

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.5 of 2015 and
M.P.No.1 of 2015

Selvaraj .. Appellant/Defendants
-Vs-
M.Asaithambi .. Respondent/Plaintiff

Prayer:- This second appeal has been filed under Section 100 of Code of Civil Procedure against the judgment and decree of the learned Subordinate Judge, Nagapattinam dated 09.02.2011 made in A.S.No.56 of 2010 confirming the judgement and decree of learned District Munsif, Nagapattinam dated 21.07.2010 made in O.S.No.304 of 2007.

For Appellant : Mr.S.Sounthar

J U D G M E N T

The defendant in O.S.No.304 of 2007 on the file of the learned District Munsif, Nagapattinam is the appellant herein. The respondent is the plaintiff in the suit. The plaintiff filed the said suit for permanent injunction to restrain the defendant from in any manner interfering with his peaceful possession and enjoyment of the suit property. The trial Court decreed the suit as prayed for by decree and judgement dated 21.07.2010. As against the same, the appellant herein filed an appeal before the learned Subordinate Judge, Nagapattinam in A.S.No.56 of 2010. By decree and judgement dated 09.02.2011, the First Appellate Court dismissed the appeal thereby confirming the decree and judgement of the trial Court. Challenging the same, the appellant is before this Court with this second appeal.

2.This second appeal has come up today for admission. I have heard the learned counsel for the appellant and I have also perused the records carefully.

3.The case of the plaintiff is that, the suit property was originally owned by his father. It is his further case that on 10.06.1984 his father had executed a Will in favour of the plaintiff thereby bequeathing the suit property in his wife name Mrs.Soundaravalli for her life and thereafter, to the plaintiff. His father died on 26.01.1993 and his mother died on 13.09.2000. Thus, according to the plaintiff, he has become absolute owner of the suit property and he is in possession and enjoyment of the suit property.

4.The defendant is the sister's husband of the plaintiff. From the life time of the parents of the plaintiff, according to the defendant, he along with his wife have been living in the suit property. Thus, the suit is liable to be dismissed as the plaintiff is not in exclusive possession and enjoyment of the suit property.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, two witnesses were examined and seven documents were exhibited. On the side of the defendant, three witnesses were examined and three documents were exhibited.

6.Having considered the above, the trial Court decreed the suit which was confirmed by the First Appellate Court. That is how the appellant is before this Court with this second appeal.

7.In this second appeal, it is contended that the Will dated 10.06.1984 has not been proved by examining any one of the attestors. It is also contended that the Village Administrative Officer and the local panchayat Councilor who have been examined as witnesses on the side of the defendant have categorically stated that the defendant is in possession and enjoyment of the suit property.

8.The learned counsel for the appellant would submit that the Courts below have failed to consider these evidences in their proper perspective. It is also contended that since, the wife of the defendant has got undivided share in the suit property, without impleading her as party, the plaintiff had chosen to file the present suit only against the defendant/appellant herein. Thus, for non impleading of proper party also, the suit is liable to be dismissed, it is contended.

9.I have considered the above submissions.

10.At the outset, I should say that in this second appeal, I do not find any substantial question of law involved so as to admit the same. All the grounds raised in this second appeal are only questions of fact. Admittedly, the suit is a simple suit for permanent injunction to protect the possession of the plaintiff. The two Courts below, based on oral as well as documentary evidences, have held that the plaintiff is in possession and enjoyment of the suit property. Though, it is contended that the Village Administrative Officer and the local Panchayat Councilor have deposed that the defendant is also in possession of the suit property, the Courts below, for sound reasons, have rejected their evidences.

11.Further, so far as the alleged registered Will is concerned, assuming that the Will has not been proved as required under the Indian Evidence Act, since, the suit is only for bare injunction, the

failure of the plaintiff to prove the alleged Will will not have much significance in this matter, because, even in the absence of Will, the plaintiff has got right to occupy the suit property. At any rate, this is only a simple suit for permanent injunction and so, this Court need not go into the validity of the Will in detail. Thus, in my considered opinion, the Courts below on appreciating oral as well as documentary evidences have concurrently held that the plaintiff is in possession and enjoyment of the suit property, in which, I do not find any infirmity.

12. So far as non impleading of the wife of the defendant is concerned, it is always open for the wife of the defendant to work out her remedies in the manner known to law including by filing a suit for partition. In my considered opinion, non impleading the wife of the defendant is not a ground for this Court to interfere with the decrees and judgements of the Courts below. It is also because of the reason that there is no plea taken in the written statement that the suit is bad for non joinder of necessary party. At any rate, I hold that there is no substantial question of law involved in this second appeal so as to admit the same. In view of all the above, the second appeal deserves to be dismissed.

13. In the result, the second appeal fails and accordingly, the same is dismissed and the decrees and judgements of the courts below are confirmed. However, it is made clear that the wife of the defendant/appellant is at liberty to work out her remedies in the manner known to law and for that, the judgement passed in this second appeal will not be in any manner a bar. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jbm
To

1. The Subordinate Judge,
Nagapattinam.

2. The District Munsif,
Nagapattinam.

1 cc to Mr.S.Sounther ,Advocate, SR.No.10728

S.A.No.5 of 2015

mp(co)pmk.16.4.2015