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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2019

CORAM

THE HONOURABLE Ms.JUSTICE P.T. ASHA

S.A.No.13 of 2013

&

M.P.No.1 of 2013

1.Jayaraman
2.Kumaran
3.Velmurugan

..Appellants/Defendants 1, 4 & 5

Vs.

1.Rajeswari
2.Pasupathi Ammal
3.Valliammal

4.The District Collector,
O/o The District Collector,
Cuddalore.

5.Revenue Divisional Officer,
O/o The Revenue Divisional Officer
Vridachalam

6.The Tahsildar,
O/o The Tahsildar
Vridachalam.

7.The Village Administrative Officer
Kottaham Village Office
Kottaham, Vridachalam Taluk

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 27.11.2012 made in A.S.No.10 of 2011 on the file of the learned Sub Judge, Neyveli reversing the Judgment and Decree dated 21.03.2011 made in O.S.No.135 of 2008 on the file of the Learned District Munsif Cum Judicial Magistrate, Neyveli.

For Appellants	:	Mr.R.Selvakumar
For Respondents 1 to 3	:	Mr.N.Ramesh
For Respondents 4 to 7	:	Mr.S.Jaganathan
		Government Advocate (CS)



JUDGEMENT

The unsuccessful defendants in a suit for declaration and injunction with reference to two items of property are the appellants before this Court. This Court considering the short point involved is glossing over intricate details of the case, suffice it to give a broad outline of controversy in the suit.

2.The plaintiff had filed a suit for a declaration and injunction with reference to A & B-Schedule property and also for a mandatory injunction directing the 8th defendant to transfer the patta in favour of the plaintiff. The case of the plaintiff is that the A-Schedule property had devolved on herself and defendants 2 and 3, her sisters by way of partition and B-Schedule properties are the properties adjacent to the suit A-Schedule property.

3.The case of the plaintiff is that the 2nd defendant being eldest in the family, the patta stood in her name. The B-Schedule property is a Government Porambokku land which has been enjoyed by the plaintiff and defendants 2 and 3. The case of the plaintiff is that after obtaining patta in her name the 1st defendant had sold the property to the defendants 4 and 5 under a sale deed dated 15.12.2008. B-Schedule property is in the possession of the plaintiff and therefore the suit for declaration and injunction with reference to the B-Schedule property.

4.The plaintiff further contended that despite her request to have the joint patta issued in favour of the plaintiff and the defendants, the said request has not been acceded to by the 8th defendant and consequently the suit has come to be filed.

5.The 5th defendant had filed a written statement wherein he had admitted the plaintiff's right to the A-Schedule property but with reference to the B-Schedule property he would submit that the property as early as in the year 1982, has been in enjoyment of the 4th defendant and that the 4th defendant has been in enjoyment of the property for over 26 years. Therefore, the only issue for consideration in the above suit is with reference to B-Schedule property.

6.The Trial Court had raised issue Nos.2 and 4 which related to the B-Schedule property. The Trial Court namely the District Munsif Cum Judicial Magistrate, Neyveli, had returned the finding that the plaintiff had not filed any documents to show her possession of the property and neither had steps been taken to appoint an Advocate Commissioner to identify the



property in question. Ultimately, the Trial Court had held that the B-Schedule property was in the possession of the 5th defendant.

7. Challenging the said Judgement and Decree the plaintiff had filed A.S.No.10 of 2011 on the file of the Sub Court, Neyveli. Along with the first appeal, she had also filed I.A.No.36 of 2012 for receiving additional documents under Order XLI Rule XXVII of the Code of Civil Procedure. The documents were taken on file and marked as Ex.B.1 to Ex.B.4 whereas it ought to have been marked as Ex.A.3 to Ex.A.6.

8. Be that as it may, the learned Judge relied upon these documents and proceeded to reverse the Judgement and Decree of the Lower Court. I am not traversing into the merits of the appeal since the only limited point of argument which has been put forward by the appellants was that they have not been given an opportunity to cross examine the plaintiff on the documents that have been marked and considering the fact that these documents had been relied upon for reversing the Judgement and Decree of the Trial Court an opportunity ought to have been given to the defendants which omission has caused grave prejudice to them.

9. The counsel for the plaintiff would fairly concede that the defendants have not been given an opportunity to cross examine the plaintiff on the documents that were filed before the Appellate Court. Therefore considering the limited scope, I deem it fit to remit the matter back to the Sub Court, Neyveli, to permit the parties to let in evidence only with reference to the documents that have been filed before the Appellate Court. Both the parties shall be permitted to lead oral evidence on the documents marked in the Appellate Court. The parties are not permitted to let in any additional documentary evidence.

The Appellate Court shall conclude the said exercise within a period of two months from the date of receipt of a copy of this Judgement and give its Judgement after the oral evidence. The above Second Appeal is allowed and the matter is remitted back to the Appellate Court. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



To

1.The Subordinate Judge,
Neyveli.

2.The District Munsif Cum Judicial Magistrate,
Neyveli.

Copy to : The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

+1cc to Mr.C.A.Anburaja, Advocate, SR.No.49578
+1cc to Mr.N.Ramesh, Advocate SR.No.48517
+1cc to The Special Government Pleader Sr.No.48855

AKM/05.11.19 /4P-7C/
AKM/01.12.19

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