



S.A.No.805 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.805 of 2022

Kasi

...Appellant

Vs

1.Ramu

Chellammal (Died)

2.Soodamani

3.Rajendran

4.Mannar

5.Nagarani

... Respondents

Prayer: The appeal is filed under Section 100 of the Code of Civil



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Procedure against the Judgement and Decree dated 27.09.2019 made in A.S.No.49 of 2013 by the Sub Judge, Ponneri, confirming the Judgement and Decree of dismissal made in O.S.No.198 of 2003 dated 29.07.2013 by the District Munsif, Thiruvottiur.

For Appellant : Mr.E.Prabu

JUDGEMENT

The unsuccessful plaintiff before the Courts below is the appellant before this Court. The parties are referred to in the same array as before the Trial Court.

2. The plaintiffs had filed a suit in O.S.No.198 of 2003 on the file of the District Munsif, Thiruvottiur seeking a permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property by the



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plaintiff.

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3. It is the case of the plaintiffs that the suit schedule property was the ancestral property of the plaintiffs. The plaintiffs and the defendants 1 to 3 are the brothers and sisters. Defendants 4 and 5 are the legal heirs of the 1st defendant.

4. It is the case of the plaintiffs that the A- Schedule property is a Hindu Joint Family property of one Ezhumalai, the father of plaintiffs and defendants. Ezhumalai died in the year 1953 leaving behind the plaintiffs, the 3rd defendant and one Govinda Reddy as his legal heirs. Govinda Reddy relinquished his right in the A Schedule property in favour of the 1st plaintiff orally after receiving a sum of Rs.1,500/- in December 1982.

5. The 3rd defendant had been living with the plaintiffs and has



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been impleaded only as a formal party. Defendants 1 and 2 are married and living separately. They have no right or interest in the suit property. The 1st plaintiff has been using the property in question, described as the B-Schedule for storing Haystack and had constructed a latrine thereon. The 1st plaintiff is also keeping his cows and buffaloes in the backyard. It is the case of the plaintiffs that the defendants were attempting to trespass into the property since the 1st week of March 1988 and the plaintiffs have been constrained to file the suit for the relief stated therein.

6. The defendants had filed a written statement inter alia contending that the properties are not an ancestral property and that Ezhumalai died in the year 1957 and not 1953 as alleged in the plaint. The defendant would contend that the defendants 1 and 2 are the legal heirs of the said Ezhumalai and it is false to say that Govinda Reddy had relinquished his interest in the A-Schedule property in favour of

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the 1st plaintiff.
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7. The defendants would contend that 10 cents in the western side of the property belonged to Kutty Ammal, the mother of the plaintiffs and defendants. The said Kutty Ammal died ten years back and as such the plaintiffs and defendants became entitled to seek a share in the suit B-schedule property.

8. The defendants would contend that they are in possession and enjoyment of the suit property. The defendants 1 and 2 by a deed dated 20.05.1987 had divided the B-schedule property into two shares. Southern share measuring 35 feet North to South, 82 feet East to West was allotted to the 1st defendant. Northern share measuring 18 feet North to South, 82 feet East to West was allotted to the share of the 2nd defendant. From the date of the partition, they have been in exclusive possession and enjoyment of the property. The defendants

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would submit that they have no interest in the eastern extent of 10 cents in A-Schedule property.

9. The defendants would submit that with reference to 10 cents on the eastern side, the same does not belong to the plaintiffs as it has been settled by Vellappa Reddy in favour of Govinda Reddy. There is no cause of action for filing the suit.

10. The Trial Court disbelieved the case of the plaintiffs and had dismissed the suit.

11. Challenging the same, the 1st plaintiff has filed A.S.No.49 of 2013 on the file of the Sub Judge, Ponneri. The Lower Appellate Court also confirmed the Judgement and Decree of the Trial Court. The Lower Appellate Court had extracted the evidence of P.W.1 and had arrived at the conclusion that the 1st plaintiff is not entitled to the

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relief claimed.

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12. P.W.1 in his evidence has admitted to the fact that he does not have an exclusive right, title or interest in the suit property. The 1st plaintiff who has pleaded relinquishment by his siblings has not proved the same. In the absence of proof, it can be only held that the suit property belongs jointly to the appellants as well as respondents and I see no reason to interfere with the well considered Judgement of the Courts below. The Judgement under appeal does not give rise to any Substantial Question of law.

13. In the result, the Second Appeal is dismissed. There shall be no order as to costs.

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kan

Index : Yes/No

Speaking order/non-speaking order

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To,

1.The Sub Judge, Ponneri.

2.The District Munsif, Thiruvottiyur.



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P.T.ASHA, J.,

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