



S.A.(MD)No.156 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.04.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.156 of 2022

and

C.M.P.(MD)No.1822 of 2022

Seetharaman

... Appellant

/Vs./

1.Mangalakshmi

2.Chandrakala

3.Soundarajan

4.Rajagopalan

5.Srinivasan

6.Radha Ammal

7.Chandrasan

... Respondents

(R-1, 2, 5 & 6 herein are set exparte by the trial Court and R-3, 4, 6 & 7 are set exparte by the first appellate court. Hence notice may be given up against them.

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree passed in A.S.No.31 of 2015, on the file of the Principal Subordinate Judge, Kumbakonam, dated 24.10.2017 by which confirming the judgment and decree passed in



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O.S.No.119 of 2011 on the file of the Principal District Munsif,
Kumbakonam, dated 04.12.2014.

For Appellants : Mr. R.Baskaran
Senior Counsel
for Mr.B.Anandan

For Respondents : Mr.G.Gomathi Sankar (R1 & R2)

JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below. The fourth defendant in the suit in O.S.No. 119 of 2011 on the file of the Principal District Munsif Court, Kumbakonam is the appellant herein. The respondents 1 and 2 are the plaintiffs in the suit. The said suit was filed for permanent injunction to restrain the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule property. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.



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2. The plaintiffs claimed that they are the owners of the suit schedule property and they traced their title over the same as follows:

(a) The suit property originally belonged to the plaintiffs' grandmother by name, Rajam Ammal, who was in enjoyment and in possession of the same and subsequently, she executed a registered settlement deed in favour of the plaintiffs' mother, by name Saraswathi Ammal, under Ex.A3, settlement deed dated 23.08.1972;

(b) Saraswathi Ammal thereafter executed a settlement deed dated 24.09.2009 (Ex.A1) in favour of the plaintiffs;

(c) Eversince the date of the settlement deed dated 24.09.2009 (Ex.A1), the plaintiffs are in possession and enjoyment of the same;

(d) The revenue records have also been mutated in favour of the plaintiffs and patta dated 24.11.2010 (Ex.A2) also stands in the names of the plaintiffs ;

(e) Kist receipts dated 04.01.2013 namely Ex.A6 also stand in the names of the plaintiffs;

(f) The extract from the A-Register dated 06.08.2013 (Ex.A4) also stands in the names of the plaintiffs;



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3. However, according to the defendants, they claim possession of the suit schedule property as cultivating tenants. They have filed three documents, which have been marked as Exs.B1 to B3 before the trial Court.

4. Based on the pleadings of the respective parties, the trial Court framed issues. On the side of the plaintiffs, seven documents were filed, which were marked as Exs.A1 to A7, which included the settlement deed standing in the names of the plaintiffs as well as the patta. On the side of the plaintiffs, two witnesses were examined, namely, P.Ws.1 and 2. On the side of the defendants, three documents were filed, which were marked as Exs.B1 to B3. All the documents pertain to the year 1987. The defendants had relied upon exchange of communication dated 11.06.1987 (Ex.B1) to show that the fourth defendant was a cultivating tenant under the plaintiffs' predecessors in title. On the side of the defendants, three witnesses were examined, namely, D.W.1 to D.W.3.

5. The trial Court, namely, the Principal District Munsif Court, Kumbakonam in O.S.No.119 of 2011, after giving due consideration to



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the oral and documentary evidence available on record, has come to the right conclusion by giving a finding that the defendants have not produced any documentary evidence to prove their possession and enjoyment of the suit schedule property. The trial Court has observed that the defendants have been unable to produce any documentary evidence in the form of A-Register to prove their case that they are the cultivating tenants. The trial Court has also observed that Exs.B1 to B3 will not prove the defendants' case that they are in possession of the suit schedule property as cultivating tenants. The trial Court, in its Judgment and decree dated 04.12.2014 passed in O.S.No.119 of 2011 has decreed the suit in favour of the plaintiffs, as they have produced documents namely two settlement deeds, which were marked as Exs.A1 and A3 and they have also proved their possession over the suit schedule property by producing patta, chitta and kist receipts as well as copy of the A-Register extract, which have been marked as exhibits on their side.

6. This Court is of the considered view that only based on the oral and documentary evidence available on record, the trial Court has come to the correct conclusion that the plaintiffs are entitled for the suit relief.



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The lower appellate Court, namely, Principal Sub Court, Kumbakonam, in its Judgment and decree dated 24.10.2017 passed in A.S.No.31 of 2015 has also rightly confirmed the findings of the trial Court by dismissing the first appeal filed by the fourth defendant.

7. It is also to be noted that the documents produced by the defendants, which were marked as Exs.B1 to B3 are all of the year 1987. The suit was filed in the year 2011 by the plaintiffs. The documents produced by the defendants of the year 1987 cannot be relied upon by the defendants to prove their possession. The documents produced by the plaintiffs, which were marked as exhibits make it clear that the plaintiffs are in possession of the suit schedule property.

8. For the foregoing reasons, this Court is of the considered view that only based on the oral and documentary evidence available on record, both the Courts below have rightly rejected the contentions of the appellant / fourth defendant and the suit has been rightly decreed in favour of the plaintiffs. The substantial questions of law raised by the appellant / fourth defendant in the grounds of this second appeal are all



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issues, which have been considered by the Courts below, only based on the oral and documentary evidence available on record. There are no debatable issues of facts or law, which requires this Court's interference under Section 100 of C.P.C. In the result, there is no merit in this Second Appeal and accordingly, this Second Appeal is dismissed. 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 Principal Subordinate Judge, Kumbakonam.
- 2.The Principal District Munsif, Kumbakonam.
- 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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