



S.A.(MD)No.175 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.03.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.175 of 2023

and

C.M.P.(MD)No.3740 of 2023

1.Karuppiah

2.K.Ponnusamy

3.Vellaisamy

4.Arumugam

... Appellants

/Vs./

1.Gunasekaran

2.Alaguraj

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the Judgment and Decree dated 30.11.2021 made in A.S.No.120 of 2017 on the file of the Sub Court, Aranthangi confirming the Judgment and decree dated 19.01.2017 made in O.S.No.18 of 2006 on the file of the District Munsif Court, Aranthangi and allow this Second Appeal pending on the file of this Court.



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For Appellants : Mr.S.Mani

For Respondents : Mr.K.Paranjothi

JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below. The defendants in the suit are the appellants herein. The suit in O.S.No.18 of 2006 was filed by the respondents / plaintiffs on the file of the District Munsif Court, Aranthangi, for permanent injunction to restrain the appellants / defendants from interfering with their peaceful possession and enjoyment of the suit schedule property. The trial Court decreed the suit in favour of the respondents / plaintiffs, by its judgment and decree dated 19.01.2017.

2. Before the trial Court, the respondents / plaintiffs had filed 21 documents, which were marked as Exs.A1 to A21. On the side of the



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appellants / defendants, they had filed only one document, namely, settlement register dated 15.09.1972, which has been marked as Ex.B1, which is not standing in the name of the appellants / defendants. The appellants / defendants claimed that Ex.B1 stands in the name of their ancestors. On the side of the respondents / plaintiffs, five witnesses were also examined namely, P.W.1 to P.W.5 and on the side of the appellants / defendants, two witnesses were examined namely, P.W.1 and P.W.2.

3. As seen from the exhibits marked on the side of the respondents / plaintiffs, they have filed chitta, adangal and land tax receipts from the year 2000 onwards. They have also filed a sale deed dated 01.07.1974 marked as Ex.A1 and a will dated 16.09.2004 marked as Ex.A2. The chitta, adangal and land tax receipts for the suit schedule property all stand in the name of the respondents / plaintiffs. The only document filed by the appellants / defendants, which was marked as Ex.B1, which is dated 15.09.1972, namely, the settlement register copy also does not stand in the name of the appellants / defendants. But the appellants / defendants claim that it stands in the name of their ancestors.



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4. The respondents / plaintiffs have filed a suit only for permanent injunction to restrain the appellants / defendants from interfering with their peaceful possession and enjoyment of the suit schedule property. Having filed documentary evidence to establish their possession over the suit schedule property, the trial Court has rightly decreed the suit in favour of the respondents / plaintiffs based on the oral and documentary evidence available on record.

5. Though the appellants / defendants may have pleaded in their written statement that they are the absolute owners of the suit schedule property, when undisputed documentary evidence has been produced by the respondents / plaintiffs to prove their possession, necessarily the trial Court will have to grant the relief as prayed for in the plaint by the respondents / plaintiffs, ie., grant the relief of permanent injunction in their favour to restrain the appellants / defendants from interfering with their peaceful possession and enjoyment of the suit schedule property.

6. This Court is of the considered view that the trial Court has rightly decreed the suit in favour of the respondents / plaintiffs based on



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the oral and documentary evidence available on record. No counter claim has also been filed by the appellants / defendants in the suit to declare that they are the absolute owners of the suit schedule property. They have also not filed any documentary evidence before the trial Court to substantiate their claim that they are the owners of the suit schedule property, though they may contend in their written statement as well as before this Court that they are the absolute owners. The lower appellate Court has also rightly confirmed the findings of the trial Court in the First Appeal filed by the appellants / defendants before the Sub Court, Aranthangi in A.S.No.120 of 2017 by dismissing the first appeal. There are no substantial questions of law involved in this Second Appeal and the issues that have been raised in this second appeal by the appellants / defendants have been rightly considered by the Courts below.

7. If at all the appellants / defendants are the rightful owners of the suit schedule property, their remedy is to file a suit for declaration to declare that they are the absolute owners. When admittedly the respondents / plaintiffs are in possession of the suit schedule property, they can be evicted, even if the title of the suit schedule property is



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vested with the appellants / defendants, only by due process of law. The respondents / plaintiffs cannot be treated as trespassers, as they have produced documentary evidence before the trial Court, especially when they are in legal possession of the suit schedule property.

8. This Court does not find any merit in this second appeal and accordingly, this Second Appeal is dismissed. However, liberty is granted to the appellants / defendants, if they so desire to file a suit for declaration to declare their title over the suit schedule property in the manner known to them under law. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
NCC : Yes / No
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TO:

- 1.The Sub Court, Aranthangi.
- 2.The District Munsif Court, Aranthangi.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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ABDUL QUDDHOSE, J.

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Judgment made in
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