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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1311 of 2008

Kalyani

Rep.by her Power Agent

Mr.Sankaran S/o.Kandasamy,

Edaiyur Village, Thiruthuraipoondi Taluk,

Thiruvarur District.

... Appellant/Defendant

Vs.

Bhuvaneswari

rep.by her Power Agent

Sudha.Ka.Porchezhiyan,

S/o.Ganesan,

Edaiyur Village,

Thiruthuraipoondi Taluk,

Thiruvarur District.

... Respondent/Plaintiff

Prayer: The second appeal has been filed under Section 100 of C.P.C. against the judgment and decree dated 02.06.2008 passed in A.S.No.33 of 2007 on the file of the Subordinate Court, Mannargudi, reversing the judgment and decree dated 22.11.2007 passed in O.S.No.80 of 2003 on the file of the District Munsif Court, Thiruthuraipoondi.

For Appellant : Ms.P.T.Rama Devi

For Respondent : Mr.A.Ilango

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 02.06.2008 passed in A.S.No.33 of 2007 on the file of the Subordinate Court, Mannargudi, reversing the judgment and decree dated 22.11.2007 passed in O.S.No.80 of 2003 on the file of the District Munsif Court, Thiruthuraipoondi.

2.The second appeal has been admitted on the following substantial questions of law:

"a.Whether the first appellate Court right in reversing the judgment of the trial Court, without framing necessary issues and giving reasons for reversing the judgment in total violation of Order 41 Rule 31 C.P.C.?

b.Whether the Court below right in



holding that the appellant/Defendant admitted the possession of the plaintiff/respondent in total misreading of evidence and the finding is perverse and liable to be set aside?"

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3. Considering the scope of the issues involved in the matter as regards the subject matter between the parties lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

5. Suit for permanent injunction.

6. The parties are not in issue that the suit property originally belonged to the plaintiff's grandfather Ponnudurai Pillai and the same could also be evidenced from the sale deed marked as Ex.A2. From the relinquishment deeds marked as Exs.A3 to 5, it is found that the daughters of Ponnudurai Pillai had relinquished their right and interest in respect of the suit property in favour of their brothers and therefore, for claiming title to the suit property, the plaintiff mainly relies upon the abovesaid documents. The document marked as Ex.A6 is the transfer of patta in the name of the plaintiff and one Kandasamy. The kist receipt has been marked as Ex.A7 and the house tax receipt and the electricity receipts have been marked as Exs.A10, A11, A12, A13 & A14. On the basis of the abovesaid set of documents, the plaintiff claims to be in the possession and enjoyment of the suit property. According to the plaintiff, inasmuch as the defendant attempted to interfere with her possession and enjoyment, she has been necessitated to institute the suit against the defendant for the relief of permanent injunction.

7. The defendant having admitted that the suit property originally belonged to the plaintiff's grandfather Ponnudurai Pillai, would only raise the plea that the plaintiff's grandfather had given the suit property to her father-in-law Kandasamy and based on the enjoyment of the suit property by Kandasamy, the patta had been issued in his favour and on that footing, the defendant would put forth the case that it is only she, who is in the possession and enjoyment of the suit property.

8. Considering the materials placed on record, both oral and documentary on the part of the plaintiff through PW1 and the documents marked as Exs.A1 to A14 and the evidence adduced by the defendant through DWs 1 to 3 and the documents marked as Exs.B1 to B14 as well as Exs.C1 & C2, the trial Court was pleased to dismiss the plaintiff's suit. On appeal by the plaintiff, the first appellate Court has set aside the judgment and decree of the trial Court and by way of allowing the appeal



preferred by the plaintiff, granted the relief in favour of the plaintiff. Challenging the same, the second appeal has been laid by the defendant.

9.As above pointed out, the plaintiff claims title to the suit property through her grandfather Ponnudurai Pillai. Whereas, according to the defendant, Ponnudurai Pillai, who is admittedly the original owner of the suit property, had given the same to her father-in-law Kandasamy and thereby, she is in the possession and enjoyment of the suit property. However, as rightly held by the first appellate Court, the defendant has not come forward with the specific plea as to how her father-in-law had obtained title to the suit property, whether the same had been gifted in his favour by Ponnudurai Pillai or obtained by way of sale and when she has not come forward clearly as to how come her father-in-law had derived title to the suit property, the claim of title, possession and enjoyment of the suit property by the defendant through her father-in-law does not merit acceptance as determined by the first appellate Court.

10.The defendant seems to have mainly relied upon the boundary recitals contained in Ex.B2 and on that basis, would put forth the claim that the suit property is the property of her father-in-law. However, when as above pointed out, the defendant has not come forward as to how her father-in-law had acquired the suit property and when no document of title is forthcoming on the part of the defendant pointing to the same, the reliance on the boundary recitals found in Ex.B2 on the part of the defendant for claiming title to the suit property and for contending that consequentially, it is only the defendant, who is in the possession and enjoyment of the suit property, as such, cannot be countenanced in any manner and the same had been rightly rejected by the first appellate Court.

11.The first appellate Court has also considered the evidence of DWs2 & 3 and when DW2, in particular, is unable to say anything about in his alleged affidavit marked as Ex.B14 and when he pleads complete ignorance about Ex.B14 and further having admitted that he had not appeared before any advocate for Ex.B14 and when he has clearly admitted that he has not run any shop in the suit property during 2003, as rightly held by the first appellate Court, the evidence of DW2, as such, cannot be accepted in any manner and similarly, the genuineness of Ex.B14 also cannot be sustained. Similar is the evidence of DW3, who would only depose that the suit property had been prima facie given to Kandasamy by the original owner Ponnudurai Pillai. It is thus noted that even as per the version of DW3, Ponnudurai Pillai had not transferred his right, interest qua the suit property in favour of Kandasamy, the father-in-law of the defendant. Therefore, as rightly concluded by the first



respective parties both oral and documentary in detail rightly concluded that it is only the plaintiff, who is in the possession and enjoyment of the suit property lawfully and that the defendant has not established her title as well as the possession and enjoyment of the suit property in any manner and therefore, the contention raised by the defendant's counsel that the first appellate Court has erroneously set aside the judgment and decree of the trial Court cannot at all be accepted in any manner.

15. For the reasons aforesaid, in my considered opinion, no substantial questions of law is involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendant.

In conclusion, the judgment and decree dated 02.06.2008 passed in A.S.No.33 of 2007 on the file of the Subordinate Court, Mannargudi, reversing the judgment and decree dated 22.11.2007 passed in O.S.No.80 of 2003 on the file of the District Munsif Court, Thiruthuraipoondi, is confirmed and resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

Sms

Copy to

1. The Subordinate Judge,
Mannargudi.

2. The District Munsif Court,
Thiruthuraipoondi.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.P.T.Ramadevi, Advocate, S.R.No.16751

S.A.No.1311 of 2008

SSI(CO)
GN(16/11/2021)