



S.A.(MD).No.44 of 2017

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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2023

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.44 of 2017
and
C.M.P(MD)No.1031 of 2017

1. Duraisamy
2. Suriyaprakasam
3. Karunanithi ... Appellants

/Vs./

Perumal ...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree passed in A.S.No.5 of 2015 on the file of the Principal Subordinate Court, Kumbakonam, dated 17.11.2016 reversing the Judgment and Decree passed in O.S.No.117 of 2011 on the file of the District Munsif cum Judicial Magistrate Court, Papanasam, dated 22.12.2014.

For Appellants : Mr.V.Chandrasekar

For Respondent : Mr.V.Maragathavel



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JUDGMENT

This Second Appeal is filed to set aside the Judgment and Decree, dated 17.11.2016 in A.S.No.5 of 2015 on the file of the Principal Subordinate Court, Kumbakonam, reversing the Judgment and Decree, dated 22.12.2014 passed in O.S.No.117 of 2011 on the file of the District Munsif cum Judicial Magistrate Court, Papanasam.

2. The Defendants are the Appellants and the Plaintiff is the Respondent herein. For the sake of convenience, the contesting parties shall be referred to as plaintiff and defendants as per the ranking in the suit.

3. The plaintiff has filed the suit in O.S.No.117 of 2011 for bare injunction. The claim of the plaintiff is that the suit property is a natham property, he is in occupation and natham patta is also issued to the plaintiff. The Adangal would show that the plaintiff is entitled to the property. The revenue documents are in favour of the plaintiff.



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4. The claim of the defendants is that they have purchased the suit property. The further contention of the defendants is that there is no proper identification of the property. Even though Advocate Commissioner was appointed, the parties have failed to survey the property and identify the property along with four boundaries. The further contention of the defendants is that if there is a dispute regarding the property, the plaintiff ought to file a suit for declaration and bare injunction cannot be prayed.

5. Therefore, considering the facts of this case, this Court is of the considered opinion that to meet the ends of justice, this matter ought to be remitted back for identification of the property. However, liberty is granted to the plaintiff to modify the suit prayer for declaration and injunction, if so advised.

6. Accordingly, the Judgment and Decree passed in A.S.No.5 of 2015 on the file of the Principal Subordinate Court, Kumbakonam, dated 17.11.2016 reversing the Judgment and Decree passed in O.S.No. 117 of 2011 on the file of the District Munsif cum Judicial Magistrate



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Court, Papanasam, dated 22.12.2014 are set aside. This matter is remitted back to the Trial Court. The properties shall be surveyed, after survey and identification of the property, the parties are at liberty to file additional documents and additional pleadings and contest the case. Thereafter, the Trial Court is directed to consider the claim of the plaintiff and the defendants.

7. With the observations and directions this Second Appeal is disposed of as stated supra. No Costs. Consequently, connected miscellaneous petition is also closed.

13.12.2023

Index : Yes / No
NCC : Yes / No

KSA



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TO:

1. The Principal Subordinate Court,
Kumbakonam.
2. The District Munsif cum Judicial Magistrate Court,
Papanasam.
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.44 of 2017

Dated:
13.12.2023