



S.A(MD)No.389 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.389 of 2015

1.Sakkaravarthy Prabu
2.Ponnuchamy

... Appellants/Appellants
/Plaintiffs

Vs.

Pounchamy

... Respondent/Respondent
/Defendant

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed by the Sub Court, Sivagangai in A.S.No.133 of 2012, dated 13.08.2014, confirming the judgment and decree passed by the Principal District Munsif Court, Manamadurai in O.S.No.147 of 2010, dated 19.01.2012.

For Appellants : Mr.N.Tamilmani

For Respondent : Mr.R.Udhayakumar



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JUDGMENT

The appellant filed a suit for bare injunction in O.S.No.147 of 2010 on the file of the Principal District Munsif Court, Manamadurai and the same was dismissed. Aggrieved by the same, the appellant preferred an appeal in A.S.No.133 of 2012 on the file of the Sub Court, Sivagangai and the same was also dismissed. Aggrieved by the same, the present Second Appeal is filed. The respondent herein filed a suit for bare injunction in respect of the very same suit property in O.S.No.129 of 2010 on the file of the Principal District Munsif Court, Manamadurai and the same was decreed. Aggrieved by the same, the appellants herein and others preferred an appeal in A.S.No.97 of 2015 on the file of the Sub Court, Sivagangai and the same was transferred to the Sub Court, Manamadurai and re-numbered as A.S.No.132 of 2019. Subsequently, on 04.10.2019, the appeal preferred by the appellant herein in A.S.No.132 of 2019 was dismissed.

2. Therefore, decree for injunction obtained by the respondent against the appellants and others in respect of very same suit property had attained finality. When decree for injunction is operating against the appellant, the



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appellant is not entitled to maintain the present Second Appeal, which is also arising out of suit for bare injunction. The comparison of four boundaries of suit properties in both the suits makes it clear that both the suits are in respect of same property. The said fact is not disputed by the learned counsel for the appellant. Therefore, the judgment and decree passed in O.S.No.129 of 2010 on the file of the Principal District Munsif Court, Manamadurai, as confirmed by the judgment and decree in A.S.No.132 of 2009 on the file of the Sub Court, Manamadurai will operate as resjudicata against the present Second Appeal. The appellants claims possession over the suit property in their alleged capacity as Poojari of Gurunathar Samy temple. The appellants claimed that they were in possession of temple's house at suit property. However, during the course of evidence, the appellants and their witnesses admitted the house in the suit property got dilapidated and articles in the house are now kept in the house of plaintiffs. Therefore, it appears that the plaintiffs claimed possession only in their capacity as Poojari and they failed to prove the same by leading acceptable evidence. The counsel for appellant unable to point out any perversity in the finding of fact arrived at by both the Courts below. Hence, in the absence of any substantial question of law arising for consideration, the Second Appeal deserve to be dismissed.



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3. Even as merits of the case, the Courts below came to a factual conclusion that the appellant failed to prove their possession over suit property.

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NCC : Yes/No
Index : Yes / No

vsd

To

1. The Sub Court,
Sivagangai.
2. The Principal District Munsif Court,
Manamadurai.
3. The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

S.SOUNTHAR, J.

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