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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Second Appeal No.704 of 2015

Munusamy

...Appellant/Plaintiff

Vs.

Gowran

...Respondent/Defendant

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree made in A.S.No.53 of 2011 on the file of the Subordinate Judge, Dharmapuri, dated 28.09.2012 confirming the judgment and decree made in O.S.No.107 of 2006 on the file of the District Munsif, Palacode, dated 29.09.2011.

For Appellant	: Mr.M.Selvam
For Respondent	: Mr.R.Thirugnanam

J U D G M E N T

Aggrieved over the concurrent finding of the Courts below, the plaintiff has preferred the above Second Appeal.

2. According to the plaintiff, his father Govinda Gounder purchased the suit property by virtue of registered sale deed dated 07.01.1954 and was in possession and enjoyment of the same. In an oral partition, the property was allotted to the share of the plaintiff and ever since, he is in possession and enjoyment. The defendant attempted to interfere with the possession and therefore, he issued a legal notice dated 20.02.2006 and it was replied by the plaintiff by a notice dated 06.04.2006. The defendant has claimed title to the property on the pretext that the property which was sold by the plaintiff's father in the year 1954 was re-conveyed to their predecessor in the year 1957 and they continued to be in possession. Since the plaintiff is entitled to the property and the property is in S.No.702/1 and the Well in S.No.702/2 and that he is entitled to 1/3rd share in the Well, sought for declaration and injunction restraining the defendant from interfering with his peaceful possession.



3. In the written statement, the defendant has taken a stand that in 1954, the property was sold to the plaintiff's father. Thereafter, after period of three years, the plaintiff's father reconveyed the property in the year 1957. In the said transaction, the predecessor of the defendant namely, Kaveri Gounder, has purchased 0.10 cents and Thirupathi purchased 0.09 cents and they are in possession. Because, it was believed that the plaintiff's father and his family will not interfere and go by the undertaking that they did not register the reconveyance. But, however, they are in possession of the property and mortgaged in favour of one M. Shanmugam and they have cultivated the lands for six years. They redeemed the property in the year 1997 and they are jointly cultivating the lands. Therefore, the possession as claimed by the plaintiff is false and the plaintiff is not entitled to the relief sought for.

4. The trial Court framed appropriate issues and tried the suit. Before the trial Court, the plaintiff has examined himself as P.W.1 and two other witnesses and marked Ex.A1 to Ex.A5. On the side of the defendant, D.W.1 to D.W.6 were examined and no documents were marked. The revenue documents were marked as Ex.X1 to Ex.X6. After considering the materials, the trial Court came to a categorical finding that the plaintiff has established his title in favour of his father Kunji @ Govinda Gounder. On the other hand, the defendant has not proved the title and possession. Therefore, they are not entitled to the same. However, the trial Court went on to observe that the plaintiff is not the sole owner of the property as it is admitted that he has two other brothers. Though he examined P.W.3, who is his step brother, he failed either to implead him or to examine witnesses to prove the oral partition and his exclusive title to the property and dismissed the suit. On appeal, the judgment and decree of the trial Court was confirmed after considering the materials placed before it.

5. From the materials, it is categorically proved that by Ex.A1, dated 07.05.1954, the suit property was purchased by the father of the plaintiff by virtue of the registered sale deed. This factum is admitted by the defendant also. Therefore, it is clear that from 07.01.1954, the plaintiff's father was the title holder of the property. It is also admitted by the plaintiff that there are three sons to Kunji @ Govinda Gounder and he died intestate. In that event, all the three sons have equal share. The plaintiff could have examined P.W.3, his step brother, to prove that there was an oral partition and the property was allotted in favour of the plaintiff. But, the blood brother of



the plaintiff, who is another share holder was neither added as party nor examined as witness to prove the factum that the plaintiff is the exclusive title holder of the suit property by virtue of oral partition entered between sons of Govinda Gounder. As far as the possession is concerned, it is also proved by the patta and other documents marked as Ex.X1 to Ex.X6. It is also categorically found that the defendant, who failed to get reconveyance by virtue of registered document is not entitled to the title and possession by virtue of the same. However, it is admitted that the plaintiff has two other brothers. In that event, burden is cast on the plaintiff to prove his exclusive title. In absence of any evidence, it goes without saying that the plaintiff has not established that he is entitled to the property exclusively.

6. Therefore, the finding of the Courts below is absolutely correct and legally sustainable. If at all, the plaintiff wants to prove his exclusive title, he has to file a suit for declaration of title by impleading all the legal heirs. Therefore, this Court is of the considered opinion that the appellant/plaintiff has to work out his remedy by filing a suit for declaration impleading all the legal heirs. The Second Appeal does not merit any consideration for the relief of declaration sought for by the plaintiff.

Accordingly, the Second Appeal is dismissed giving liberty to the appellant to work out his remedy in the manner known to law. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Subordinate Judge,
Subordinate Court
Dharmapuri.
2. The District Munsif,
District Munsif Court, Palacode.



Copy to

The Section Officer
VR Section
High Court, Madras 104.

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+1 CC to Mr.R.Thirugnanam, Advocate sr 54990.
+1 CC to Mr.M.Selvam, Advocate sr 55504.

Second Appeal No.704 of 2015

SRA (CO)
SP (01/06/2022)