

S.A.(MD)No.499 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 21.08.2024

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

S.A.(MD)No.499 of 2024

and

C.M.P.(MD)No.11009 of 2024

S.Azhakarammal

... Appellant

versus

1. P.Vairamuthu

2. S.Ponnuthurai

3. The Sub Registrar,
Sub Registration Office,
Sivakasi,
Virudhunagar District.

... Respondents

Second Appeal filed under Section 100 of C.P.C. as against the Judgment and Decree dated 12.07.2022 made in A.S.No.25 of 2019 on the file of the learned Subordinate Judge, Virudhunagar, confirming the Judgment and Decree dated 05.07.2017 made in O.S.No.145 of 2015 on the file of the District Munsif, Virudhunagar.

For Appellant : Mr.M.Vijayarathinam



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JUDGMENT

The plaintiff in O.S.No.145 of 2015 on the file of the District Munsif Court, Virudhunagar, has preferred this second appeal challenging the Judgment and Decree dated 12.07.2022 made in A.S.No. 25 of 2019 on the file of the learned Subordinate Judge, Virudhunagar, confirming the Judgment and Decree dated 05.07.2017 made in O.S.No. 145 of 2015 on the file of the District Munsif, Virudhunagar.

2. For the sake of convenience, the parties are referred to as per their rank in the suit.

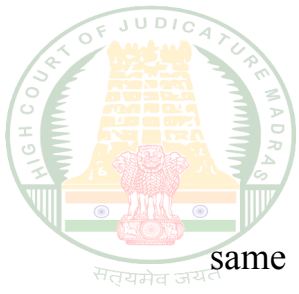
3. The appellant/plaintiff had filed the above suit in O.S.No.145 of 2015 for the relief of permanent injunction restraining the defendants 1 and 2 from creating any encumbrance in the suit schedule property. The suit schedule property is a vacant land to an extent of 52 cents in Survey No.1222/5 of Saminatham Village, Virudhunagar District. She claimed that the suit schedule property was purchased by her on 10.04.1965.



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4. The case of the defendants 1 and 2/respondents 1 and 2 is that the suit schedule property is their ancestral property of one Subramania Thevar and he already executed a settlement deed dated 19.07.1989 in favour of the first defendant. Claiming so, the defendants 1 and 2 filed a suit in O.S.No.216 of 2005 on the file of the Principal District Munsif, Virudhunagar District, seeking the relief of declaration and permanent injunction that the plaintiff along with her sons are disturbing their peaceful possession of the suit schedule property. The said suit was partly allowed by granting the relief of permanent injunction and rejecting the relief of declaration. Challenging the Judgment and Decree of the learned Principal District Munsif, Virudhunagar, in O.S.No.216 of 2005, the plaintiff filed an appeal before the Subordinate Court, Srivilliputtur, in A.S.No.2 of 2011 and the defendants 1 and 2 also filed another appeal as against the relief of declaration, before the Subordinate Court, Srivilliputhur in A.S.No.9 of 2011. The First Appellate Court allowed the appeal filed by the plaintiff in A.S.No.2 of 2011 and dismissed the appeal filed by the defendants 1 and 2. Challenging the same, the defendants 1 and 2 have filed two second appeals before this Court in S.A.(MD)No.206 of 2012 and S.A.(MD)No.187 of 2014 and the

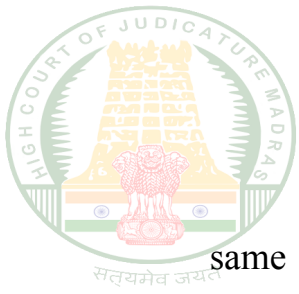


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same are pending. In these circumstances, the plaintiff has filed the above suit in O.S.No.145 of 2015 for the relief of permanent injunction restraining the defendants 1 and 2 from creating any encumbrance in the suit schedule property.

5. The case of the plaintiff is that by taking advantage of the second appeals pending before this Court, the defendants 1 and 2 have attempted to get patta for the suit schedule property as if they got an order of stay in S.A.(MD)No.206 of 2012 and in S.A.(MD)No.187 of 2014. The plaintiff has submitted her objections. However, without considering the objections made by the plaintiff, the Tahsildar has granted patta in favour of the defendants 1 and 2 for the suit schedule property and taking advantage of the same, the defendants 1 and 2 are attempting to alienate the property.

6. The trial Court, by its Judgment and Decree dated 05.07.2017, dismissed the suit that the suit is barred under Section 41(h) of the Specific Relief Act. Challenging the same, the plaintiff has filed an appeal before the Sub Court, Virudhunagar in A.S.No.25 of 2019 and the



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same was dismissed by the First Appellate Court, by its Judgment and Decree dated 12.07.2022, confirming the Judgment and Decree passed by the trial Court. Therefore, the plaintiff has preferred this second appeal on the following substantial questions of law:

(i) Is the learned Subordinate Judge right in dismissing the suit when the plaintiffs have produced decree and judgment in A.S.No.9 of 2011?

(ii) Is not the Judgment and decree of the learned Subordinate Judge is perverse for adopting the law Section 41(h) Specific Relief Act, when the declaration of title and permanent injunction in favour of the respondents herein was concurrently dismissed?

(iii) When the defendants have not produced any document to prove their title over the suit property, is the learned Subordinate Judge right in his finding that the defendants may succeed in the pending second appeal?

7. This Court considered the submissions made by the learned counsel appearing for the appellant and perused the materials placed on record.

8. The plaintiff has filed the above suit seeking the relief of



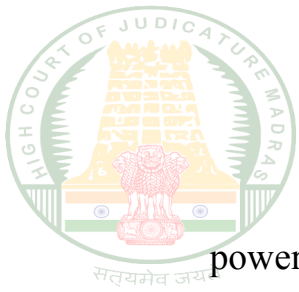
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perpetual injunction restraining the defendants 1 and 2 from creating any encumbrance in the suit schedule property. But, the plaintiff has not produced any materials to substantiate that the defendants 1 and 2 have attempted to alienate the suit property.

9. The case of the plaintiff is that by referring the second appeals pending before this Court, the defendants 1 and 2 have obtained a patta for the suit schedule property and with the help of the same, they are attempting to alienate the suit schedule property.

10. In the event, if the patta has wrongly been granted by the Revenue Officials, then, the plaintiff is having a remedy under the Patta Pass Book Act to challenge the grant of patta in favour of the defendants 1 and 2. When the plaintiff is having a remedy under the Patta Pass Book, the Courts below are right in rejecting the claim sought for by the plaintiff in the suit.

11. The grant of perpetual injunction is governed by Section 38 of the Specific Relief Act. It is a discretionary power of the Court. This



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power is subject to other provision under Chapter VIII of the Specific Relief Act. Section 41 under Chapter VIII of the Specific Relief Act provides certain circumstances under which an injunction cannot be granted. Clause (h) of Section 41 provides that the injunction cannot be granted, when a party could avail an efficacious relief in usual procedure.

12. The Hon'ble Supreme Court in ***Sushil Kumar and another vs. Ram Prakash and others***, reported in ***1988 AIR 576***, has laid down the position of law on this Section 41(h) as under:

“29. The provisions of Section 38 have to be read along with Section 41. Section 41 provides that an injunction cannot be granted in the cases falling under clauses (a) to (j). Clause (h) thereunder provides that an injunction cannot be granted when a party could obtain an efficacious relief by any other usual mode of proceeding (except in case of breach of trust). The coparcener has adequate remedy to impeach the alienation made by the karta. He cannot, therefore, move the Court for an injunction restraining the karta from alienating the coparcenary property.”



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13. The grant of injunction, if any, would certainly affect the right of the defendants 1 and 2 in the second appeal, which are pending before this Court. If the plaintiff is aggrieved over the grant of patta in favour of the defendants for the suit schedule property, it is always open to the plaintiff to challenge the patta proceedings under the Patta Pass Book Act. The substantial questions of law raised in this second appeal are answered as above.

14. With this liberty, this Second Appeal is dismissed as there is no reason to interfere with the findings of the trial Court as well as the First Appellate Court. No costs. Consequently, connected miscellaneous petition is closed.

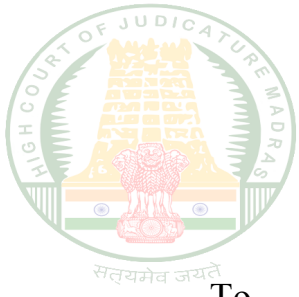
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LR/ogy

NCC : Yes / No.

Index : Yes / No.

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