



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

S.A.(MD) No.90 of 2018
and
C.M.P(MD)No.1937 of 2018

Ponruby Mercy

... Appellant/Appellant/Defendant

vs.

Ponnuthai

...Respondent/Respondent/Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree passed in A.S.No.39 of 2011 on the file of Sub Court, Valliyoor, dated 18.12.2013 confirming the Judgment and Decree passed in O.S.No.12 of 2007 on the file of the Additional District Munsif Court, Nanguneri, dated 31.01.2011.

For Appellant : Mr.P.M.Vishnuvarthanan

For Respondent : Mr.H.Arumugam

J U D G M E N T

The defendant in the suit in O.S.No.12 of 2007, on the file of the Additional District Munsif Court, Nanguneri, is the appellant in the Second Appeal. The respondent as plaintiff filed a suit in O.S.No.12 of 2007 on the file of the Additional District Munsif Court, Nanguneri for declaration of title in respect of suit house and consequently for recovery of possession.

2.The case of the plaintiff is that she is the wife of one Wilbert Johnson. The appellant is the daughter-in-law of the plaintiff. The case of the plaintiff is that originally the suit property belonged to one Gnanadoss Nadar and that a registered 'Will' was executed by him in 1963. The property was bequeathed in favour of the plaintiff and the wife of Gnanadoss. As per the said 'Will', the properties were enjoyed by the plaintiff as well as by the wife of Gnanadoss Nadar. After the death of the said Ranjitham, who is the wife of Gnanadoss Nadar, the plaintiff become the absolute owner. This position is not in dispute.



3. It is admitted by the plaintiff that she executed a 'Will' on 26.04.1993 in favour of his son by name Mahesh Deva Gnanadurai. It is her case that later the defendant and her husband obtained a settlement deed, dated 12.02.1996 in respect of all other properties of the plaintiff by force, except the suit property. It is also the specific case of plaintiff that the Will dated 26.04.1993 was later cancelled by a registered cancellation deed, dated 06.06.2005.

4. Even in the settlement deed it is stated by the plaintiff that the suit property is mentioned as the property retained by her. It is the further case of plaintiff that she permitted her son and the defendant to reside over the suit property and that taking advantage of the same, the defendant is making attempt to alienate the suit property. It is therefore, the present suit is filed for declaration and consequently for recovery of possession in respect of the suit property, which is a portion of the property, which was bequeathed under the 'Will' originally executed by the plaintiff on 26.04.1993 and excluded in the subsequent settlement deed executed by her in favour of her son. The facts regarding the execution of the 'Will' and the settlement deed by the plaintiff is not in dispute. However, the defendant contended that the properties were handed over to the defendant even at the time of execution of the 'Will', dated 26.04.1993 and that the defendant is in enjoyment of the suit property from 1993 as full owner of the property. It is contended that the document, dated 26.04.1993 was actually a settlement deed and that it has not been cancelled in the manner known to law and that therefore, the suit is not maintainable.

5. The trial Court as well as the lower appellate Court having regard to the admitted facts, decreed the suit holding that the documents namely the registered Will, dated 26.04.1993 shows that it is only a Will and that it will come into effect only after the life time of the plaintiff. It is further held that the plaintiff has every right to cancel the Will and that the cancellation of Will is valid.

6. It is further held by the Courts below that the settlement deed Ex.B1, which is the original of Ex.A4, would show that the suit property was retained by the plaintiff and that the settlement deed was only in respect of 1 acre 50 cents excluding the suit property. It is further stated that the plaintiff permitted her son to reside in the suit property and that the possession of the plaintiff's husband is only permissive and that the defendant is not entitled to claim title by adverse possession.

7. The Courts below also found that the Will under Ex.A2 would come into force only after the life time of the plaintiff and that the defendant will not get any right under the will as the same was cancelled during the life time of plaintiff. The trial court accepted the case of plaintiff and decreed the suit holding that



plaintiff is the lawful owner of the suit property. Aggrieved by the judgment and decree of the trial Court, the defendant preferred an appeal in A.S.No.39 of 2011 on the file of the Sub Court, Valliyoor and the same was also dismissed by judgment and decree, dated 18.12.2013. This appeal is once again by the defendant.

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8.The learned counsel for the appellant is unable to convince this Court that any question of law is involved in this Second Appeal. Having regard to the concurrent findings of the Courts below on all issues against the appellant, this Court is of the view that the questions of law raised in this appeal have no substance. The findings of the Courts below are supported by reasons. Based on proper appreciation of evidence, the Courts below have rendered specific findings as to the title and the entitlement of the plaintiff. The second appeal is liable to be dismissed and hence dismissed.

9.However, the learned counsel for the appellant wanted some time for the defendant to vacate and hand over the suit property to the plaintiff.

10.The learned counsel for the appellant has produced before this Court an affidavit of undertaking by the appellant stating that the appellant may be permitted to vacate and hand over peaceful possession of the property, which is the subject matter in O.S.No.12 of 2007, on the file of the Additional District Munsif, Nanguneri, within a period of 18 months. However, the learned counsel for the respondents filed an affidavit expressing some difficulties and pointed out that the intension of the appellant is to create some problems in future.

11.The respondent however is prepared to give six months time to vacate the property. The affidavit of undertaking is given for giving time upto 1 ½ years. However, the respondent could agree only for one year. Hence, by consent, this Court grant time to the appellant for one year from 01.04.2018. The appellant shall hand over the possession of the property, as it is, to the respondent on or before 31.03.2019. The appellant or any one claim under her shall not deal with the property or enjoy the property detriment to the interest of respondent, till she hand over the property to the plaintiff/respondent.

12.In case, the appellant/defendant refuse to hand over possession to the respondent as agreed by this undertaking before this Court, the respondent or any one claiming under her in future may initiate contempt against the appellant based on the undertaking given before this Court apart from executing the decree through court.

13.In the result, the Second Appeal is dismissed and the Judgment and Decree passed by the Sub Court, Valliyoor in A.S.No.39



of 2011 confirming the judgment and decree of Additional District Munsif, Nanguneri in O.S.No.12 of 2007 is affirmed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

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Sub Assistant Registrar

To

1.The Subordinate Judge,
Valliyoor.

2.The Additional District Munsif,
Nanguneri.

Copy to:

The Section Officer
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1CC to Mr.H.Arumugam, Advocate, SR.No. 58260

S.A.(MD)No.90 of 2018
26.03.2018

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AM/SV MMS/SAR 4/11.05.2018/4P/6C