

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.02.2019

Coram:

The Honourable Mr.Justice V.BHARATHIDASAN

Second Appeal No.461 of 2017

S.Anjali Devi

... Appellant/Appellant/Plaintiff

Vs.

B.Porkodi

... Respondent/Respondent/Defendant

This second appeal has been filed under Section 100 of CPC, against the Judgment and Decree dated 03.06.2016 made in A.S.No.36 of 2015 passed by the learned XVIII Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 22.09.2014 in O.S.No.625 of 2011 passed by the learned IV Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.K.Sitharthan

For Respondent : Mr.Aisf Ali

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 03.06.2016, made in A.S.No.36 of 2015 passed by the learned XVIII Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 22.09.2014 in O.S.No.625 of 2011 passed by the learned IV Assistant Judge, City Civil Court, Chennai.

2. Brief facts of the plaintiff's case is as follows:-

(a) The plaintiff/appellant, and respondent/defendant, are sisters. The suit schedule property consists of ground, first, second and third floor bearing Old Door No.79, New Door No.110, (110/79), Ramasamy Street, Mannady, Chennai-1. Originally, the property belonged to her mother S.Balammal. During her life time, she executed a Will dated 03.03.1983. As per the Will, the ground floor and first floor of the suit property were bequeathed to the defendant and the second and third floor of the suit property were bequeathed to the plaintiff till their life time for enjoyment. Subsequently, the mother of the

plaintiff and defendant died on 06.07.1986. Thereafter, the Will was probated and the Letters of Administration has also been obtained. The plaintiff is administering the entire property for over 24 years, by collecting rent and paying taxes, besides paying 50% of the rent to the defendant.

(b) The defendant is having only life estate, which is limited to the extent of enjoyment of the property during her life time. The defendant is entitled for rental income only. The defendant has settled at United States. After returning from USA, she had taken steps to alienate the property and also started to disturb the possession of the plaintiff. Hence, the plaintiff filed the suit for permanent injunction restraining the defendant from alienating the House, ground and premises bearing Old Door No.79, New Door No.110, (110/79), Ramasamy Street, Mannady, Chennai-1, and also for permanent injunction restraining the defendant or her agent or anybody claiming under her from interfering with the peaceful possession of the plaintiff.

3. The defendant contested the suit stating that as per Will dated 03.03.1983, the defendant is entitled to the ground floor and first floor with life estate. The absolute right is given to the plaintiff's and defendant's children. After obtaining Letters of Administration, in the year, 1986, the defendant let out the suit property to the plaintiff for a monthly rent of Rs.10,000/-. The defendant was residing along with her husband, who was employed in United States. The plaintiff did not make the payment of rent regularly. The rent has also been periodically increased. Finally, the plaintiff was paying the monthly rent of Rs.30,000/- both for the ground and first floor. She was regularly paying the rent from 2004. Thereafter, she has committed default and she has not paid rent to the defendant. The defendant demanded the monthly rent and the arrears. The defendant took necessary steps through legal action to vacate the plaintiff. The plaintiff has no right to do anything with the suit property. Now, the son and daughter of the defendant wanted to sell the property for the welfare of the defendant during her life time itself. The plaintiff has no right to prevent the defendant and her legal heirs from selling the ground floor and first floor of the suit property.

4. After contest, the trial Court, considering the entire pleadings and evidence available on record, dismissed the suit holding that even though as per the Will, the respondent/defendant has no right to sell the suit property and the respondent/defendant has only life interest in the suit property and she has no power to alienate the property, the appellant/plaintiff failed to prove that the respondent/defendant alienated the property. So far as the injunction is concerned, since as per the 'Will' executed by the

mother of the respondent/defendant, the defendant is only having life interest over the property and her legal heirs are having absolute ownership over the property, the trial Court has come to the conclusion that the appellant/plaintiff has not proved her case through oral and documentary evidence that the respondent/defendant disturbed her possession over the property. Aggrieved against the same, the appellant/plaintiff preferred the first appeal before the lower appellate Court and after contest, the lower appellate Court also considering the entire evidence and materials available on record, dismissed the appeal and confirmed the decree and judgement of the trial Court. Now, the unsuccessful plaintiff came forward with this second appeal.

5. Earlier without admitting the appeal only notice was ordered to the respondent and the same has also been served and Mr. Asif Ali, Advocate, entered appearance on her behalf.

6. I have heard the rival submissions and also perused the materials available on record.

7. Admittedly, the plaintiff and defendant are sisters and both of them got property through 'Will' executed by their mother. As per the 'Will', the ground and first floor of the suit property were bequeathed to the defendant and the second and third floor of the suit property were bequeathed to the plaintiff till their life time for enjoyment. The plaintiff and defendant got only right to enjoyment of the property and they have no right to alienate the same. After the death of plaintiff and defendant, their children got absolute right. Now, it is the case of the plaintiff that the defendant is taking steps to alienate the property and admittedly, the plaintiff is in possession and enjoyment of the property belonging to the defendant. But, the case of the defendant is that the plaintiff is the tenant under her and she was paying rent to the defendant. Both the Courts below gave concurrent finding that there is no evidence to show that the defendant is taking steps to alienate the property and also disturbing the possession of the plaintiff. Therefore, I do not find any infirmity or illegality in the judgement passed by the Courts below and I do not find any merit in the case of the appellant/plaintiff and both the Courts below have concurrently rejected the case of the appellant/plaintiff with valid reasons. Hence, I do not find any question of law much less substantial question of law that has arisen for consideration in this second appeal.

8. In the result, the second appeal is dismissed. No costs. The Judgment and decree dated 03.06.2016 made in A.S.No.36 of 2015 passed by the learned XVIII Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree

dated 22.09.2014 in O.S.No.625 of 2011 passed by the learned IV Assistant Judge, City Civil Court, Chennai is hereby confirmed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

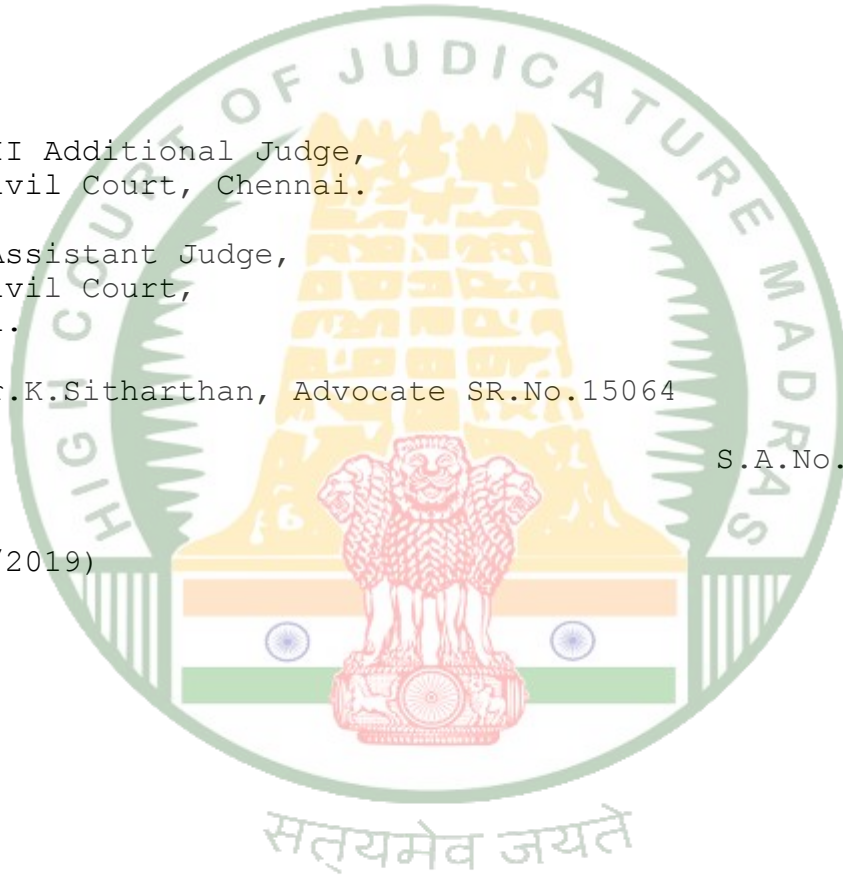
1.The XVIII Additional Judge,
City Civil Court, Chennai.

2.The IV Assistant Judge,
City Civil Court,
Chennai.

+2cc to Mr.K.Sitharthan, Advocate SR.No.15064

S.A.No.461 of 2017

RJI (CO)
GMY (02/07/2019)



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