

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.03.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.733 of 2022

1.C.Muthusamy
2.C.Neelamegam
3.S.Saraswathy

... Appellants

/Vs./

1.V.Palaniappan (Died)
2.P.Mahalakshmi
3.P.Balamurugan
4.P.Madurai Veeran
5.P.Saravanan
6.P.Muthu Kumar
7.P.Rama Chandran
8.P.Kamaraj

... Respondents

(R2 to R8 are brought on record as Lrs of the deceased sole respondent, vide order of this Court dated 15.10.2019 made in CMP(MD)No.2621 to 2623 of 2016.)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the Judgment and Decree dated 30.09.2009 passed in the appeal in A.S.No.85 of 2009 on the file of the III Additional Subordinate Court, Madurai, confirming the judgment and decree dated 11.03.2009 passed in O.S.No.17 of 2004 on the file of the Principal

District Munsif Court, Madurai Town, and thus decree the suit as prayed for with costs throughout.

For Appellants : Mr.J.Barathan

For Respondents : Mr.C.Jawahar Ravindran (R2 to R8)

JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below. The plaintiffs 2 to 4 in the suit in O.S.No. 17 of 2004 on the file of the Principal District Munsif Court, Madurai are the appellants herein. The respondents are the legal representatives of the deceased sole defendant. The suit was filed for permanent injunction to restrain the defendant from interfering with the peaceful possession and enjoyment of the suit schedule property. The plaintiffs 2 to 4 claimed ownership of the suit schedule property and in support of their contention, they have filed six documents, which were marked as Exs.A1 to A6 before the trial Court. However, the defendant denied the title of the appellants / plaintiffs 2 to 4 over the suit schedule property.

2. Before the trial Court, the defendant filed six documents on his side, which were marked as Exs.B1 to B6. The defendant has traced his title over the suit schedule property by virtue of three registered documents, namely (a) settlement deed executed by Periasamy Pillai in favour of Sornathammal dated 23.12.1941 (Ex.B1); (b) registered sale deed dated 25.05.1985 executed by Ganesan in favour of Sarathammal (Ex.B2) and (c) registered sale deed dated 26.06.1995 (Ex.B3) executed by Sarathammal in favour of the defendant (Palaniappan). On the side of the plaintiffs, two witnesses were examined namely P.W.1 and P.W.2 and on the side of the defendants, two witnesses were examined namely D.W. 1 and D.W.2.

3. The trial Court has dismissed the suit filed by the plaintiff by giving the following reasons:-

(a) the plaintiffs claimed right and title over the suit schedule property, based on Ex.A1 sale deed, likewise, the defendant claims right and title over the suit schedule property based on Ex.B3 sale deed. Under these circumstances, the suit for bare injunction without seeking the relief of declaration is not maintainable;

(b) The plaintiffs have not taken any commission to identify the suit property. As per the averments of the plaint, the suit property lies adjacent to Door No.11B. P.W.1, in his cross examination had admitted that Door No.11A belongs to the defendant, which lies on the western side of Door No.11B. Therefore, the suit property is not situated on the western side of Door No.11B.

4. This Court is of the considered view that since there is a cloud over the title of the suit schedule property and that too when the defendant has filed documentary evidence in the form of Exs.B1 to B3 to also claim right over the suit schedule property, the trial Court has rightly dismissed the suit for bare injunction filed by the plaintiffs without seeking the relief of declaration.

5. It is settled law that whenever there is a cloud over the title, necessarily the plaintiffs ought to have filed a suit for declaration. Having not filed a suit for declaration, the trial Court has rightly dismissed the suit. The lower appellate Court namely, III Additional subordinate Court, Madurai, in A.S.(MD)No.85 of 2009 has also rightly

confirmed the findings of the trial Court by dismissing the first appeal filed by the plaintiffs by its judgment and decree dated 30.09.2009.

6. There are no substantial questions of law involved in this Second Appeal. The factual and legal issues involved in the suit have been rightly considered by the Courts below. There are no debatable questions of fact or law involved, which requires further consideration by this Court. The substantial questions of law raised by the appellants in the grounds of this Second Appeal, are issues, which have been duly considered by the Courts below.

7. In the result, there is no merit in this Second Appeal. Accordingly, this Second Appeal is dismissed. No costs.

28.03.2023

Index : Yes / No
NCC : Yes / No
Sm

ABDUL QUDDHOSE, J.

Sm

TO:

- 1.The District Munsif Court,
Ramanathapuram.
- 2.The Additional District and Sessions Judge (Fast Track Court),
Ramanathapuram.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
S.A.(MD)No.733 of 2022

Dated:
28.03.2023