

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.06.2015

Coram:

THE HONOURABLE MS. JUSTICE R.MALA

Second Appeal No.438 of 2015

and

M.P.No.1 of 2015

Sinnappan

..Appellant/plaintiff

/vs/

1.Madeleine

2.Clara @ Bakiyavady

..Respondents/Defendants

The Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 16.02.2015 passed in A.S.No.1 of 2014 on the file of Principal District Judge, Pondicherry confirming the judgment and decree dated 23.04.2013 passed in O.S.No.201 of 2007 on the file of Principal Subordinate Judge, Puducherry.

For Appellant

: Mr.T.S.Baskaran

JUDGMENT

The Second Appeal filed against the judgment and decree dated 16.02.2015 passed in A.S.No.1 of 2014 on the file of the Principal District Court, Pondicherry confirming the judgment and decree dated 23.04.2013 passed in O.S.No.201 of 2007 on the file of the Principal Subordinate Court, Puducherry.

2.The learned counsel appearing for the appellant would submit that the appellant as a plaintiff filed a suit in O.S.No.201 of 2007 for permanent injunction and the same was dismissed. Against which, the appellant filed an appeal in A.S.No.1 of 2014, which was also dismissed by the First Appellate Court. Against the concurrent findings of both the Courts below, the appellant has preferred this second appeal.

3.At the time of admission, argument of the learned counsel for the appellant is heard in length.

4.On perusing the record, it reveals that the mother of the appellant/plaintiff namely, Kullapottu @ Amaloremarie, got the property by way of assignment made by the Government and

subsequently, she executed a Will on 24.01.1994 in favour of the appellant and on that basis, appellant is in possession and enjoyment of the suit property. Since the respondents attempted to interfere with the plaintiff's peaceful possession and enjoyment of the suit schedule property, the plaintiff/appellant herein has filed the suit for permanent injunction. After hearing both sides, the suit was dismissed, against which, the plaintiff has preferred an appeal, which was also dismissed by the first appellate Court, which is the last fact finding Court. Both the Courts below dismissed the suit by holding that the Will is not proved in accordance with law. Further, it was held that the defendants are none other than the legal heirs of the deceased Kullapottu @ Amaloremarie, who is the mother of the appellant. Since the Will has not been proved, the respondents and the other legal heirs of the deceased Kullapottu @ Amaloremarie are alleged to have been the co-sharers, no injunction can be granted. So, both the Courts below dismissed the suit. In such circumstances, I am of the view, no substantial question of law will arise in this appeal. Therefore, the second appeal deserves to be dismissed and it is hereby dismissed.

5. In the result, the second appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Puducherry.

2. The Principal District Judge,
Pondicherry.

3. The Record Keeper,
V.R. Section,
High Court, Madras.

1 cc to M/s.T.S.Baskaran , Advocate Sr.No.30513

S.A.No.438 of 2015

cnr (co)
pmk.13.7.2015