

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1226 of 1998

Rojammal

... Appellant/Plaintiff

Vs.

1. Mohanammal (deceased)

2. R.C.Ramamoorthy

3. R.C.Gangadaran

4. R.C.Karunakaran

5. R.C.Siva

(RR2 to 5 brought on record as Lrs of the deceased
sole respondent vide order dated 12.08.2014 in
CMP.Nos.698 to 700/2011 in S.A.1226/1998)

... Respondents

Prayer:

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed by the learned Subordinate Judge, Tiruvallur in A.S.No.31 of 1996 dated 23.07.1997 reversing the judgment and decree passed by the learned District Munsiff, Tiruvallur in O.S.No.717 of 1984 dated 27.1.1995.

For Appellant : Mr.R.Rajasekar

For Respondents : R1-Died
Mr.K.Surendranath
For RR2, 3 & 5

J U D G M E N T

The summons as well as the plaint averments are as follows:-

The plaintiff is the younger sister of the defendant. They were given the properties by the deceased father P.Sanjeevi Naidu under his last Will dated 17.05.1961. The said S.No.326/6 is to the extent of 6.53 acres given to the plaintiff and the defendant. After the death of Sanjeevi Naidu, the parties divided the land by metes and bounds, the western north side was taken by the defendant and the eastern south side was allotted in favour of the plaintiff. From the partition, the plaintiff has taken possession of the suit property. After the partition, the land was sub-divided as S.No.326/6A and 326/6B. The land allotted to the plaintiff bearing S.No.326/6B. Accordingly, the Revenue Authorities granted patta in favour of the plaintiff in Patta No.483. After receiving the same, the plaintiff was paying gists and Revenue Taxes for the past 20 years.

2. Due to misunderstandings and enmity, the defendant and her husband continuously giving trouble to the plaintiff and the defendant's family members tried to encroach the property from the western side and annexed some portion of the land with her land. Aggrieved by the same, the appellant/plaintiff filed a suit for permanent injunction restraining the defendant's men and agent who is trespassing the suit property.

3. The summons and the written averments are as follows:-

The defendant has admitted the relationship between the plaintiff and the defendant. The defendant has also admitted that there was a Will executed by the plaintiff's and defendant's father, Sanjeevi Naidu on 17.05.1961. Under the Will, the total extent of 6.53 acres of land was divided into two parts and the western side land of 3.20 acres were allotted to the defendant and Eastern side land of 3.21 acres were allotted in favour of the plaintiff. Besides, two Wells one is big and another one is small. The said Well's occupied portion is 12 cents. In the 12 cents, the Well and the pump set also installed and the father of the plaintiff and defendant had clearly mentioned in the Will that the said 12 cents meant for common purpose and both the plaintiff and the defendant shall commonly enjoy the same. However, in order to grab the 12 cents of the property, plaintiff has filed the vexatious suit against the defendant.

4. After the trial, the lower Court decreed the suit and gave finding in favour of the plaintiff and that 12 cents was enjoyed by the plaintiff. Aggrieved by the same, defendant has filed an Appeal before the lower Appellate Court in A.S.No.31 of 1996. The lower Appellate Court, after elaborate trial, has dismissed the suit and allowed the Appeal. As against the reversion finding, the present second appeal has been filed.

5. The learned counsel appearing for the plaintiff and defendant fairly admitted that there was a Will dated 17.05.1961, in that some house property and the said scheduled property were allotted in favour of daughters viz., Mohanammal and Rojammal as per the Will. The said Mohanammal/defendant is entitled to 3.26 cents and Rojammal is entitled to 3.21 cents and the remaining 12 cents was left for common purpose. In the 12 cents, the plaintiff and defendant are commonly enjoyed without any disturbance. The learned counsel fairly conceded that though the Will clearly mentioned the extent of properties to the plaintiff and defendant and also makes it clear that the 12 cents is allotted for only common purpose, since 12 cents consists of borewell and pump sets. However, without

considering the Will, which was marked as Ex.A1, the lower Court allotted 6 cents in favour of the plaintiff is contrary to the Will, which is not permissible one. However, the lower Appellate Court, after perusing Ex.A1 allowed the appeal and held that 6 cents (totally 12 cents) are allotted for common purpose and accordingly, plaintiff and the defendant are entitled to use for common purpose.

6. In view of the above, I do not find any error in the order passed by the Lower Appellate Court.

7. In the result, this Second Appeal is dismissed. The parties are directed to bear their own costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

kmi

To

1.The Subordinate Judge, Tiruvallur.

2.The District Munsiff Court, Tiruvallur.

Copy to
The Section Officer,
V.R. Section, High Court, Madras.(2 copies)

+1cc to Mr.K.SUDRENDRANTH, Advocate, S.R.No.17687
+1cc to Mr.M.RAJASEKARAN, Advocate, S.R.No.17834

S.A.No.1226 of 1998

NMI (CO)
TR(23/07/2018)

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