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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20 / 09 / 2021

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SECOND APPEAL NO.430 OF 2012

Rajakili ... Appellant/2nd Plaintiff/2nd Respondent

Vs.

1.Thangamani

2.Amutha

3.Alagudurai ... Respondents/Defendants 1 to 3/Appellant

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree passed in A.S.No.94 of 2010 dated 24.11.2011 on the file of the Court of Additional Subordinate Judge, Mayiladuthurai, in reversing the judgment and decree passed in O.S.No.362 of 2004 dated 07.09.2010 on the file of the Court of Additional District Munsif, Mayiladuthurai.

For Appellant : Mr.A.Muthukumar

For Respondents : Mr.S.Sounthar

J U D G M E N T

The second plaintiff is the appellant. The plaintiffs filed a Suit for permanent injunction against the respondents / defendants claiming title through the WILL executed on 13.07.1995.

2.The short facts leading to the Second Appeal is as follows:

(i)Originally, the property belonged to one Somasundaram Pillai. One Ambigai Achi is one of the daughters-in-law of Somasundaram Pillai. She executed a WILL dated 13.07.1995, which was registered as Document No.10/1995 in favour of first plaintiff Arumugam. The said Arumugam, due to his ailment, for the medical expenses, had taken money from the second plaintiff and executed a Sale Agreement on 03.01.2004 fixing the sale consideration as Rs.12,500/-. On the date of



agreement, the first plaintiff received a sum of Rs.7,000/- from the second plaintiff and received the balance sale consideration of Rs.5,500/- on various dates.

(ii)The defendants / respondents attempted to purchase the Suit property from the first plaintiff. Since they were unsuccessful in their attempts, they made attempts to dispossess the second plaintiff / appellant by various methods. Based on this, the plaintiffs filed a Suit for permanent injunction.

(iii)Per contra, the defendants denied the averments made in the plaint and would contend that the WILL said to have been executed on 13.07.1995 by Ambigai Achi was false and that the said Ambigai Achi was not the owner of the property. On the other hand, pursuant to the family arrangement made on 04.09.1958, one Soundaranayaki Ammal became the owner of the property. The second defendant entered into a Sale Agreement on 03.05.2001 for a valid sale consideration of Rs.25,000/- and she was put in possession and enjoyment of the suit property on 03.05.2001 itself. On 08.04.2004, the said Sale Agreement was registered. Thereafter, she has been enjoying the property.

(iv)In the meantime, the first plaintiff Arumugam died.

(v)Based on the pleadings, the Trial Court framed appropriate issues and decreed the Suit in favour of the second plaintiff/appellant. On appeal, the First Appellate Court has reversed the findings. Aggrieved over the same, the second plaintiff / appellant is before this Court.

3.Heard the submissions made on either side.

4.The admitted fact remains that a large extent of properties were originally owned by Somasundaram Pillai. He had two sons and one daughter, namely, Rajarethinam Pillai, Arumugam Pillai and Soundaranayaki Ammal. His two sons died at young age leaving behind their wives Ambigai Achi and Kannikaparameswari respectively as their heirs. The properties appeared to have been shared among them.

5.From the perusal of the family arrangement dated 04.09.1958 - Ex.B1, it is noted that the wife of Arumugam Pillai, namely, Kannikaparameswari filed a Suit for maintenance against Soundaranayaki Ammal, in O.S.No.67 of 1956. During the pendency of the said Suit, the parties have arrived at a mutual settlement, as per which, the properties were divided between them. It was also agreed that Kannikaparameswari shall withdraw



the Suit. Accordingly, "A" Schedule property was allotted to Kannikaparameswari and "B" Schedule property was allotted to Soundaranayaki Ammal.

6. It is pertinent to note that the wife of the another son, namely, Ambigai Achi was neither impleaded in the litigation nor included in the family arrangement.

7. Be that as it may, on 13.07.1995, the said Ambigai Achi, one of the daughters-in-law of Somasundaram Pillai had executed a WILL in favour of the first plaintiff Arumugam. The WILL was not questioned by anybody much less the said Soundaranayaki Ammal or Kannikaparameswari. From the evidence of parties, it could be deduced that the said Soundaranayaki Ammal was alive at the time of trial. Ambigai Achi died in the year 1998 as admitted by both sides. Therefore, the presumption is that the WILL came into effect from 1998 and that the first plaintiff has become the absolute owner of the property situate in S.No.409/1 measuring 0.8 - 1/3 cents. He executed a Sale Agreement in favour of the second plaintiff, who is the appellant herein.

8. The defendants claimed title through the registered Sale Agreements dated 08.04.2004 and 21.04.2008 respectively. Originally, the Sale Agreement dated 08.04.2004 was registered in respect of the property in S.No.409/1. It is the case of the defendants that during the pendency of the Suit, they entered into another registered Sale Agreement dated 21.04.2008, in which, the Survey Number was corrected as 409/11. The Trial Court has appointed an Advocate Commissioner to find out the physical features of the property. The Advocate Commissioner, after inspection, has filed a report that he could not identify the property in S.No.409/1 and he measured the property in S.No.409/11 and filed a report. Admittedly, the dispute is over the property situated in S.No.409/1, whereas, the Advocate Commissioner has filed a report in respect of the property in S.No.409/11.

9. Coming to the evidence part, it is seen that the husband of P.W.1 has deposed about his trace of title through the WILL. P.W.2 would speak about the purchase of the property by the first plaintiff and his possession and enjoyment over the same. P.W.3 is the attesting witness to the WILL dated 13.07.1995. He would cogently let in evidence as to the reason for gifting away the property through WILL in favour of the first plaintiff, the witnesses, execution and registration part of the same. Both the Courts below have given a categorical



finding that the WILL has been proved.

10. In so far as the evidence of defendants side is concerned, D.W.1 would state that he entered into first registered Sale Agreement on 08.04.2004 vide Ex.B5, mentioning Survey Number as 409/1. Thereafter, he shown the place to the Village Administrative Officer and the Village Administrative Office has stated that the correct Survey Number is 409/11 and therefore, he entered into a fresh Agreement on 21.04.2008.

11. Admittedly, Ex.B6 was entered during the pendency of the Suit. D.W.2 is an Executive Officer of the Panchayat. He would state that the second defendant has entered into a Sale Agreement vide Ex.B5. Based on the same, they have granted permission to put up thatched hut in the property and it was assessed to tax and that he was not aware of Ex.B6. A suggestion was made during cross examination that he was deposing in favour of Thangamani, who was the Council Member and President of the Panchayat. During his cross examination, he would also state that he inspected the properties and would give a categorical evidence that the suit property belongs to Rajakili is a vacant site and the property of the second defendant is in a different place where a thatched hut is available. P.W.3 - Village Administrative Officer would state that the suit property is in S.No.409/11 and that the second defendant is in possession of the same.

12. It is categorically admitted by D.W.1 that the Sale Deed was not registered for want of funds. However, it is noted that on the basis of the Sale Agreement, permission was granted to put up a thatched hut and the property tax assessments were made. It is well settled that the Sale Agreement will not confer any title over the property and the property tax receipts will not automatically prove possession of the property.

13. From the consideration of the totality of the circumstances, it appears that D.W.1 being a Council Member and President of the Village Panchayat appears to have obtained the tax receipts in favour of the second defendant. However, it is material to see that the property tax receipts are all subsequent to the institution of the Suit. No document was produced before this Court to show the possession prior to the institution of the Suit. But the First Appellate Court has totally relied on Exs.B1 to B9 and non suited the second plaintiff for the relief.



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14.It is imperative to note as to whether the Sale Agreement was made from the true owner. Admittedly, Soundaranayaki Ammal had entered into a Settlement pursuant to a litigation between herself and one of her sisters-in-law Kannikaparameswari. However, the said Ambigai Achi, who is another sister-in-law was not a party. The family arrangement, excluding one of the coparceners will not be binding on all. Admittedly, as per the evidence of D.W.3, the property belongs to 14 persons including Soundaranayaki Ammal and one Natarajan, who is the father of Ambigai Achi. Therefore, it is clearly proved that Ambigai Achi also had a share in the property. Further, as per the family arrangement dated 04.09.1958 vide Ex.B1, the total extent of land in S.No.409/1 allotted to Soundaranayaki Ammal was 64 Cents. But the Sale Agreement does not mention that 5 Cents and 0.8- 1/3 Cents out of 64 Cents, but gives an impression that the entire extent of land in S.No.409/1 is only 13-1/3 Cents. There is no explanation as to the description of the property. Even though D.W.1 would depose that he is going to examine somebody on behalf of Soundaranayaki Ammal to prove his entitlement, nobody was examined to explain the trace of title to Soundaranayaki Ammal and the conveyance through the Sale Agreements vide Exs.B5 and B6 in favour of the second defendant. Therefore, it is crystal clear that by a Sale Agreement, the second defendant has not secured any right, title or interest over the property.

15.We have already discussed that the Advocate Commissioner went and measured a different property in S.No.409/11, whereas, the suit property is in S.No.409/1. The Trial Court has rightly ignored the Advocate Commissioner's report.

16.It is well settled that the plaintiff shall prove his / her title, on his/her own strength. Therefore, we have to see as to whether the second plaintiff has proved her case.

17.As discussed above, the WILL dated 13.07.1995, which is a registered document was proved cogently and it was not disputed by the original sharers of the property till the death of the testator in the year 1998. Once the title is conveyed and it remained without challenge till date, it becomes absolute property of the person, to whom it was conveyed. Accordingly, the first plaintiff Arumugam has become the absolute owner of the property from 1998, the year of death of Ambigai Achi. Ample evidence has been given that he was put in possession pursuant to the execution of the WILL. More particularly, D.W.2 - Executive Officer in his cross examination would categorically state that the property of the plaintiffs is a vacant site,



whereas, the property measured by the Advocate Commissioner consisted of a house. In that event, it is very clear that the plaintiffs are having property in S.No.409/1 measuring 0.8 - 1/3 Cents.

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18.Further, Exs.A2 to A6 are the tax receipts, issued in favour of the plaintiffs. D.W.2 would also testify that the tax receipts vide Exs.A2 to A6 were issued by the Panchayat in favour of the second plaintiff / appellant. In particular, Ex.A3 is a pre-suit tax receipt. Once this tax receipt is accepted by the defendants side witness and a competent official, it automatically goes to prove the possession of the plaintiff. In that event, the possession of the plaintiff stands proved on the basis of his own documents. In that event, the plaintiff is entitled to the relief sought for by him.

19.The Trial Court by itself has well considered the issue and given a correct finding and granted relief in favour of the plaintiff / appellant. On the other hand, the First Appellate Court misdirected itself in the direction that the said Soundaranayaki Ammal was proved to be the owner and through her, the defendants had proved their possession, even though all the Suit documents were collected after filing of the Suit. In the considered opinion of this Court, the findings of the First Appellate Court is not based on any legal evidence and therefore, the questions of law raised in the Second Appeal are answered in favour of the second plaintiff / appellant.

20.Accordingly, the judgment and decree passed in A.S.No.94 of 2010 dated 24.11.2011 by the learned Additional Subordinate Judge, Mayiladuthurai stands set aside and the judgment and decree passed in O.S.No.362 of 2004 dated 07.09.2010 by the learned Additional District Munsif, Mayiladuthurai stands confirmed.

21.In fine, the Suit stands decreed in favour of the appellant and the Second Appeal stands allowed. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

TK



To

1.The Additional Subordinate Judge
Mayiladuthurai.

2.The Additional District Munsif
Mayiladuthurai.

Copy To

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.A.Muthukumar, Advocate SR.No.47701
+1cc to Mr.S.Sounthar, Advocate SR.No.48090

SECOND APPEAL NO.430 OF 2012

AD(CO)
GN(28/12/2021)