

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.376 of 2018
and C.M.P.No.10549 of 2018

Indirani .. Appellant/Plaintiff

Vs.

Vajjiravel .. Respondent/Defendant

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 29.02.2016 made in A.S.No.10 of 2015 on the file of the Sub Court, Arakkonam, confirming the judgment and decree dated 17.12.2014 made in O.S.No.118 of 2007 on the file of the District Munsif Court, Arakkonam.

For Appellant : Mr.S.Gowri Shankar

J U D G M E N T

Second Appeal is filed against the judgment and decree dated 29.02.2016 made in A.S.No.10 of 2015 on the file of the Sub Court, Arakkonam, confirming the judgment and decree dated 17.12.2014 made in O.S.No.118 of 2007 on the file of the District Munsif Court, Arakkonam.

2.The appellant who is the plaintiff in O.S.No.118 of 2007 on the file of the District Munsif Court, Arakkonam, challenging the concurrent findings of the Courts below has preferred the present Second Appeal. The appellant filed the said suit against the respondent/defendant for permanent injunction restraining him from interfering with her peaceful possession and enjoyment of the suit schedule property in occupation of tenant. According to the appellant, the suit property and other properties originally belonged to her father Ramasamy Mudaliar. He by the registered Will dated 27.01.1980, bequeathed the properties mentioned therein separately to the appellant/plaintiff, her mother, sister and brothers of her father. The suit property was not mentioned in the said Will. The suit property was allotted to her in the family arrangements arrived between her family members. She is in possession and enjoyment of the suit property by letting out to her mother's sister, Ponnammal. The respondent is son of her father's brother. On 13.04.2007, the respondent with the help of rowdy elements, attempted to disturb the appellant's possession and enjoyment of the property in

occupation of her tenant and the same was resisted by the appellant and her relatives. Hence, she has come out with the present suit for the relief stated above.

3.The respondent filed written statement and denied all the averments and contended that as per the Will dated 27.01.1980, whatever movable or immovable properties and cash left out in the said Will belonged to the appellant's father will become the absolute properties of respondent's father. The respondent has become absolute owner of the suit properties and he is in possession of the same. He denied the title of the appellant and also denied that she is in possession and enjoyment of the suit property through tenant Ponnammal. There is no family arrangements as alleged by the appellant. The suit property and other landed properties are not allotted to the appellant in the family arrangements. Earlier the respondent has filed suit against the appellant in respect of the landed properties and obtained decree. The appellant suppressed this fact and filed the present suit and prayed for dismissal of the same.

4.Based on the above pleadings, the learned Trial Judge framed necessary issues. Before the learned Trial Judge, the daughter of the appellant was examined as P.W.1 and Ponnammal was examined as P.W.2 and 8 documents were marked as Exs.A1 to A8. The respondent examined himself as D.W.1 and marked 8 documents as Exs.B1 to B8. The learned Trial Judge considering the pleadings, oral and documentary evidence, dismissed the suit, holding that the appellant has not proved her case.

5.Against the dismissal of the suit, the appellant filed A.S.No.10 of 2015. The learned I Appellate Judge framed necessary points for consideration. The learned I Appellate Judge independently considering the materials on record, the judgment of the Trial Court and arguments of the counsel for parties, dismissed the appeal, confirming the judgment and decree of the Trial Court, holding that appellant failed to prove her possession through the tenant and she has not proved the interference of the respondent with her possession.

6.Against the said judgment and decree dated 29.02.2016 made in A.S.No.10 of 2015, the appellant has preferred the present Second Appeal.

7.The learned counsel for the appellant contended that the appellant has proved her title and possession as per Exs.A4 and A8, which were issued by the competent authority. P.W.2, who is a tenant deposed that she is in possession of the suit property as a tenant of the appellant. The appellant through evidence of P.W.1, who is her daughter, deposed that the suit property was not covered under the Will and appellant was allotted the suit property only by family arrangements. P.W.1 has deposed that suit property was allotted to the appellant by family arrangements in the year 1974. The

appellant has produced water tax receipts, house tax receipts, family card of P.W.2 and voter I.D to prove the possession of the appellant through tenant. The appellant is seeking a decree of permanent injunction, restraining the respondent from interfering with her peaceful possession and enjoyment of the suit property in occupation of her tenant.

8.Heard the learned counsel for the appellant and perused the materials available on record.

9.It is an admitted fact that the suit property and other properties originally belonged to appellant's father Ramasamy Mudaliar. It is also admitted that by the Will dated 27.01.1980, marked as Ex.A7, the father of the appellant bequeathed various items of the properties to the appellant, her sister, her mother and also to the brother of the appellant's father. It is also admitted that the suit property was not included in the said Will.

10.According to the appellant, the suit property was allotted to her in the family arrangements during the year 1974, whereas it is the case of the respondent that all the properties which are not mentioned in the Will dated 27.01.1980 were given to his father. The appellant has failed to prove the family arrangements. The respondent, by Ex.B3 dated 30.11.1998, sold the suit property to one Arumugam. The learned I Appellate Judge taking note of Ex.B3, has rightly held that respondent is not owner of the suit property on the date of filing of the suit. From the materials available on record, it is seen that both the appellant as well as respondent failed to prove their possession to the suit property.

11.Ponnammal, who is the maternal aunt of the appellant, as P.W.2 deposed that she is in possession of the suit property as a tenant of the appellant from the year 1974. She has produced voter I.D as well as ration card which are marked as Exs.A4 and A8. In addition to that, the appellant has produced water tax, property tax and E.B card. The Courts below rejected these documents on the ground that these documents do not relate to the period when the suit was filed. At the same time, it is seen from record that P.W.2 who is the tenant of the appellant failed to furnish any particulars in her evidence as to when the respondent interfered with the possession and enjoyment of the suit property. The learned I Appellate Judge taking into consideration these facts, dismissed the appeal, in addition to the other grounds. The finding of the learned I Appellate Judge with regard to failure on the part of the appellant to prove the interference by the respondent and therefore, she is not entitled to the relief of injunction, is valid. There is no error of law in the judgments passed by both the Courts below warranting interference by this Court. No question of law much less than the substantial question of law has arisen in this Second

Appeal.

12.In the result, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gsa

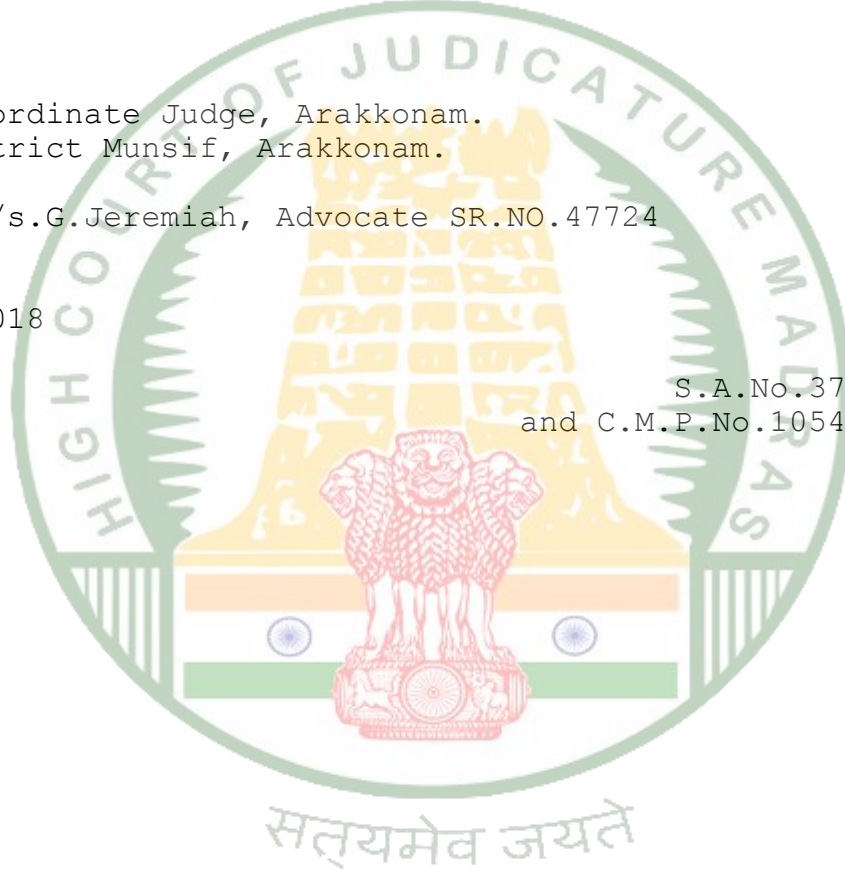
To

- 1.The Subordinate Judge, Arakkonam.
- 2.The District Munsif, Arakkonam.

+1cc to M/s.G.Jeremiah, Advocate SR.NO.47724

CP(CO)
sm:20.8.2018

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