



S.A.(MD)No.190 to 192 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.06.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)Nos.190 to 192 of 2017
and
C.M.P.(MD)Nos.3602 to 3604 of 2017

M.K.Nadarajan ... Appellant in S.A.(MD)No.190 of 2017

P.Chelladurai ... Appellant in S.A.(MD)No.191 of 2017

1.M.Sornathammal

M.Sivanantham (Died)

2.M.Thiyagarajan

3.M.Chandrasekaran

4.Eswari

5.Lakshmi

6.Shyamaladevi

7.S.Ashok Kumar ... Appellants in S.A.(MD)No.192 of 2017

/Vs./



S.A.(MD)No.190 to 192 of 2017

- 1.The Joint Commissioner,
Hindu Religious Charitable and Endowment Board,
Madurai – 1.
- 2.The Assistant Commissioner,
Hindu Religious Charitable and Endowment Board,
Dindigul.
- 3.The Executive Officer and
Joint Commissioner representing
Arulmighu Dhandayuthapani Swami Thirukovil,
Adivaram, Palani,
Dindigul District. ... Respondents in all appeals

COMMON PRAYER: Second Appeals filed under Section 100 of the Civil Procedure Code to set aside the Judgments and Decrees passed in A.S.Nos.46, 47 & 48 of 2015 passed by the learned Sub Judge, Palani dated 21.03.2017 confirming the Judgment and Decree in O.S.Nos.89, 88 & 90 of 2004 on the file of the District Munsif, Palani, dated 04.08.2015 respectively.

For Appellants : Mr.T.Lenin Kumar (in all appeals)
For Respondents : Mrs.S.Jeyapriya (in all appeals)
Government Advocate (R1 & R2)
Mr.K.Govindarajan (R3)



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COMMON JUDGMENT

These Second Appeals have been filed challenging the concurrent findings of the Courts below in three suits in O.S.Nos.88, 89 and 90 of 2004 on the file of the District Munsif Court, Palani. The respective suits were filed by individual parties, the appellants herein, seeking for permanent injunction restraining the respondents from interfering with the peaceful possession and enjoyment of the suit schedule properties by the respective appellants / plaintiffs. The respondents are the defendants in the said suits.

2. The suit schedule properties pertain to Survey No.864. Both the Courts below have concurrently held that the documentary evidence produced by the appellants / plaintiffs with regard to their possession does not pertain to Survey No.864 and therefore, the appellants / plaintiffs are not entitled for the grant of permanent injunction. The respondents / defendants have also contended that the appellants / plaintiffs are encroachers as seen from their written statements.



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3. This Court has perused the exhibits filed by the appellants / plaintiffs in three suits, which have been marked as exhibits especially, the house tax receipts and property tax receipts. None of the exhibits produced by the respective appellants / plaintiffs pertain to Survey No. 864. The Courts below have rightly taken into consideration the same and have held that the appellants / plaintiffs have not proved their possession over the suit schedule properties and therefore, they are not entitled for the relief of permanent injunction. Accordingly, all the three suits came to be dismissed by separate judgments and decree dated 04.08.2015 passed in O.S.Nos.88, 89 & 90 of 2004 by the District Munsif Court, Palani. The lower appellate Court, namely, the Sub Court, Palani, has also confirmed the findings of the trial Court by its separate Judgments and decrees dated 21.03.2017 by dismissing the respective first appeals. Aggrieved by the concurrent findings of the Courts below, the respective appellants / plaintiffs have filed these second appeals.

4. This Court has also perused and examined the exhibits marked on the side of the appellants / plaintiffs and as seen from the said exhibits and as rightly held by the Courts below, none of those exhibits pertain to



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Survey No.864, in which the suit schedule properties are situated. The burden of proof is on the respective appellants / plaintiffs to prove that they are in possession of the suit schedule properties as per Section 101 of the Indian Evidence Act, 1872, as they are the ones, who have filed the suits. Having failed to prove the same, this Court is of the considered view that both the Courts below have rightly dismissed the suits in O.S.Nos.88 to 90 of 2004 filed by the respective appellants / plaintiffs as having not filed any documentary evidence to prove that they are in possession of the respective suit schedule properties. However, assuming the appellants / plaintiffs are in legal possession of the suit schedule properties, necessarily the respondents / defendants will have to evict them only by following the due procedure established under law.

5. For the foregoing reasons, there are no substantial questions of law involved in these second appeals, as the issues raised by the appellants / plaintiffs have already been considered by the Courts below only in accordance with law and only based on the oral and documentary evidence available on record. Accordingly, these Second Appeals are dismissed.



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6. However, it is made clear that the appellants / plaintiffs, if they, are found to be in legal possession of the respective suit schedule properties, the respondents / defendants shall evict them only by following the due procedure established under law. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

16.06.2023

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

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



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ABDUL QUDDHOSE, J.

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Common Judgment made in
S.A.(MD)No.190 to 192 of 2017

Dated:
16.06.2023