the suit and a bare injunction suit would suffice.

5. The lower Appellate Court namely, the I Additional Sub Court, Madurai, (Melur Camp) in the appeal filed by the defendant in A.S.No.86 of 2012 has also rightly confirmed the findings of the trial court by dismissing the first appeal.

6. On the last hearing date, this Court, after considering the submissions made by the learned counsel for the appellants/the legal heirs of the deceased defendant that they will have to file additional documents under Order 41 Rule 27 C.P.C, granted time for them to produce the same. Till date, that same has not been produced through an application filed under Order 41 Rule 27 C.P.C and no further time can be granted to the appellants for the said purpose. The matter is listed before me for the 4th time. The Second Appeal is of the year 2020 at this stage while dealing



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under Section 100 C.P.C the question of granting further time to the appellants to produce additional documents will not arise.

7. As seen from the oral and documentary evidence available on record, it is clear that both the courts below have rightly held that the plaintiffs are entitled for the decree for permanent injunction as prayed for in the plaint. The substantial questions of law raised in this Second Appeal have been rightly considered by the courts below. There is no substantial question of law involved in this Second Appeal. Accordingly, there is no merit in this Second Appeal.

8. In fine, this Second Appeal is dismissed. Accordingly, the judgment and decree dated 15.06.2016 passed in A.S.No.86 of 2012 on the file of the 1st Additional Sub Court, Madurai (Melur Camp) confirming the judgment and decree dated 07.08.2012 passed in O.S.No.83 of 2009 on the file of the District Munsif Court, Melur, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet: Yes/No
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To,

1.The 1st Additional Sub Court, Madurai (Melur Camp)

2. The District Munsif Court, Melur.

3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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