

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.465 of 2020
and
C.M.P.No.9825 of 2020

Velmurugan ...Appellant/Plaintiff

Vs.

Sundaranayagi (died)

Chandrasekar ...Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 19.02.2020 passed in A.S.No.10 of 2015 on the file of the Principal Subordinate Court, Tindivanam, confirming the judgment and decree dated 30.03.2015 passed in O.S.No.88 of 2010 on the file of the District Munsif-cum-Judicial Magistrate, Vanur.

For Appellant: Mr.K.Venkatasubban
for M/s.Sarvabhauman Associates

JUDGMENT

The plaintiff in O.S.No.88 of 2010, whose suit for declaration and consequential injunction was dismissed by the trial Court, upon its confirmation by the Appellate Court in A.S.No.10 of 2015, has come up with this Second Appeal.

2. While admitting the nature of the properties as joint family properties, the plaintiff would claim that the first defendant relinquished her share in the property of their father immediately, after the death of their father in 1973. In lieu of the said share, she was given the properties of their mother. Therefore, according to the plaintiff, after the said arrangement the plaintiff has been in continuous possession of the entirety of the property left behind by their father and in fact had ousted the first defendant from possession of the property. On the said plea, the plaintiff sought for a declaration of his title and consequential injunction.

3. The suit was resisted by the first defendant contending that the plea the first defendant has orally relinquished her share in the father's property and she had agreed to take her mother's property is false. The defendants had set up a claim that there was an oral arrangement in the year 2006, under which she was allotted certain properties which she had settled on her son, the second defendant.

4. During trial, the plaintiff was examined as PW1 and one Elumalai was examined as PW2. The first defendant was examined as DW1. Exs.A1 to A17 were marked on the side of the plaintiff. Exs.B1 to B3 were marked on the side of the defendants.

5. The trial Court upon consideration of the evidence concluded that the plaintiff has not proved the oral arrangement said to have taken place in 1973 as projected by him. The Court also found that the non impleading of the other daughter viz., Mangai, who is admittedly alive, is fatal to the suit. On the above conclusion, the trial Judge dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No.10 of 2015. The Appellate Court concurred with the findings of the trial Court in respect of the plea regarding the oral arrangement said to have taken place in 1973. Its further went on hold that the first defendant has also not established the oral arrangement pleaded by her and hence, the settlement deed executed by her in favour of the second defendant on 27.05.2009 is not valid. On the said findings, the Appellate Court confirmed the judgment and decree of the trial Court dismissing the suit. Aggrieved, the plaintiff has come up with this Second Appeal.

6. Heard, Mr.K.Venkatasubban for M/s.Sarvabhauman Associates for the appellant.

7. Mr.K.Venkatasubban, appearing for the appellant, would vehemently contend that the trial Court was not right in framing the issues only based on the pleadings of the plaintiff. The trial Court ought to have taken into account the pleading of the defendants and also framed relevant issues on the oral partition set up by the defendant and validity of the settlement deed executed by the first defendant in favour of the second defendant.

8. I am unable to countenance the submissions of the learned counsel for the appellant. The suit is one for declaration of title based on ouster and for injunction. It is for the plaintiff to prove his exclusive possession. The plaintiff has pleaded an oral arrangement pursuant to which, he came into exclusive possession of the property. The said oral arrangement was denied by the defendants. If the plaintiff fails to prove

the oral arrangement the plaintiff's case has to fail. Whether the oral arrangement said to have taken place in 2006, as pleaded by the defendant is proved or not is not germane to the suit. However, I find from the judgment of the Appellate Court, the Appellate Court has considered that question also and has held that the oral arrangement as pleaded by the first defendant has also not been proved and the settlement deed said to have been executed pursuant to the said oral arrangement marked as Ex.A17 is also invalid. Therefore, the only point argued by the counsel does not survive.

11. Hence, I do not find any question of law much less a substantial question of law arising in this Second Appeal to enable me to entertain the appeal. Hence, this appeal fails, and it is accordingly dismissed, without being admitted. No costs. Consequently, connected Miscellaneous Petition is also closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

dna

To

- 1.The Principal Subordinate Judge, Tindivanam.
- 2.The District Munsif-cum-Judicial Magistrate, Vanur.

+1 CC to M/s. Sarvabhuman Associates sr 30044.

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SAI (CO)
SP(21/04/2021)

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