

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.01.2019

Coram

THE HONOURABLE MS. JUSTICE P.T.ASHA

S.A.No.83 of 2019

1. C.Chinthamani
2.C.kothandaraman

... Appellants/ Appellants/ Plaintiffs

Versus

1. R.Nagalakshmi
2. K.Vijayalakshmi
3. R.Sarathy
4.R.Kamalakkannan

... Respondents/ Respondents/ Defendants

Prayer :

Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree passed in A.S. No.71 of 2018 dated 30.08.2018 by the Learned XVIII Additional City Civil Judge at Chennai confirming the Judgment and Decree passed in O.S. No.2445 of 2012 dated 11.08.2017 by the learned XV Assistant City Civil Judge at Chennai.

For Appellants : Mr.S.Parthasarathy

For Respondents: M/s.Waraon and Sai Rams

J U D G M E N T

The plaintiffs are the appellants before this court. They had filed a suit O.S.No.2445 of 2012 on the file of the XV Assistant City Civil Court, Chennai, for an injunction restraining the defendants from alienating the suit A & B Schedule properties and an injunction restraining the defendants their men, Agents from interfering with the plaintiffs peaceful possession and enjoyment of the suit A & B Schedule properties. The suit 'A' Schedule property is land and building measuring is an

extent of 4830 sq.ft., in Mambalam and 'B' Schedule property is a land measuring 2430 sq.ft., or thereabouts in Anna Nagar. The case of the plaintiffs are that they and the defendants (who are their sisters are the children of M.Chinnaraju). M.Chinnaraju had two wives the defendants were born to the 1st wife Kanagavalli @ Saroja, and after her death on 20.10.1963 the plaintiffs father had re-married Sarojini @ T.Saroja, the mother and the plaintiffs and two other daughters Mohanalakshmi and Mahalakshmi were born to her. The 1st and 2nd defendants are the daughters of Chinnaraju, the 3rd defendant is the husband of 1st defendant and 4th defendant is the son of 2nd defendant.

2. The suit A & B schedule properties are the self acquired properties of the said N.Chinnaraju and the 'A' Schedule was purchased in the name of the 1st wife Kanagavalli @ Saroja. Thereafter, he had obtained an absolute release in respect of the said property from the defendants and therefore he became the sole and absolute owner of the same. On 18.05.1992 the plaintiffs father had executed a Will bequeathing the 'A' & 'B' Schedule property in favour of the plaintiffs with a condition that they should take care of their mother Sarojini @ Saroja and the elder and younger sisters. The plaintiffs father died on 09.07.1992 and it was only recently that the plaintiffs had come to know about the Will. It is their contention that they have taken proceedings to obtain probate of the Will in O.P.S.R.No.4926 of 2012 on the file of this Court.

3. It is the case of the plaintiff that in the 1st week of March 2012 the defendants with the help of their husband and son had trespassed into the 'A' Schedule property and were attempting to sell the same to third parties using forged documents. They have also threatened to trespass into the 'B' Schedule properties as well. The plaintiffs would contend that they are the absolute owners of the suit property in view of the Will. However, the defendants are having a political backing and therefore the plaintiffs are not getting the assistance of the local Police. Therefore left with no other alternative they have filed the above suit. The plaintiffs had not made their mother and their two sisters as parties to the above suit.

4. Only the 1st defendant had filed a written statement, wherein the defendants would deny the allegations contained in the plaint and they would contend that as far as the 'A' Schedule property was concerned the same belonged to their mother as she had purchased it from out of her stridhana funds. On 20.10.1963 when she died she had left behind her surviving her husband and the

defendants. The defendants would contend that they have not executed any release deed in favour of their father and on the fathers demise his 1/3rd share devolved equally upon the plaintiffs, the defendants and the other two sisters whereby each became entitled to a 1/7th share. The 'B' schedule property was also the property of all the plaintiffs, defendants and the other two sisters each having a 1/7th share. The defendants had denied both the release deed said to have been executed in the year 1980 as well as the Will which is said to have been executed by their father in the year 1992. The defendants 1 & 2 had further contended that after their fathers demise each of them had settled their share in favour of the 3rd respondent and the 4th respondent, who are the husband of the 1st respondent and son of the 2nd respondent respectively. After a detailed enquiry the learned XV Assistant City Civil Judge, Chennai, dismissed the suit. Challenging the said judgment and decree the plaintiffs had filed A.S.No.71 of 2018 on the file of the XVIII Additional Judge, City Civil Court, Chennai. The learned Judge also confirmed the judgment and decree of the trial court. Challenging the concurrent judgment and decree the plaintiffs are before this court.

5. Heard, Mr.S.Parthasarathy, for the appellants.

6. From the submissions of the learned Counsel and a perusal of the records it is evident that the 'A' Schedule property is already in the possession of the defendants and this possession is admitted by the plaintiffs and they are in possession of only the 'B' Schedule property. The plaintiffs title to the property is yet to be established since the probate petition which is said to have been initiated in the year 2012 has not even been numbered and in these circumstances when the plaintiffs exclusive right to the property itself is questioned, the plaintiff ought to have got the probate ordered and without getting such an order the suit filed by them is premature.

7. Admittedly, since the plaintiffs and the defendants are in possession of the 'A' Schedule property the plaintiffs are not entitled to a decree for injunction. With reference to the 'B' Schedule property the same is a vacant site and until and unless the plaintiffs are able to establish their right under the Will, all the children of Chinnaraju, being co-owners are entitled to a 1/7th share each in the 'B' Schedule property. There can be no injunction against the Co-owner. Consequently, the judgment and decree of the courts below are in order and does not

suffer from any infirmity. Consequently, the second appeal stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

msvm

To:

1. The XVIII Additional City Civil Judge,
Chennai.

2. The XV Assistant City Civil Judge,
Chennai.

+1cc to M/s.Waraon and Sai Rams , Advocate SR.No. 6272

+1cc to Mr.S.Parthasarathy , Advocate SR.No. 6558

S.A.No.83 of 2019

A.SK(06/06/2019)