



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2017

CORAM

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.345 of 2017

and

C.M.P (MD) No.7399 of 2017

Selvaraj

... Appellant/Appellant/1st Defendant

Vs.

1.Gopalakrishnan

... 1st Respondent/1st Respondent/Plaintiff

2.Baby

... 2nd Respondent/2nd Respondent/2nd Defendant

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 11.12.2015 made in A.S.No.34 of 2013 on the file of the Sub Court, Kuzhithurai, Kanyakumari District, confirming the Judgment and Decree, dated 09.10.2012 made in O.S.No.349 of 2007 on the file of the Principal District Munsif, Kuzhithurai, Kanyakumari District.

For Appellant : Mr.H.Ilango
for Mr.N.Edwin Jeyakumar

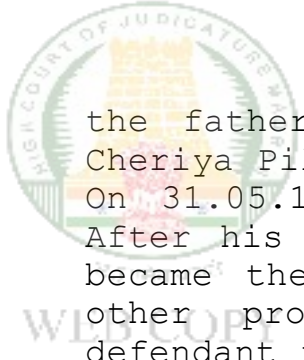
For R - 1 : M/s.J.Anandhavalli

JUDGMENT

The above Second Appeal arises against the Judgment and Decree, dated 11.12.2015 passed in A.S.No.34 of 2013, on the file of the Sub Court, Kuzhithurai, Kanyakumari District, confirming the Judgment and Decree, dated 09.10.2012 passed in O.S.No.349 of 2007, on the file of the Principal District Munsif Court, Kuzhithurai, Kanyakumari District.

2.The unsuccessful defendant, who had lost before the Courts below, has filed the above Second Appeal challenging the Judgment and Decree passed in a suit for recovery of possession of plaint 'B' schedule property.

3.According to the plaintiff, the property belonged to him exclusively. The second defendant is the sister of the plaintiff and the first defendant is her husband. There is a building North of 'A' schedule property bearing Door No.1/9-44, which is shown as 'B' schedule property. The suit property originally belonged to



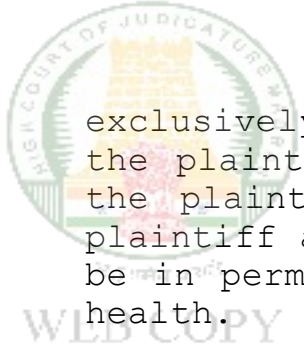
the father of the plaintiff and the second defendant, by name Cheriya Pillai Nadar, having obtained them out of his own earning. On 31.05.1967, he executed a Will in favour of the plaintiff. After his death, the Will had come into force and the plaintiff became the owner of the property. The Will has been upheld in other proceedings between the parties earlier. The second defendant was married to the first defendant. She had fallen sick and wanted to have a change of place and environment. Accordingly, the plaintiff had permitted the defendants to be in occupation of 'B' schedule property for a period of three months. When the second defendant recovered from her illness, she refused to vacate the place claiming ownership for the same. Though the plaintiff had cancelled the permissive occupation granted to the second defendant, there was no sign of the defendants for vacating premises. Hence, the suit.

4. Denying the facts and in support of the cause of action for the suit, the first defendant had filed a written statement stating that the second defendant, who is the sister of the plaintiff, is not of sound mind. The plaintiff has no right or possession over the suit property and the second defendant has been continuously in the same premises after her marriage. The Will executed in favour of the plaintiff also denied and disputed by the defendants. As the defendants have been living in the suit premises for more than the statutory period, they claimed ownership of the same.

5. On the side of the plaintiff, he himself has been examined as P.W.1 and Exs.A.1 to A.23 were marked and no oral and documentary evidence have been let in on the side of the defendants.

6. The Courts below have concurrently held that the defendants had not proved that the plaintiff is not the owner and there is no contra evidence to show that the Will executed in favour of the plaintiff is invalid.

7. Earlier, it is stated that originally the Will was filed along with the plaint with a translated copy of the same and the original Will was in Malayalam and the Tamil version of the same was marked as Ex.A.2. The original Will was lost in the Court and therefore, certified copy was reconstructed. So far as the proof of the Will is concerned, the plaintiff has marked Ex.A.10, which is the Judgment passed in O.S.No.87 of 1968, dated 08.01.1973, in which, the Will has been discussed and the validity of the same is upheld. The second defendant herein is the fourth defendant in the said suit and the Judgment is binding on the second defendant. Having accepted the Will, there is no necessity for the plaintiff to prove the same once again, when the second defendant was a party to the proceedings. It is also not the case of the defendants that the suit property belonged to the defendants



exclusively. Admittedly, the property belonged to the father of the plaintiff, who had bequeathed in favour of the plaintiff and the plaintiff had been in possession of the suit property. The plaintiff also has proved that the second defendant was allowed to be in permissive occupation of the suit property, considering her health.

8. In the absence of any evidence, the Courts below have concurrently held that the plaintiff is the owner of the suit property and he is entitled to recover 'B' schedule property from the defendants. As the factual aspects have been proved, there is no reason to interfere with the same.

9. The learned counsel for the appellant/first defendant stated that the children of the second defendant are studying in School and they may be permitted to reside till the end of the Academic year.

10. Accordingly, the defendants are permitted to stay in the suit property till 31st May, 2018. Excepting the above modification, in all other aspects, the Second Appeal is dismissed confirming the Judgment and Decree of the Courts below. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar.

To

1. The Subordinate Judge, Kuzhithurai, Kanyakumari District.

2. The Principal District Munsif, Kuzhithurai,
Kanyakumari District.

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

+1CC to Mr.N.Edwin Jeyakumar, Advocate, SR.No. 72069

+1CC to Mr.J.Anandhavalli, Advocate, SR.No. 72057

S.A (MD) No.345 of 2017

10.08.2017

ps

AM/SV MMS/SAR 1/14.09.2017/3P/6C