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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.10.2020

CORAM:

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

S.A.No.872 of 2009

and

M.P.No.1 of 2009

1.Janaki Ammal

2.Prabhakaran

3.Deenadayalan .. Appellants/Appellants/Defendants

/versus/

Khaderkhan .. Respondent /Respondents/Plaintiff

Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 13.02.2009 passed in A.S.No.15 of 2007 on the file of the Sub Court, Kallakurichi confirming the judgment and decree dated 26.10.2006 passed in O.S.No.418 of 2003 before the II Additional District Munsif Court, Kallakurichi.

For Appellants :Mrs.R.Meenal

For Respondent :Mr.K.A.Ramakrishnan

J U D G M E N T

(The case has been heard through Video Conferencing)

This Second Appeal is directed against the concurrent finding of the Courts below allowing the suit filed by the respondent herein for permanent injunction against the appellants herein.

2.Brief facts of the case is that the suit schedule property, which is a tiled house and vacant site appertain to it more fully described as items 1 and 2 in the plaint schedule, has been claimed by the plaintiff as his ancestral property, which he inherited through his maternal grandmother Jaidoon Bee, who had executed a Will dated 11.06.1998 in favour of the plaintiff and died on 03.01.1999. The plaintiff has been in possession and enjoyment of the house and vacant site appertain on the south of the tiled house. The respondents/appellants are



trying to trespass into the land and house. Hence, suit filed for permanent injunction restraining the defendants from interfering with his peaceful possession of the suit property.

3. In the written statement, the appellants have questioned the validity of the Will executed by Jaidoon Bee in favour of the plaintiff. The existence of tiled house in the 1<sup>st</sup> item of the property and the possession and enjoyment of the 2<sup>nd</sup> item of the property, which is a vacant site, denied.

4. Before the trial Court, the plaintiff and one Bakiaraj were examined as PW-1 and PW-2 respectively. In support of the plaintiff case, Will dated 11.06.1998, Rough patta under the Natham Scheme, House Tax receipts, Electricity Bill and Previous Sale Deeds with respect to the suit property were marked as Exs.A1 to A6. On behalf of the defendants, the 2<sup>nd</sup> defendant and one Raji were examined as DW1 and DW2. Objection letter given by the defendants regarding rough patta issued in favour of the plaintiff and the proceedings in connection with the objection are marked as Exs.B1 to B3. In the course of the trial, an Advocate Commissioner was appointed. His report and sketch marked as Exs.C1 and C2.

5. The trial Court, taking note of the fact that the 2<sup>nd</sup> defendant in the cross examination had conceded the title of the plaintiff in respect of the 1<sup>st</sup> item of the suit where the house is located, but objecting the grant of Natham patta issued in favour of the plaintiff, had allowed the suit. The first appellate Court, on re-appreciation of evidence, has confirmed the trial Court's judgment and decree.

6. In the second appeal, the learned counsel appearing for the appellants would submit that the Courts below ought not to have considered the Will marked as Ex.A1, which was not proved in the manner known to law. Further, when there is a dispute regarding the title, bare injunction suit is not maintainable, without seeking declaration of title. Further, pointing out the fact that the plaintiff being Muslim woman, can bequeath only 1/3<sup>rd</sup> of her property, the Will bequeathed the entire property is invalid and Ex.A1 has no evidentiary value. No title can pass through the Will.

7. Learned counsel appearing for the plaintiff would submit that there is no dispute between the heirs of Jaidoon Bee regarding the validity of the Will executed by her. After the demise of Jaidoon Bee in the year 1999, the property been in possession and enjoyment of the plaintiff and during the Natham Scheme, patta for the property been assigned to the plaintiff on 25.10.1995 and the same is marked as Ex.A2. Since then without any hindrance the plaintiff has been in enjoyment of the



property. Therefore, the defendants, who have no right whatsoever, cannot try to trespass into the land of the plaintiff. The Courts below have rightly held in favour of the plaintiff based on the evidence.

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8. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent.

9. The specific case of the plaintiff is that for more than 80 years the suit property was in possession and enjoyment of his ancestral and it has come to his hand on the demise of the maternal grandmother on 03.01.1999. The suit schedule consists of two items. One is the tiled house and the 2<sup>nd</sup> item is the vacant site appertain to it. The documents relied by the plaintiff and the Commissioner Report indicate that the house and vacant site are enjoyed by one and the same person. The defendants/appellants herein have property west of 2<sup>nd</sup> item and they have not produced any document to indicate that they are in possession and enjoyment over the 2<sup>nd</sup> item of the property. Hence, the Courts below have rightly granted injunction against the appellants herein from interfering with the peaceful possession of the respondent herein.

10. In a suit for bare injunction, the possession is the prime point for determination. The defendants, who claim title over the property ought to have produced documents and evidence in their support. The appellants herein have miserably failed to do so. Only if there is a cloud over the title, the question of failure to seek declaration of title will not stand in the way of the plaintiff seeking bare injunction. In this case, there is no cloud over the title. Therefore, this Court finds that no Substantial Questions of Law is involved in this matter for consideration.

11. In the result, the Second Appeal is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (SSA)

//True Copy//

Sub Assistant Registrar

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To:

1.The Subordinate Judge,  
Kallakurichi.

2.II Additional District Munsif,  
Kallakurichi.

+1cc to Mr.R.Meenal, Advocate, S.R.No. 35418

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and  
M.P.No.1 of 2009

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