

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.958 of 2015
and
M.P.No.1 of 2015

1.Subramaniam
2.Rukmani
3.Kumar
4.Meganathan

... Appellants/Defendants

Vs.

Ayyamperumal

... Respondent/Plaintiff

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 11.04.2015 made in A.S.No.25 of 2014 on the file of the learned Subordinate Judge, Bhavani confirming the judgment and decree dated 11.10.2013 made in O.S.No.137 of 2011 on the file of the learned Principal District Munsif, Bhavani.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.T.Murugamanikam

JUDGEMENT

The defendants in O.S.No.137 of 2011 on the file of the learned Principal District Munsif, Bhavani are the appellants herein. The respondent is the plaintiff in the suit. The suit was filed for permanent injunction to restrain the defendants from in any manner interfering with his peaceful possession and enjoyment of the suit property. The trial Court decreed the suit. As against the same, the appellants herein filed an appeal in A.S.No.25 of 2014 on the file of the learned Subordinate Judge, Bhavani. The same was dismissed by decree and judgment dated 11.04.2015 by the First Appellate Court. Challenging the same, the appellants/defendants are 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 appellants and the learned

counsel for the respondent who has entered appearance by way of caveat.

3.The case of the plaintiff is as follows:-

The suit property was originally owned by one Mr.Sriranga Gounder and Mrs.Kulandaiammal. They died intestate leaving behind their daughter Mrs.Rangammal. Mrs.Rangammal inherited the suit property and she in turn, executed the settlement deed in respect of the said property on 19.05.2010 in favour of the plaintiff herein. The plaintiff is the grand son of Mrs.Rangammal. Thus, according to the plaintiff, he is in possession and enjoyment of the suit property.

4.The defendants would contend that the suit property does not belong to the plaintiff at all. They claim that they are the adjacent land owners and they are in possession of the suit property. The trial Court framed appropriate issues. On completing trial, the trial Court decreed the suit. The appeal filed by the defendants was also dismissed by the First Appellate Court. That is how the appellants/defendants are before this Court with this second appeal.

5.The learned counsel for the appellants would submit that already on 21.02.1994, Mrs.Rangammal had executed a Will in favour of the plaintiff. But, the said Will was not at all produced in evidence despite notice. Therefore, according to the learned counsel, the title claimed by the plaintiff and the possession claimed by him have not been proved.

6.The learned counsel for the respondent would vehemently oppose this appeal. According to him, the execution of the Will on 21.02.1994 is immaterial and the non production of the same is of no consequence. He would further submit that the defendants have got no semblance of right over the suit property and they are not in possession.

7.I have considered the above submissions.

8.At the outset, I should say that there is no question of law much less a substantial question of law involved even to admit this second appeal. The only ground raised by the learned counsel for the appellants is on facts. As rightly pointed out by the learned counsel for the respondent, the Will dated 21.02.1994 is immaterial to decide the issue in the present suit and the non production of the alleged Will is also of no consequence, because, as on the execution of the settlement deed dated 19.05.2010, Mrs.Rangammal continued to have title and she died subsequent to 19.05.2010. If at all, Mrs.Rangammal continue to have title over the suit property, as on the date of her

demise, then, the alleged Will would have had force. Since, Mrs.Rangammal had parted away with the property on 19.05.2010 itself, the earlier Will dated 21.02.1994, shall not take effect on the date of her demise. This is the reason why I hold that the non production of the alleged Will is of no consequence. Apart from that, to interfere with the well merited judgment of the trial Court and confirmed by the First Appellate Court, I do not find any ground at all. As I have already pointed out, absolutely there is no question of law muchless a substantial question of law warranting admission of this second appeal. Thus, there is no merit in this appeal.

9.In the result, the second appeal fails and accordingly, the same is dismissed. The decree and judgment of the First Appellate Court confirming teh decree and judgment of the trial Court is confirmed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jbm

To

- 1.The Subordinate Judge,
Bhavani.
- 2.The Principal District Munsif,
Bhavani.

+lcc to Mr.N.Manokaran, Advocate, S.R.No.60480
+lcc to Mr.T.Murugamanikam, Advocate, S.R.No.60319

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SR(CO)
CA(14/12/2015)

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