



S.A.(MD).No.443 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2023

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

S.A.(MD).No.443 of 2022

M.Nachimuthu

... Appellant/Appellant/Plaintiff

Vs.

1.Maruthairaj

2.The Tahsildar,
Dindigul Taluk Office,
Dindigul Town,
Dindigul District.

3.The Dindigul District Collector,
Velu nachiyar Valagam,
Thadikombu Road,
Dindigul Taluk,
Dindigul District.

...Respondents/Respondents/Defendants

Prayer: Second Appeal is filed under Section 100 of CPC to set aside the judgment and decree passed in A.S.No.16 of 2015 on the file of the Additional Sub Court, Dindigul dated 19.02.2018 by confirming the judgment and decree passed in O.S.No.102 of 2008 on the file of the Additional District Munsif, Dindigul dated 08.11.2012 and thus allow the appeal with costs.



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For Appellant : Mr.V.Illanchezian
For R-1 : Mr.N.S.Karthikeyan
For R-2 : Mrs.S.Jeyapriya,
Government Advocate.

JUDGMENT

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.102 of 2008 on the file of the Additional District Munsif Court, Dindigul. The said suit was filed for a permanent injunction restraining the respondents/defendants from interfering with the appellant's peaceful possession and enjoyment of the suit schedule property.

2. A counter claim was filed by the first respondent/first defendant, who claims that he came into possession of the suit schedule property by virtue of a B memo issued by the second respondent and he continues to remain in possession. In the counter claim, the first respondent has sought for a declaratory relief that the sale deed dated 07.03.2005 executed in favour of the appellant/plaintiff has to be declared as null and void.



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3. All the respondents/defendants have categorically pleaded in their written statement that the appellant/plaintiff is not the owner of the suit schedule property. The respondents 2 and 3, who are the defendants 2 and 3 in the suit, have also categorically contended that the suit schedule property is a Government Punja land.

4. Excepting for filing the sale deed dated 07.03.2005 standing in the name of the appellant/plaintiff, which has been marked as Ex.A2, the appellant/plaintiff has not filed any revenue records to show that he is in possession of the suit schedule property as the absolute owner. The appellant/plaintiff has filed a suit only for permanent injunction and has not sought for any declaration of title in his favour. When there is a cloud over the title, the plaintiff, if he is really the true owner, ought to have filed a declaratory suit to declare himself as the absolute owner of the suit schedule property.

5. The counter claim filed by the first defendant, namely, the first respondent herein in the suit has been allowed by the Trial Court. In the counter claim, the first defendant has only sought for cancellation of the plaintiff's sale deed dated 07.03.2005 and he has not sought for any declaration



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to declare himself as the absolute owner. Neither is the plaintiff the owner of the property nor the first defendant in whose favour only a B memo has been issued and one of the B memos has been marked as Ex.B6 before the Trial Court.

6. When a categorical stand has been taken by the respondents 2 and 3 that the suit schedule property is a Government land and that too, when the appellant/plaintiff has not sought for a declaration that he is the absolute owner of the suit schedule property, but instead has chosen to file only a bare injunction suit, the Trial Court has rightly rejected the contentions of the plaintiff in the suit. The possession of the appellant/plaintiff over the suit schedule property has also not been proved by way of any documentary evidence by the appellant/plaintiff. Based on oral and documentary evidence, the Trial Court has rightly dismissed the suit filed by the appellant/plaintiff and has allowed the counter claim filed by the first respondent/first defendant. The Lower Appellate Court has also rightly confirmed the findings of the Trial Court. Even though substantial questions of law have been raised by the appellant in the grounds of this Second Appeal, this Court is of the considered view that there is no substantial question of law involved in the Second Appeal



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as the grounds raised by the appellant are only factual issues which have been rightly considered by the Courts below based on oral and documentary evidence.

7. For the foregoing reasons, there is no merit in this Second Appeal. Accordingly, this Second Appeal is dismissed. There shall be no order as to costs.

09.03.2023

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



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To

- 1.The Additional Sub Court,
Dindigul.
- 2.The Additional District Munsif Court,
Dindigul.
- 3.The Tahsildar,
Dindigul Taluk Office,
Dindigul Town,
Dindigul District.
- 4.The Dindigul District Collector,
Velu nachiyar Valagam,
Thadikombu Road,
Dindigul Taluk,
Dindigul District.
- 5.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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ABDUL QUDDHOSE, J.

Lm

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