



S.A.No.651 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.03.2024

Delivered on: 22.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN

S.A.No.651 of 2007

AND

C.M.P.No.28277 of 2023

1. C.Rani Chandra Bai
W/o.Thangarathinam

2. C.S.Christopher
S/o.Samuel

...Appellants

Vs.

1. The Public Servants (General)
Cooperative House Building Society
Rep. by its Special Officer
Sarang Street Ltd.,
Vannarapalayam, Cuddalore - 1.

2. N.Loganathan

...Respondents

Memo dated 21.09.2022 recorded

A2 died. There is no need to implead the LR's of the deceased A2 vide
Court order dated 16.03.2023 made in S.A.No.651 of 2007.



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PRAYER:

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Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree of the learned Principal Subordinate Judge, Cuddalore dated 25.08.2006 passed in A.S.No.73 of 2004 dismissing the appeal, confirming the judgment and decree dated 22.07.2004 in O.S.No.563 of 2006 on the file of the Principal District Munsif of Cuddalore.

For Appellants : Mr.R.Guru Raj
For Respondents : Mr.S.V.Durai Solaimalai, for R1
R2 - dismissed
vide Court order dated 23.07.2010

J U D G M E N T

The unsuccessful plaintiffs 2 and 3 are before this Court in appeal. Pending appeal, third plaintiff / second appellant died and it has been recorded that there is no need to implead the legal heirs of the second appellant.

2. The Second Appeal is filed challenging the judgment and decree dated 25.08.2006 in A.S.No.73 of 2004 on the file of the Principal Subordinate Court, Cuddalore confirming the judgment and decree dated



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22.07.2004 in O.S.No.563 of 2006 on the file of Principal District Munsif Court, Cuddalore.

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3. For the sake of convenience, the parties are referred to by their ranks before the trial Court.

4. According to the plaintiffs, the first plaintiff's husband Samuel was a member of the first defendant Society with Membership No.142. The first defendant Society formed a layout in K.K.Nagar, Vannarapalayam, Cuddalore Municipal limits and in that lay out, Samuel was allotted with Plot No.47 and on receiving a sum of Rs.1,064/-, the plot was transferred to him by means of a sale deed dated 11.12.1972. Samuel voluntarily retired from service in the year 1969 and died on 24.09.1978. As per the condition attached to the sale deed, the allottee has to construct a house within five years. Even though Samuel and the first plaintiff were anxious to construct a house, they were not able to do so, but however, they were in possession and enjoyment of the suit property. The Special Officer of the first defendant Society without serving any prior notice, passed a resolution dated 15.06.1991 resuming the plot and



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reallotting the same to the second defendant on the same day. Since the notice was issued on 01.04.1991, obviously, it was sent to a dead person and therefore, not served. Only an elected body can take a policy decision, the special officer can manage only day-to-day affairs and therefore, the decision of the special officer in resuming and reallotting the plot is arbitrary and illegal.

5. The first plaintiff raised a dispute before the Deputy Registrar of the Cooperative Societies (Housing), Cuddalore in A.R.C.No.549/92-93. After enquiry, by order dated 20.09.1993, the Deputy Registrar set aside the resumption and also re-allotment. As the order as against the first defendant has become final, the defendants are barred by *res judicata*. The plaintiffs commenced the construction, however, it was stopped on 12.12.1993 due to rain and while so, the second defendant trespassed into the suit property and started putting up construction illegally. As such, the first plaintiff filed a suit in O.S.No.972 of 1993 before the Principal District Munsif Court, Cuddalore as against the defendants seeking permanent injunction. In the trial Court, one Thangarathinam was examined as P.W.1 and by mistake he has stated as if the second defendant



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has constructed the house even prior to filing of the suit and I.A.No.762 of 1995 filed for amendment of the plaint was dismissed and therefore, on 16.12.1997, the plaintiffs had made endorsements and consequently, the suit was dismissed as not pressed. The first plaintiff is deemed to be in possession and therefore, he has come up with the suit for declaration and for permanent injunction. Further, even though the earlier suit was dismissed as not pressed, the same will not be a bar or *res judicata*. The first plaintiff being in possession of the property for more than 12 years has also prescribed title by adverse possession.

6. The first defendant resisted the suit by filing a written statement on the ground that the suit itself is not maintainable. According to the first defendant, the dispute is a matter that has to be decided under the Tamil Nadu Cooperative Societies Act, 1983 [hereinafter 'said Act' for the sake of convenience and clarity] and the Court does not have any jurisdiction to entertain the suit. Samuel, the husband of the first plaintiff being a member of the first defendant Society was allotted and executed a sale deed on 11.12.1972 with a mandatory condition that the allottee must put up a construction within five years of conveyance. The allottee, being a



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member of the first defendant Society, the Bye-laws of the Society and also conditions in the sale deed are binding on the allottee and knowing well about the terms and conditions, Samuel, husband of the first plaintiff did not put up any constructions and therefore, the allotment was resumed and the plot was allotted in favour of second defendant. Only after issuance of notice to all the allottees, allotment was resumed and even though the resumption was set aside, the dispute in the present suit arises under the said Act and the suit is barred under Section 90 of said Act. Since there is a dispute touching upon the business of the Registrar Society, the dispute could only be resolved by initiating proceedings under Section 90 of said Act before the Registrar and not by the Civil Court. The jurisdiction of the Civil Court is ousted. Since the order in A.R.C.No.549/92-93 relates only to the fact of resumption and it has not put an end to the dispute and therefore, it will not operate as *res judicata*. Only since no construction was put up by the plaintiffs as per terms and conditions, the allotment was resumed, pursuant to which, the same was allotted in favour of the second defendant and the second defendant being in possession of the property had also put up constructions.



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7. The second defendant also resisted the suit by filing a written statement contending that the suit property namely, Plot No.47 in K.K.Nagar, Cuddalore was allotted to this defendant on 21.06.1991 and executed a registered sale deed dated 21.06.1991 for valid and adequate consideration. On execution of the sale deed, the second defendant was put in possession of the suit property and he is a *bona fide* purchaser for value. After purchase, he has started the construction in the suit property in January 1993 and while so, the plaintiffs attempted to stop the construction. Only after the elected body of the first defendant Society has passed necessary resolution for resumption, re-allotment of the same, the Special Officer has implemented the resolution and therefore, the resumption and re-allotment is valid and in conformity with the rules and regulations of the Society. Further the first plaintiff fraudulently without impleading the second defendant, in whose favour the sale has been executed, filed an arbitration proceedings before the Deputy Registrar (Housing), Cuddalore and obtained an order setting aside the resumption. This defendant not being a party to any of the proceedings, his right or title cannot be deprived and it will not be binding on this defendant. The plaintiffs had never been in possession and had not put up any



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constructions and in fact in the suit in O.S.No.972 of 1993 earlier filed by the first plaintiff, an Advocate Commissioner was appointed and a report was filed. During trial, P.W.1 in that suit had categorically admitted that this defendant alone has put up construction. The first plaintiff, on her own, has made an endorsement and the suit was dismissed as not pressed and when the plaintiffs have not obtained any leave or liberty to initiate any fresh suit, the present suit filed again for the relief of injunction along with declaration is not maintainable and hit by *res judicata*. Further, in view of the resumption and allotment and the dispute pertains to proceedings under the said Act, the Civil Court has no jurisdiction and sought for dismissal of the suit.

8. During trial, P.W.1 and P.W.2 were examined by plaintiffs and Ex.A1 to Ex.A14 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Ex.B1 was marked. After appreciating the evidences and documents, the trial Court dismissed the suit. The trial Court, found that any order passed as against the second defendant without making him as a party will not bind him and the second defendant was admittedly in possession of the suit property and further, the Court did



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not have jurisdiction to entertain the suit. Aggrieved by the same, plaintiffs 2 and 3 filed Civil Appeal No.73 of 2004 on the file of the Principal Subordinate Judge, Cuddalore. The Lower Appellate Court, after re-appreciating the evidences dismissed the appeal. The Lower Appellate Court has also found that the suit is barred under Section 90 of the said Act and that the plaintiffs have admitted that they did not take any further proceedings for re-allotment of the plot and further, the second defendant had put up the construction in the suit property. Aggrieved by the concurrent finding of fact, the plaintiffs 2 and 3 are before this Court on second appeal.

9. This Court, by order dated 12.07.2007, ordered notice regarding admission.

10. In the appeal, though the first respondent has been served and counsel has entered appearance, steps were not taken by the appellant to serve the second respondent and hence, the appeal as against the second respondent was dismissed as early as on 23.07.2010.



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11. The learned counsel appearing for appellant argued that once 64 plots formed in the lay out has been allotted to the respective allottees, there was nothing left for the first defendant Society and in fact, the first defendant had become defunct. Only the Special Officer of another Society, who has assumed in-charge of the Special Officer of the first defendant Society has issued notice for cancellation to the allottees, as the houses were not constructed as per the conditions in the allotment. According to the learned counsel, since notices issued were returned, publications were effected and allotments were canceled and reallocated to others in the year 1991 and the procedure adopted is not lawful. Learned counsel further contended that the second defendant is the re-allottee and challenging the same, the first plaintiff approached the Deputy Registrar under Section 90 of said Act and by order dated 20.09.1993 in Ex.A2, resumption was canceled. Learned counsel further contended that only pursuant to which in the year 1993, the first plaintiff started the constructions and since the second defendant intervened, a suit in O.S.No.972 of 1993 was filed but however, the same was not pressed and since the suit was not decided on merits, the order passed in O.S.No.972 of 1993 will not operate as *res judicata* in the present suit. He further contended that when already the



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first plaintiff has gone before the Deputy Registrar under Section 90 of said Act by exhausting his remedy and order has been passed in Ex.A2, the first plaintiff cannot again approach the authority. Therefore, the suit will lie before the Civil Court as per Section 9 of the Code of Civil Procedure, 1908 (5 of 1908) [hereinafter 'CPC' for the sake of convenience and clarity] when there is no express bar under any Special Enactment. The relief claimed by the plaintiffs is for declaration and recovery of possession and only since the Civil Court possess powers to grant this relief, the civil suit filed by the plaintiffs is maintainable. The learned counsel further contended that if there is express bar under any Act ousting the jurisdiction of the Civil Court, then there must be a provision in the Act itself to grant the relief claimed. When the possession of the property cannot be granted to the plaintiffs under the provisions of said Act, the suit filed is maintainable. Further, when in the present suit, declaration of title and injunction and alternatively recovery of possession is claimed, earlier suit filed only for possession which has also been not pressed cannot be *res judicata* under Section 11 of CPC. The learned counsel contended that both the Courts below failed to see that already by the orders passed in Ex.A2, resumption has been cancelled and the suit filed is maintainable,



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but however, both the Courts have erroneously decided that the jurisdiction of the Civil Court is barred under the said Act and therefore, the findings are perverse and sought for allowing the second appeal.

12. Learned counsel relied on the following Judgments in support of his arguments:

(i) ***Daryao and others vs. State of Uttar Pradesh and others*** reported in ***AIR 1961 SC 1457***;

(ii) ***Mohanlal Goenka Vs. Benoy Kishna Mukherjee and others*** reported in ***AIR 1953 SC 65***;

(iii) ***State of West Bengal Vs. Hemant Kumar Bhattacharjee and others*** reported in ***AIR 1966 SC 1061***;

(iv) ***Narayana Prabhu Venkateswara Prabhu Vs. Narayana Prabhu Krishna Prabhu*** reported in ***AIR 1977 SC 1268***;

(v) ***Ishwardas Vs. The State of Madhya Pradesh and others*** reported in ***AIR 1979 SC 551***;

(vi) ***M.G.Narayanaswami Naidu and another Vs. M.Balasundaram Naidu and others*** reported in ***AIR 1953 Madras 750***;



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(vii) ***Sahu Madho Das and others vs. Mukand Ram and another*** reported in ***AIR 1955 SC 481***;

(viii) ***Smt.Ganga Bai Vs. Vijay Kumar and others*** reported in ***AIR 1974 SC 1126***;

(ix) ***Dhulabhai and others Vs. State of Madhya Pradesh and another*** reported in ***AIR 1969 SC 78***;

(x) ***Sri Vedagiri Lakshmi Narasimha Swami Temple Vs. Induru Pattabhirami Reddy*** reported in ***AIR 1967 SC 781***;

(xi) ***Ishar Singh Vs. National Fertilizers and another*** reported in ***AIR 1991 SC 1546***;

(xii) ***Deccan Merchants Co-operative Bank Ltd., Vs. M/s.Dalichand Jugraj Jain and others*** reported in ***AIR 1969 SC 1320***;

(xiii) ***Co-operative Central Bank Ltd., and others vs. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others*** reported in ***AIR 1970 SC 245***;

(xiv) ***U.P. Co-operative Cane Union Federation Ltd., and another vs. Liladhar and others*** reported in ***AIR 1981 SC 152***;

(xv) ***The Allahabad District Co-op. Ltd., Vs. Hannman Dutt***



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Tewari reported in *AIR 1982 SC 120*;

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13. Per contra, learned counsel appearing for first defendant Society argued that when the first plaintiff's husband was admittedly a member of the first defendant Society, he is bound by the Bye-laws and terms and conditions of the allotment and when the allotment was made specifically with the condition that a house has to be constructed within five years, admittedly, the first plaintiff's husband did not construct the house and since the Special Officer, after inspection found that the condition has not been complied with, has issued orders resuming the plot and thereafter has allotted the plot in favour of the second defendant. The learned counsel further contended that the death of Samuel was not brought to the notice of the Society and after the notice was sent based on the available records, the Special Officer had cancelled the allotment. Immediately, on allotment and the sale deed having been executed in favour of the second defendant, he was put in possession of the suit property. According to the learned counsel, said Act is a self contained code and the jurisdiction of the Civil Court is barred and the suit filed is not maintainable. When the first plaintiff has rightly approached the



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Deputy Registrar under Section 90 of said Act, the plaintiffs have not continued with the same and have not asked for re-allotment in their favour. The learned counsel contended that as per Section 90 of said Act, any dispute touching the business of the Society has to be resolved by raising the dispute before the Registrar and the party aggrieved can file an appeal under Section 152 of said Act and for execution of any of the decision, proceedings has to be initiated under Section 155 of said Act. When under Section 156 of said Act, the Civil Court jurisdiction is specifically barred, the present suit initiated by plaintiffs is not maintainable. Learned counsel contended that both the Courts below have rightly arrived at a decision which does not require any interference and sought for dismissal of the second appeal.

14. Heard learned counsel on both sides and perused the materials available on record.

15. The first defendant is the Society, who purchases the lands for the benefits of its members and form a lay out and in that process, a lay out was formed, out of which, 64 plots were earmarked and allotted to 64



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members of the first defendant Society, who are all Government servants.

Since the allotments are made only in favour of the members of the first defendant Society, the members are bound by the Bye-laws, rules and regulations of the Society and terms and conditions of the allotment.

Admittedly, Plot No.47 was originally allotted in favour of first plaintiff's husband Samuel and sale has been executed on 11.12.1972 in Ex.A1 with a condition that the construction of a house must be done within period of five years. Admittedly, the allottee Samuel and first plaintiff did not construct the building as per the conditions imposed and allottee Samuel also died on 24.09.1978. The Special Officer of the first defendant Society, who conducted inspection found that no construction has been made as per the condition imposed in the allotment, issued notices to allottees as per available records and also effected publications and thereafter in the year 1991 had resumed the allotment and immediately, based on the resolution of the Society had reallocated the plot No.47 in favour of second defendant, who is also a member of the first defendant Society. On allotment, a registered sale deed was executed by the first defendant Society in favour of second defendant for valuable consideration. Immediately, the second defendant was put in possession of the suit property. The second defendant



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had also proceeded with the construction in the plot allotted in his favour.

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16. The first plaintiff had filed an appeal before the Deputy Registrar of the Tamil Nadu Cooperative Societies, Cuddalore in A.R.C.No.549/92-93. Even though after the resumption of the allotment, the plot was reallocated in favour of second defendant and sale deed has been executed in his favour and he has also commenced the construction of building, the first plaintiff did not make the second defendant as party to that proceedings. However, the Deputy Registrar continued with the enquiry and by orders dated 20.09.1993 in Ex.A2 has cancelled the resumption of the plot and directed for re-allotment. However, instead of initiating proceedings before the authorities under the provisions of the said Act, the plaintiffs chosen to file a suit in O.S.No.972 of 1993 on the file of the Principal District Munsif Court, Cuddalore as against the defendants herein for permanent injunction. Even though the plaintiffs had claimed that they are in possession of the suit property and making construction in the plot, pursuant to report of Advocate commissioner and admission made by P.W.1 in that suit, admitting that the second defendant had carried on with the construction activities and he is in possession of



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the property had not pressed the suit by making endorsement and the suit was dismissed on 16.12.1997. The plaintiffs had not sought leave or liberty to file a fresh suit for the same cause of action. However, the plaintiffs have come up with the present suit for declaration of title and permanent injunction or in the alternative for recovery of possession of the suit property from the second defendant.

17. As per Section 9 of CPC, the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. It is the contention of the plaintiffs that the suit filed by them is maintainable as the same is not expressly barred by any Enactment.

18. Admittedly, the first defendant is a Society and governed by Bye-laws of the Society and functions of the Society in the State are governed by said Act and rules framed there under. Admittedly, both the plaintiffs and second defendant are the members of the Society and in the natural course of business of the first defendant Society, the allotment was initially made in favour of first plaintiff's husband which was later resumed



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on the ground that the terms and conditions of the allotment were not fulfilled and the re-allotment was made in favour of second defendant. If any dispute arises between the members of the Society, remedy is provided under the said Act.

19. Section 90 of said Act is usefully extracted hereunder:

"90. Disputes.-(1) *If any dispute touching the constitution of the board or the management or the business of a registered society (other than a dispute regarding disciplinary action taken by the competent authority constituted under sub section (3) of section 75 or the Registrar or the society, or its board against a paid servant of the society) arises -*

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its board or any officer, agent or servant of the society, or

(c) between the society or its board and any past board, any officer, agent or servant, or any past officer, past agent or past servant, or the nominee, heirs of legal representative of any deceased officer, deceased agent, or



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deceased servant of the society, or

(d) between the society and any other registered society, such dispute shall be referred to the Registrar for decision."

20. As per Section 90 of said Act, if any dispute touching upon the business of the registered Society between a member, past member or person claiming through a member, past member or deceased member and the Society, its Board or any Officer may apply to the Registrar for resolving the dispute. If any decision is arrived thereon, the party aggrieved can file an appeal under Section 152 of said Act. Further, if any order is passed under Section 152 or 153 of the said Act, the same shall be enforced by such authority and in such manner as may be prescribed as per Section 155 of said Act. Admittedly, when the plaintiffs have approached the Registrar for resolving the dispute arisen in respect of the business of the Society under Section 90 of said Act and an order has also been passed in Ex.A2, when no appeal has been preferred under Section 152 of said Act, the plaintiffs ought to have proceeded further under Section 155 or Section 166 of said Act. Without doing so, the plaintiffs resorted to by filing the above suit.



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21. At this juncture, it is useful to refer to Section 156 of said Act which is extracted herein:

'156. Bar of jurisdiction of Civil Courts. - Notwithstanding anything contained in any other law for the time being in force no order or award passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or an officer authorised or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any court and no injunction shall be granted by any court in respect of anything which is done or intended to be done by or under this Act.'

22. In the instant case, since admittedly the 1st plaintiff's husband and the 2nd defendant are members of 1st defendant society and a dispute has arisen regarding the allotment made, the above provision specifically bars the jurisdiction of Civil Courts and when there is an express provision under the said Act ousting the jurisdiction of the Civil Court, the Civil Court does not have jurisdiction to entertain the suit as per Section 9 of CPC and therefore, the suit filed by the plaintiffs is not maintainable. The plaintiffs ought to have resorted to continue with the proceedings under the



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said Act for further reliefs seeking for allotment and for delivery.

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23. Admittedly, the second defendant is in the possession of the suit property and also put up constructions, in fact, even in the earlier suit filed by the plaintiffs, since P.W.1 therein admitted the possession of the second defendant and construction put up by him, the plaintiffs had not pressed the earlier suit. Even in the present suit filed, P.W.1 had admitted that the second defendant has put up construction in the plot and given an application before the Deputy Registrar, but he has not proceeded further to seek for re-allotment in his favour and also for handing over the possession of the plot. Further, P.W.2 had also specifically admitted that 10 years ago, the plaintiffs put up a small room, but however, the second defendant had put up construction in the suit property. From the available materials, it could be ascertained that the second defendant is in possession of the suit property and also put up construction. The plaintiffs have specifically sought for alternative prayer for recovery of possession of the suit property from the second defendant.

24. When the plaintiffs have come up with the suit for



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declaration of title and also for permanent injunction or in the alternative for recovery of possession from the second defendant, particularly, when already the sale deed has been executed in favour of second defendant, the above appeal has been dismissed as against the second defendant as early as on 23.07.2010. When the appeal has been dismissed, the judgment and decree passed by both the Courts below have become final as against the second defendant. When the prayer of the plaintiffs has been dismissed and held that the suit is not maintainable and the 2nd defendant is in possession of the suit property, the appellants herein cannot proceed to argue or maintain the appeal only as against the first defendant as there cannot be a contra orders passed in respect of the first defendant alone. As such, even on the day the appeal has been dismissed as against second defendant / second respondent, the appellants / plaintiffs have lost their rights to agitate their claim when they have not taken any steps to restore the appeal as against the second respondent and allowed the judgment and decree to become final.

25. The appellants have filed C.M.P.No.28277 of 2023 under Order XLI Rule 27 of CPC for receiving additional evidence. The



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appellants have filed 12 documents which are all certified copies of the judgment and decree passed in suits and appeals in respect of third parties.

In those judgment and decree, neither the first defendant is a party nor those documents which are sought to be filed as additional documents pertain to the suit property. For receiving additional evidences, the appellant should satisfy that it comes within the four corners of Order XLI Rule 27 of CPC. When neither the plaintiffs nor the defendants are parties to those proceedings, which are sought to be received as additional evidences, and also those documents do not pertain to Plot No.47 which is the suit property, and further those documents are not required for the purpose of deciding the present dispute, the petition does not satisfy the provision of Order XLI Rule 27 of CPC and as such, C.M.P.No.28277 of 2023 is rejected.

26. In view of the above findings, this Court does not find any substantial question of law that arises for consideration of this Court in the above appeal. The judgments relied on by the appellants are not relevant for the facts of the present case.



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27. The Courts below have arrived at the findings of fact which is based on legal provisions and materials available on record and therefore, there is no perversity or illegality.

28. Therefore, the Second Appeal stands dismissed. However, there shall be no order as to costs.

22.03.2024

Index:Yes/No

Neutral Citation:Yes/No

Speaking/Non-speaking order

mk

To

1. The Principal Subordinate Judge,
Principal Subordinate Court,
Cuddalore.
2. The Principal District Munsif
District Munsif Court,
Cuddalore.



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G.ARUL MURUGAN, J.,

mk/drl

Pre-Delivery Judgment in
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