



S.A.(MD).No.591 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.12.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.591 of 2013

and

M.P.(MD)Nos.1 and 2 of 2013

1.Athimuthian

2.Thandeeswaran

... Appellants

/Vs./

1.Kanjana

2.Madhavan

3.The District Collector,
Madurai District, Madurai.

4.The Tahsildar,
Vadipatti Taluk,
Taluk Office,
Vadipatti, Madurai District.

5.The Village Administrative Officer,
Urseri Village,
Vadipatti Taluk, Madurai District.

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 26.07.2013, made in A.S.No.9 of 2013 on the file of the Principal Sub Court, Madurai, reversing the Judgment and Decree,



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dated 20.09.2012, made in O.S.No.102 of 2011 on the file of the District Munsif cum Judicial Magistrate, Vadipatti.

For Appellants	: Mr.M.Thirunavukkarasu
For R1 and R2	: Mr.V.Meenakshi Sundaram for Mr.G.Mohan Kumar
For R3 to R5	: Mr.C.Satheesh Government Advocate

JUDGMENT

The present second appeal is preferred by the defendants 1 and 2 against the Judgment and Decree dated 26.07.2013, passed in A.S.No.9 of 2013 on the file of the Principal Sub Court, Madurai, reversing the Judgment and Decree, dated 20.09.2012, passed made in O.S.No.102 of 2011 on the file of the District Munsif cum Judicial Magistrate, Vadipatti.

2. The plaintiffs in the suit are the respondents 1 and 2 herein, the defendants 1 and 2 are the appellants herein and the defendants 3 to 5 in the suit are the respondents 3 to 5 herein. For the sake of convenience, the parties are referred as plaintiffs and defendants as per the ranking in the suit.



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3. The plaintiffs had filed the suit for bare injunction claiming the road is located in their land in Urseri Village. The suit was dismissed. Aggrieved over the same, the plaintiffs had preferred the first appeal and the same was allowed. Aggrieved over the same, the defendants 1 and 2 have preferred the present second appeal.

4. Pending the appeal suit in A.S.No.9 of 2013, the defendants 1 and 2 herein had filed another suit in O.S.No.233 of 2013 with a comprehensive prayer of declaration and injunction and the same was allowed, vide judgment and decree, dated 10.01.2023. Aggrieved over the same, the plaintiffs herein had filed A.S.No.34 of 2023 and the same is pending.

5. Since the defendants 1 and 2 in the present second appeal has preferred a comprehensive suit with a prayer for declaration and injunction, the present second appeal cannot be entertained since the present suit is only for mandatory injunction. Further the rights of the parties can be determined in the subsequent suit.



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6. Therefore, judgment and decree passed by both the Trial Court and the Appellate Court are set aside. The parties are directed to raise all the grounds available to them before the Trial Court in O.S.No.233 of 2013. And the grounds raised in the present second appeal is available for all the parties in O.S.No.233 of 2013.

7. It is seen that the defendants 1 and 2 had filed a petition under section 10 of CPC in I.A.No.15 of 2014 in O.S.No.233 of 2013 stating that the parties and properties are different and the said petition was allowed. Against the said order, C.R.P.(MD)No.2366 of 2014 was filed and the same was allowed holding that the property and issue in both the suit are different. The effect of the order would have an impact in the appeal suit A.S.No.34 of 2023 and in the suit in O.S.No.233 of 2013.

8. At this juncture it is pertinent to state that the judgement passed in O.S.No.233 of 2013 had ended in favour of the defendants 1 and 2 herein and against plaintiffs herein. In order to meet the ends of justice it is incumbent to



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place both the plaintiff and the defendants on equal plane. Therefore, this Court is remitting the case to O.S.No.233 of 2013 on the file of District Munsif Court, Vadipatti. The Trial Court shall consider the suit in O.S.No.233 of 2013 independently on merits without influenced by the order passed in I.A.No.15 of 2014. The parties cannot take the plea that was raised in I.A.No.15 of 2014 before the Trial Court in O.S.No.233 of 2013.

9. The defendants 1 and 2 / appellants herein have preferred M.P.(MD)No.1 of 2013 to receive the additional written statement. Since the present second appeal is allowed, it would meet the ends of justice if the plaintiffs and defendants are permitted to file additional pleadings before the Trial Court in O.S.No.233 of 2013. Accordingly, the plaintiffs and the defendants are permitted to file additional pleadings, file additional documents, evidences and thereafter adjudicate the case.

10. In the result, the second appeal is allowed and the Judgment and Decree dated 26.07.2013, passed in A.S.No.9 of 2013 on the file of the Principal Sub



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Court, Madurai is set aside. The Judgment and Decree, dated 20.09.2012, passed made in O.S.No.102 of 2011 on the file of the District Munsif cum Judicial Magistrate, Vadipatti is set aside. The case is back to the Trial Court in O.S.No. 233 of 2013 and the suit shall be completed within a period of one year from the date of receipt of a copy of this judgment.

11. The original copy of the written statement filed in M.P.(MD)No.1 of 2013 shall be returned to the appellants.

12. With the above said observations, the second appeal is disposed of. No costs. Consequently, M.P.(MD)Nos.1 and 2 of 2013 are closed.

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Index : Yes / No

NCC : Yes / No

Tmg



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TO:

1. Principal Sub Court, Madurai.
2. District Munsif cum Judicial Magistrate,
Vadipatti.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.
4. The District Collector,
Madurai District, Madurai.
5. The Tahsildar,
Vadipatti Taluk,
Taluk Office,
Vadipatti, Madurai District.
6. The Village Administrative Officer,
Urseri Village,
Vadipatti Taluk, Madurai District.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.591 of 2013

Dated:
05.12.2024