



S.A(MD)No.409 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A(MD)No. 409 of 2018

and

C.M.P(MD)No.11591 of 2018

Selvarayan (Died)

1. S.Rajamani
2. Jacqueline Lee Boliver
3. Thomas Rayan

... Appellants

Vs.

1. Immanuel
2. Nesiah Samuel (Died)
3. M.Christal Gnana Thangam
4. N.S.Joseph Samuel
5. N.S.Hawkwins Samuel

... Respondents

[Respondents 3 o 5 are brought on record a Legal Heirs of the deceased 2nd respondent, vide Order of this Court, dated 10.8.2022]



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Decree and Judgment, dated 10.01.2018 passed in A.S.No.21 of 2014 on the file of the Sub Court, Valliyoor, reversing the Judgment and Decree dated 30.01.2014 passed in O.S.No.142 of 2006 on the file of the Additional District Munsif Court, Nanguneri.

For Appellants : V.Meenakshisundaram

For Respondents : Mr.G.Aravinthan, for
M/s.Ra.Jenifar Bibin, for R-1, R-3 to R-5
R-2 Died

ORDER

This Second Appeal is filed against the Judgment and Decree, dated 10.01.2018 in A.S.No.21 of 2014 passed by the Subordinate Judge, Valliyoor, reversing the Judgment and Decree, dated 30.01.2014 in O.S.No.142 of 2006 passed by the Additional District Munsif Court, Nanguneri.

2. The Plaintiffs are the Appellants and the defendants are respondents herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiffs and Defendants.



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3. The plaintiffs had filed the suit in O.S.No.142 of 2006 for permanent injunction restraining the defendants from interfering in the peaceful possession of the suit property and the said suit ended in favour of the plaintiffs. Aggrieved over the same, the defendants have preferred an appeal in A.S.No.21 of 2014. The First Appellate Court had allowed the said appeal and set aside the Judgment of the Trial Court. However, liberty was granted to the plaintiffs to file comprehensive suit for declaration and injunction. Aggrieved over the same, the present Second Appeal is filed.

4. This Second Appeal was admitted on two substantial questions of law and the same are extracted hereunder:

1. Whether the First Appellate Court is correct in reversing the decree of the trial Court and dismissing the suit for injunction filed by the appellants/plaintiffs by driving the plaintiffs to file a comprehensive suit for declaration and injunction is correct, when the plaintiffs is in lawful and peaceful possession of the suit schedule property and have all rights to protect his possession against title person who does not have better title?



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2. When the plaintiffs in the present suit for injunction is having clear title and possession in the suit schedule property and more so the trial Court recorded the admission of D.W.1 admitting the possession of the plaintiffs, whether the first Appellate Court is correct in driving the plaintiffs to consider costlier remedy of a suit for declaration/injunction merely because the defendants denied the title of the plaintiffs?

5. The defendants are denying the title of the plaintiffs. The contention of the plaintiffs is that when the defendants are not having better title, when the defendants have no right to deny the title of the plaintiffs, then Appellate Court ought to have granted injunction, hence the judgment of the Appellate Court dismiss the suit with a direction to file fresh suit for declaration and injunction is unnecessary.

6. It is seen that the First Appellate Court has thoroughly examined the title of both the plaintiffs and the defendants and has come to the conclusion that bare injunction cannot be granted and the plaintiff had to file the suit for declaration and injunction. Therefore, the Appellate Court has granted liberty to



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file a comprehensive suit for declaration and injunction.

7. This Court is of the considered opinion that rather than directing the plaintiffs to file a fresh suit, it would suffice to directing the plaintiffs to amend the prayer in the suit for declaration and injunction. This will meet the ends of justice.

8. The Learned counsel appearing for the Respondents submitted that the suit was not filed for impleading necessary parties and hence the suit is bad in law for non-joinder of necessary parties.

9. Therefore the case is remanded back to the Trial Court. The plaintiffs shall amend the plaint for declaration and injunction and also implead the necessary parties along with the averments and shall contest the suit.



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10. With these directions and observations, the Second Appeal is allowed, the Judgment and Decree, dated 10.01.2018 passed in A.S.No.21 of 2014 passed by the Subordinate Judge, Valliyoor is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
KSA

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To

1. The Subordinate Court,
Valliyoar.
2. The Additional District Munsif Court,
Nanguneri.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J

KSA

**Judgment made in
S.A(MD)No. 409 of 2018**

15.11.2023