

HON'BLE SRI JUSTICE S.V.BHATT

S.A.No.441 of 2015

JUDGMENT:

The plaintiff in O.S.No.130 of 2010, on the file of the I-Additional Senior Civil Judge, Nellore, is the appellant.

The appeal is directed against the confirming judgment dated 20.03.2015 in A.S.No.76 of 2014, on the file of the I-Additional District Judge, Nellore.

The averments, in brief, are that the appellant filed the suit for permanent injunction. The suit schedule property, consisting of ground and first floors, belongs to late Palepu Arlappa, who is the junior maternal uncle of the appellant. During the life time of late Palepu Arlappa, the plaintiff looked after his welfare till his death, including payment of electricity charges and municipal taxes. It is stated that the said Arlappa executed his last Will on 15.12.2007 while he was in a sound and disposing state of mind. The defendant, who is the sister of plaintiff, started quarrelling for a share in the property and disputed the execution of the Will dated 15.12.2007. The defendant is trying to dispossess the plaintiff from the suit schedule property and claims that late Arlappa executed a Will on 12.02.2007 in her favour. It is further stated by the plaintiff that the Will dated 12.02.2007 is not the last Will of late Arlappa and in fact it was cancelled paving way for execution of Will dated 15.12.2007. Hence, the plaintiff filed the suit for permanent injunction to resist the threatened acts of defendant.

The respondent filed written statement resisting the suit claim primarily by contending that the Will dated 15.12.2007, under which the plaintiff is claiming property, is fabricated by the plaintiff. The suit for mere perpetual injunction is not maintainable. Late Arlappa executed his last Will dated 12.02.2007 in favour of the defendant in a sound and disposing state of mind. The defendant also spent substantial amounts on late Arlappa during his life time.

It is on this controversy the parties have joined trial.

The trial Court settled the following issues for consideration:

- i) Whether the plaintiff is entitled for permanent injunction against the defendant as prayed for? and
- iii) To what relief?

P.Ws.1 and 2 were examined on behalf of the appellant and Exs.A-1 to A-6 were marked. On behalf of respondent, D.Ws.1 and 2 were examined and Exs.1 to 11 were marked.

By reference to the oral and documentary evidence adduced by the parties, the trial Court, on issues 1 and 2, held that the plaintiff failed to prove that he is in possession of the suit schedule property and, accordingly, dismissed the suit. Aggrieved thereby, the appellant preferred A.S.No.76 of 2014. The appellate Court, having considered each and every one of the circumstances contended by the appellant, dismissed the appeal holding that the appellant failed to prove that late Arlappa executed his last Will in favour of plaintiff and that the Will executed in favour of defendant is not the last Will of Arlappa.

Both the Courts below have rightly considered the material available on record in right perspective and came to the conclusion that the appellant failed to prove that he is in possession and enjoyment of the suit schedule property. No question of law, much less substantial question of law, arises for consideration. I see no reason to interfere with the findings of fact recorded by the Courts below. The appeal does not merit consideration under Section 100 of Civil Procedure Code.

The second appeal is, accordingly, dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any pending, shall also stand disposed of.

S.V.BHATT,
J

14th August, 2015
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