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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2021

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.593 of 2021
and
CMP No.12542 of 2021

Dhanasekaran ... Appellant/Plaintiff in Trial Court
Vs.

Nagappan ... Respondent/Defendant in Trial Court

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree of dismissal, dated 06.10.2020 in A.S.No.18 of 2017 on the file of the Subordinate Judge, Madurantakam, confirming the Judgment and Decree, dated 07.12.2015 in O.S.No.71 of 2013 on the file of the learned District Munsif, Madurantakam insofar as it is against the appellant.

For Appellant : Mr.D.Saikumaran

JUDGMENT

The unsuccessful plaintiff before the Courts below has filed this Second Appeal, challenging the Judgment and Decree in A.S.No.18 of 2017 of the learned Subordinate Judge, Madurantakam confirming the Judgment and decree in O.S.No.71 of 2013 of the learned District Munsif, Madurantakam.

2. The suit in O.S.No.71 of 2013 was filed by the appellant/plaintiff for a bare injunction, restraining the defendant from interfering with his peaceful possession and enjoyment of the suit properties. The suit properties were four items of the properties comprised in Ottakovil Madura Mettupalayam Village, Madurantakam Taluk comprised in S.No.241 (0.82 cents), S.No.242 (0.92 cents), S.No.160 (1 acre) and S.No.654 (0.60 cents).

3. The appellant's case is that the suit property was a



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Maikkal Poramboke and was owned by his father who had taken possession of the same four decades ago. His father had developed the said land and made it cultivable. He paid 'B' Memo charges in respect of the suit property to the Government. By an unregistered Will, dated 02.08.2003, the appellant's father Kutty Gounder bequeathed the suit property on the appellant and on his death in the year 2005, the Will came into effect. Exercising his ownership over the suit property, the plaintiff had filed the writ Petition before this Court in W.P.No.7547 of 2012. Excepting the plaintiff no other person has been paying B Memo charges to the effect. While so, the defendant who was totally stranger to the property, had attempted to trespass into the suit property which was successfully thwarted by the plaintiff. However, as the defendant once again disturbed the possession of the plaintiff, the suit came to be filed.

4. The respondent/defendant had resisted the above pleadings inter alia contending that he was in absolute possession and enjoyment of the first item of the suit property namely S.No.241 and the defendant alone is paying 'B' memo charges to the Government and it was the plaintiff who had attempted to disturb his possession which constrained the respondent to file the police complaint before the Melmaruvathur Police Station. During enquiry, the plaintiff/appellant had conceded that it was the defendant who was in possession and enjoyment of 1st item of the suit property. As regards, the 2nd item, the same was Tharisu Poramboke, the 3rd item was Thangal Poramboke and the 4th item was Vayakkal Poramboke. The defendant's father Kutty Gounder and his brothers had taken possession of these properties 30 years back and had developed the same. They had jointly dug a Well in the 2nd item of the suit property for irrigating the lands in item Nos.2 and 3. The Adangal in respect of the item Nos.2 to 4 stood in the name of Kutty Gounder since he was the eldest member of the family. Therefore, Item Nos.2 to 4 are the joint properties of the defendant's father and his brothers. In the year 2002, the plaintiff had attempted to throw out the defendant from possession along with his father Kutty Gounder, therefore, the respondent had filed the suit for permanent injunction. Pending suit, Kutty Gounder died on 07.02.2005 and the suit came to be dismissed after trial. Kutty Gounder died intestate leaving behind the surviving plaintiff, defendant, 3 other sons, 3 daughters and his wife. All the legal heirs of Kutty Gounder are in joint possession and enjoyment of item Nos.2 to 3. The defendant is also entitled to 10/54 share in the suit item 1. Therefore, the defendant had filed a suit for partition against the plaintiff and others in O.S.No.117 of 2010 on the file of the learned Subordinate Judge, Madurantakam and the suit is pending disposal. The defendant would therefore submit that the



plaintiff was not entitled to the relief claimed by him.

5. The trial Court after framing issues, considering the oral and documentary evidence produced before it, proceeded to dismiss the suit.

6. During trial, the plaintiff had examined himself as PW1 and three other witnesses had examined as PW2 to PW4 and the documentary evidence filed on the side of the plaintiff has been marked as Ex.A1 to A10. The defendant had examined himself as DW1 and one Guruvaiyan was examined as DW2. Exs.B1 to B7 were marked on the side of the defendant.

7. Challenging the Judgment and Decree of the trial Court, the plaintiff/appellant had filed A.S.No.18 of 2017 on the file of the Sub Court, Madurantakam. The Appellate Court also confirmed the Judgement and Decree of the Courts below. It is challenging this Judgment and Decree that the appellant is before this Court.

8. Heard the learned counsel who made his submissions for admitting the Second Appeal.

9. The appellant who claimed that all the properties are in his possession, has failed to prove the same. The Will which was produced by the appellant was disbelieved by both the Courts below owing to the inconsistencies in the evidence of the attesting witness with reference to the place of execution and the mode of execution. The Court had also observed that in the earlier proceedings in O.S.No.117 of 2010 (Partition Suit filed by the defendant), the plaintiff had not referred to this Will. As regards the possession of the properties, the Courts below have found that the documents filed by the plaintiff does not prove his possession of the property. In fact, Exs.A1 to A10 was in the name of Kutty Gounder and not that of the plaintiff. However, the defendant has marked his kist receipt Ex.B3 which contains three receipts for the fasli year 1416 and 1417 which show that the defendant is in possession of the property by paying 'B' Memo Charges. That apart, the defendant has produced the 'B' Memo Charges in respect of the 1st item of suit property and the Adangal receipts for the fasli year 1416 and 1417 which would go to show that it was the defendant who is in possession of the property.

10. As regards the item Nos. 3 to 5, the plaintiff is not able to prove his exclusive possession and enjoyment. On the contrary, the defendant had filed the document to show that the same is in joint possession of Kutty Gounder and his brothers and it is in this circumstance, the Courts below have dismissed the suit filed by the plaintiff. Hence, I do not find any



reason to interfere with these findings of the Courts below and the appellant has not made out any question of law much less a substantial question of law which enable me to interfere with the Second Appeal. The Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Subordinate Judge,
Madurantakam
2. The District Munsif,
Madurantakam
3. The Section Officer,
VR Section, Madras High Court,
Chennai.

S.A.No.593 of 2021
and
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GPL(CO)
SU(11/10/2021)