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S.A.No.36 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.36 of 2018

T.J.Salvi @ Ambrose Selvi

... Appellant

Vs.

I.S.Jackrias

... Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree in A.S.No.24 of 2015, dated 31.07.2017 on the file of the I Additional District Judge, Tiruvallur, in confirming the judgment and decree in O.S.No.112 of 2006 dated 09.04.2015 on the file of the Subordinate Judge, Thiruvallur.

For Appellant : Ms.V.Srimathi

For Respondent : Mr.K.Balaji



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JUDGMENT

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The unsuccessful plaintiff in the suit for declaration of title and injunction is the appellant. The suit filed by the appellant was dismissed by the trial Court and the First Appellate Court confirmed the judgment of the trial Court. Aggrieved by the concurrent findings, the appellant has come up with this Second Appeal.

2. According to the appellant/plaintiff, the suit property was originally owned and possessed by one Abraham Naidu. He had two sons namely, Jackrias, the defendant herein and one Irudhayaraj. There was a partition in the family of Abraham Naidu on 21.06.1975 and in the partition deed Abraham Naidu and his wife were given life estate over the suit property with vested remainder to their son Irudhayaraj. After death of his wife Sowrammal and also Irudhayaraj, wife of said Irudhayaraj namely Leela Arokiyarnary executed a General Power Attorney in favour of one Lilli and the plaintiff purchased the suit property from said Lilli on 03.10.2005. Thus, the plaintiff claimed absolute title over the suit property. The defendant herein was authorized to collect rent on behalf of his brother Irudhayaraj. Since the defendant prevented the appellant/plaintiff from entering the suit property, the



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plaintiff was constrained to file a suit for declaration of title and delivery of possession. The appellant also prayed for a permanent injunction restraining the respondent/defendant from encumbering the suit property.

3. The respondent/defendant filed a written statement denying the partition dated 21.06.1975 pleaded by the appellant. The respondent/defendant claimed that he became absolute owner of the suit property, as he purchased the portion of the property allotted to his brother by a sale letter on 15.12.1987. He also claimed that he has been in possession and enjoyment of the suit property by having patta and electricity connection etc., in his name. Therefore, he sought for dismissal of the suit.

4. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellant herein failed to prove the partition pleaded by her and consequently rejected the plea of exclusive title of appellant's vendor. Therefore, the trial Court dismissed the suit. Aggrieved by the same, the appellant preferred an appeal in A.S.No.24 of 2015 on the file of the I Additional District Judge, Tiruvallur. The first Appellate Court also on appreciation of evidence available on record concurred



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with the findings of the trial Court and dismissed the appeal. Aggrieved by the same, the appellant is before this Court by way of this Second Appeal.

5. The learned counsel for the appellant submitted that the respondent claimed absolute title over the suit property by virtue of the sale letter allegedly executed by his brother and his wife. However, the said document has not been produced by the respondent. In such circumstances, the respondent miserably failed to prove his absolute title over the suit property. The learned counsel for the appellant further submitted that as the respondent admitted the right of appellant's vendor in respect of a portion of the suit property, the Courts below ought to have accepted the plea of partition raised by the appellant. The learned counsel for the appellant further submitted that the Courts below failed to take into consideration the evidence let in by the appellant to prove 1975 partition pleaded by her.

6. It is the specific case of the appellant/plaintiff that the suit property originally belonged to one Abraham Naidu and there was a partition in the family of Abraham Naidu on 21.06.1975 and in the said partition, the suit property was allotted to Abraham Naidu and his wife with vested



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remainder to Abraham Naidu's son Irudhayaraj. The appellant claimed to have purchased the suit property from the said Irudharaj and his wife Leela Arokiamary under Ex.A3. Ex.A2 is the General Power Attorney executed by the wife of Irudhayaraj in favour of one Lilli, who sold the property to the appellant. Though the appellant claimed that there was a partition in the family of Abraham Naidu on 21.06.1975 and in the said partition, the suit property was allotted to Irudhayaraj, the appellant failed to produce any acceptable evidence to show that there was a partition and the suit property was allotted to the share of Irudhayaraj absolutely. The power deed executed by Irudhayaraj's wife in favour of one Lilli to sell the property to the appellant was marked as Ex.A2.

7. The recital in Ex.A2 reads as follows:

“என் கணவர் காலம் சென்ற இருதயராஜ் அவர்களுக்கும், அவரின் தந்தை ஆப்காம் நாயுடு, மேற்படி இருதயராஜ் அவர்களின் தாய் திருமதி.சௌரம்மாள். மேற்படி இருதயராஜ் அவர்களின் சகோதரர் ஜக்கிரியால் நாயுடு ஆகியவர்களுக்கும் இடையே கிடைக்கப்பெற்று நான் சர்வ சுதந்திர பாத்ரியதைதாய் சர்வ வில்லங்க சுத்தியாக ஆண்டு அனுபவித்து வரும் சொத்து விவரத்தில்.”

8. In Ex.A2 power deed executed by the wife of Irudhayaraj in



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favour of Leela, there is no mention about 1975 partition pleaded by the appellant. In the said document, the appellant's vendor clearly admitted that the property belonged to one Abraham Naidu, his wife Sowrammal, his son Irudhayaraj and the respondent herein. However, it was not clearly mentioned about how Irudhayaraj's wife Leela Arokiamary got absolute right over the suit property to convey the same in favour of the appellant. From the reading of recital in Ex.A2 it is clear that the appellant's vendor namely Leela wife of Irudhayaraj had no absolute right over the suit property, if at all she can claim only a fraction of share in the suit property.

9. In such circumstances, the appellant failed to prove his exclusive title over the suit property and consequently, her prayer for declaration of title and recovery of possession is not maintainable.

10. The trial Court as well as the First Appellate Court on proper appreciation of exhibits marked on behalf of the appellant rightly came to the conclusion that the appellant miserably failed to prove her exclusive title over the suit property. In such circumstances, no substantial question of law arising for consideration in this Second Appeal to enable to this Court to interfere with



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the findings rendered by the Courts. Therefore, the Second Appeal is dismissed. However, it is made clear that the dismissal of the Second Appeal will not prevent the appellant from seeking other remedies available to her under law including the relief of partition.

11. a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the Courts below.

b) In the facts and circumstances of the case, there shall be no order as to costs.

27.11.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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S.SOUNTHAR, J.

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To

- 1.The I Additional District Judge, Tiruvallur.
- 2.The Subordinate Judge, Thiruvallur.

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