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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2021

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.NO.126 OF 2017

AND

C.M.P.NO.2651 OF 2017

1.Banu
2.Rajalakshmi
3.Hemalakshmi

...Appellants/Appellants 2 to 4/
Third Parties

Vs

Muthuram

...Respondent/Respondent/
2nd Plaintiff

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgement and the decree in A.S.No.3 of 2012 dated 13.04.2016 on the file of Sub Court, Neyveli confirming the judgment and decree dated 18.08.2008 in O.S.No.239 of 2004 before the District Munsif Cum Judicial Magistrate, Neyveli.

For Appellants : M/s.Meenal

For Respondent : Mr.V.Rajesh Babu

JUDGMENT

The second appeal is filed by the legal heirs of the defendant in O.S.No.239 of 2004 on the file of the District Munsif Cum Judicial Magistrate, Neyveli.

2.The respondent's mother filed the suit in O.S.No.239 of 2004 on the file of the District Cum Judicial Magistrate,



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Neyveli for declaration of title and for mandatory injunction to remove the superstructure put up by the defendants in the suit property. The suit is also for recovery of compensation after removing the superstructure.

3.The suit property is an extent of 20 cents comprised in Suvey No.9 of 2015 in Kadallur District. It is the case of the plaintiffs that the suit property originally belonged to the first plaintiff's mother by name Ambuthachi. After the death of the first plaintiff's mother about 15 years back, the property was inherited by the first plaintiff. It is also stated that the suit property was cultivated by the plaintiff by Manavary Crops.

4. It is stated that patta was also given in favour of the first plaintiff and that the first plaintiff is the absolute owner of the property. It was stated that the defendant, who is the owner of the land on the south of the suit property, was trying to encroach the property. It is further submitted that the defendant wanted to sell the suit property by putting temporary shed on 25.07.2004. The husband of the first appellant, who was the defendant in the suit, filed a written statement, claiming title to the property on the basis of a oral sale obtained from one Kesavan Naidu, who is none other than the father of the first plaintiff. The first plaintiff died and hence the suit was prosecuted by second plaintiff.

5.The trial Court decreed the suit after holding that the plaintiffs have established their tittle. The trial Court granted the relief of mandatory injunction and directed the defendants to remove the superstructure within a period of three months and to hand over possession within three months. As against the judgment and decree of the trial court, the appellants herein preferred an appeal in A.S.No.3 of 2012 on the file of the Sub-Court, Neyveli. During the pendency of appeal, it is stated that the appellants filed a petition in I.A.No.15 of 2014 in A.S.No.3 of 2012 under Order 41 Rule 27 of C.P.C to receive certain documents as additional evidence. The appellate Court after considering the pleadings and evidence independently confirmed the judgment and decree of the trial Court and dismissed the appeal. Against the dismissal of appeal, the legal heirs of the defendant filed the present second appeal.



7. This Court considered the submissions of the learned counsel for the respondents and grounds raised in the appeal. At the time of admitting the second appeal, this Court has framed the following question of law:-

2. Whether in law the Courts below were right in shifting the burden on the defendant when the plaintiff had failed to prove her case?''

8. First of all, the case of the plaintiffs claiming title through the mother of first plaintiff is indirectly admitted by the defendant in the written statement. In the written statement, the defendant claimed title to the property on the basis of a oral sale obtained from the husband of the first plaintiff. It is stated that the defendant's father orally purchased the property from the husband of plaintiff. It is to be noted that the defendant has not denied the statement in the plaint that the property originally belonged to the mother of the first plaintiff. The defendant admits that he put up the thatched shed only on the basis of oral sale obtained



from the first plaintiff's husband. The oral sale is not valid to convey title to the property in favour of defendant. In the present case, the defendant has not pleaded adverse possession. The defendant's claim regarding title on the basis of oral sale has been rightly rejected by the trial Court and the appellate Court.

9.This Court does not find any error or irregularity in the findings of the Courts below accepting the title of the plaintiffs. Following title, the plaintiffs are entitled to recovery of possession and mandatory injunction as the plaintiffs are entitled to consequential reliefs, once the title of the plaintiffs is established. The learned counsel appearing for the appellants submitted that the appellants filed I.A.15 of 2014 for receiving additional documents and the lower appellate Court has not considered the documents. The defendant has failed to establish his continuous possession or enjoyment of the suit property. The courts below have found title in favour of plaintiffs based on the oral and documentary evidence. It is found by the courts below that the defendants have not pleaded or given the details about the oral sale, particularly the date and time.

10.Though it is stated by the defendant in the written statement that the property was in possession and enjoyment of the defendant, the Courts below have found that the encroachment was made recently and that just prior to the suit the defendant has put up permanent superstructure. During the pendency of the suit, the plaintiffs have produced the documents A1 and A2 to show that the plaintiffs are the absolute owners of the property and that they have also proved their possession of the property earlier. The questions of law raised by the appellants have no legal implication. Having regard to the first question of law, it is not relevant for want of pleadings in the written statement. The second question of law does not arise as the plaintiffs have proved their title by documents and oral evidence.

11.Considering the facts and circumstances of this case, this Court does not find any merits in this case. Accordingly,



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the second appeal is dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Deputy Registrar(CS)

// True Copy //

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Sub Court, Neyveli.
2. The District Munsif Cum Judicial Magistrate,
Neyveli.

+1cc to M/s.R.Meenal, Advocate, S.R.No.25587

+1cc to Mr.V.Rajesh Babu, Advocate, S.R.No.25273

S.A.No.126 of 2017
and
C.M.P.No.2651 of 2017

GPL(CO)
RLP(20/10/2021)