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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1162 of 2008

and

M.P.No.1 of 2008

Veerathammal,
W/o, Rose Mandiri,
Digupalli Village,
H/o, Mahimandalam Village,
Walaja Taluk,
Vellore District.

... Appellant

Vs.

Shanmugam
S/o, Rajagopal
Bhajanai Koil Street,
Mahimandalam Village,
Walaja Taluk,
Vellore District.

... Respondent

Prayer:Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 07.01.2008 made in A.S.No.28 of 2005 on the file of the Additional District cum Sessions Court (FTC No.II), Ranipet confirming the judgment and decree dated 20.06.2003 made in O.S.No.583 of 1995 on the file of the District Munsif cum Judicial Magistrate No.1, Walajapet.

For Appellant : Mr.V.K.Rajagopalan

For Respondent : Mr.P.Mani



J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 07.01.2008 passed in A.S.No.28 of 2005 on the file of the Additional District cum Sessions Judge, Fast Track Court No.II, Ranipet, confirming the judgment and decree dated 20.06.2003 passed in O.S.No.583 of 1995 on the file of the District Munsif cum Judicial Magistrate Court No.1, Walajapet.

2. The unsuccessful plaintiff is the appellant in this second appeal.

3. The suit has been laid by the simplicitor for the relief of permanent injunction. The plaintiff claims title to the suit property based on the Will dated 14.09.1973 said to have been executed in her favour by her father and according to the plaintiff, since the date of the Will, she is in the possession and enjoyment of the suit property by obtaining patta, paying tax receipts etc., and the defendant without any manner of right, title or interest in the suit property, attempted to interfere with the possession and enjoyment of the suit property and hence according to the plaintiff, she has been necessitated to lay the suit for the relief of permanent injunction.

4. The defendant resisted the plaintiff's suit contending that the Will relied upon by the plaintiff for deriving title to the suit property is not accepted and the same is not true and the measurements and the boundaries contained there in are also not correct. The defendant is enjoying the property in his possession right from the date of his ancestors, purchased from Lakshi and Andal on 09.08.1995 and the battai road is running from West to East and both the plaintiff and the defendant's properties are situated at the southern side of the street and there is a common lane of nearly 5 feet in breadth running from North to South and there are vacant sites and built portion on both Eastern side and Western side and the length of the common way is 150 feet, which has to be used to draw well water from kankaiyans portion and the abovesaid approach way is in existence for several years and hence the plaintiff without any cause of action has laid the suit and the suit is liable to be dismissed.

5. In support of the plaintiff's case, P.Ws.1 to 3 were



examined. Exs.A1 to A4 were marked. On the side of the defendant, D.Ws.1 and 2 were examined. Exs.B1 to B6 were marked. Further C.W.1 was examined. Exs.C1 to C3 were also marked.

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6. On a consideration of the oral and documentary evidence adduced in the matter and the submissions put forth by the respective parties, the Courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the present second appeal has been preferred by the plaintiff.

7. Considering the materials placed on record, both oral and documentary, as rightly concluded by the Courts below, the plaintiff has failed to establish that she is in the possession and enjoyment of the property as recited in the Will and furthermore, when the extent of the property as put forth by the plaintiff and the Commissioner's report and plan do not tally with each other and more so, when the extent of the property also differ from Ex.A1 Will and the Commissioner's plan and the lie of the property is also found to be varying and as above pointed out, when the Courts below have correctly held that the plaintiff has miserably failed to establish that she is in the possession and enjoyment of the property covered under the Will as well as described in the plaint schedule and as rightly concluded by the first appellate court, despite the plaintiff's claim of title to the property in issue, when the same has been repudiated by the defendant, the plaintiff having not sought for the relief of declaration as required by law and furthermore, the documents projected by the plaintiff not advancing her case of the possession and enjoyment of the property in issue, as projected by her, in such view of the matter, the Courts below are found to be justified in not accepting the plaintiff's case.

8. Considering the reasonings and conclusions of the Courts below for non-suiting the plaintiff, they being proper and consistent with the materials available on record both on factual matrix and on the points of law, in such view of the matter, I do not find any valid reason warranting interference in the same. Therefore, no substantial question of law is found to be involved in the second appeal.

9. In conclusion, the judgment and decree dated 07.01.2008 passed in A.S.No.28 of 2005 on the file of the Additional District cum Sessions Judge, Fast Track Court No.II,



Ranipet, confirming the judgment and decree dated 20.06.2003 passed in O.S.No.583 of 1995 on the file of the District Munsif cum Judicial Magistrate Court No.1, Walajapet are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Additional District cum Sessions Judge,
Additional District cum Sessions Court (FTC No.II),
Ranipet.
- 2.The District Munsif cum Judicial Magistrate No.1,
District Munsif cum Judicial Magistrate No.I Court,
Walajapet.

Copy to

The Section Officer,
VR Section,
High Court.

+1cc to M/s.P.Mani, Advocate, S.R.No.7471

+1cc to M/s.V.K.Rajagopalan, Advocate, S.R.No.7460

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and
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SSV(CO)
SB(13/09/2021)