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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 03.02.2022

C O R A M

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

Second Appeal No.992 of 2008

Nataraja Gurukkal ...Appellant/Appellant/Plaintiff

Vs

Jayalakshmi (Deceased)

1.Santhna Lakshmi

2.Seethaladevi ... Respondents/Respondents/Defendants

3.Visalakshi @ Visalatchi

4.Vijayalakshmi

5.Sankari @ Kayathri

6.Deivanayaki .. Respondents/Appellants/Plaintiffs

Prayer: Second Appeal is filed against the judgment and decree dated 27.03.2008 made in A.S.No.32 of 2004, on the file of the Additional District Judge, Pondicherry, in confirming the Judgment and Decree dated 22.10.2003 made in O.S.No.220 of 1998, on the file of the Principal District Munsif, Karaikal.

For Appellant ... Mr.L.Poovendra Perumal
for M/s.Sai Bharath

For Respondents ... Ms.Shanthini for
M/s.R.Karthikeyan for R1&R2

J U D G M E N T

The second appeal is preferred against the judgment and decree 27.03.2008 made in A.S.No.32 of 2004, on the file of the Additional District Judge, Pondicherry, in confirming the Judgment and Decree dated 22.10.2003 made in O.S.No.220 of 1998, on the file of the Principal District Munsif, Karaikal.



2. The second plaintiff is the appellant herein. For the sake of convenience, the parties are referred to as before the trial Court. The suit is for permanent and mandatory injunction.

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3. Facts briefly narrated and necessary for the disposal of the second appeal is as follows:

The suit property in S.No.153/59 measuring 6 Ares and 44 Ca absolutely belongs to Sundaresa Gurukkal. After the demise of Sundaresa Gurukkal on 05.10.1973, the property was inherited by his sons, ie., Ramani Gurukkal, Duraisamy Gurukkal and Saminatha Gurukkal and the patta also stands in their name. The patta clinchingly proves that the suit property was owned by the plaintiffs and their brothers. The plaintiffs and their brothers are the co-sharers of the suit property and the backyard of the suit property is undivided. While so, in the undivided suit property, the sister-in-law of the plaintiffs, viz., the defendant herein, namely, the wife of Ramani Gurukkal, has constructed a bathroom and a latrine without the knowledge and consent of the plaintiffs. The defendant is in permissive possession of the suit property. Therefore, the plaintiffs filed a complaint before the Tirunallar Police Station. However, the defendant has proceeded with the construction and hence, the plaintiffs filed the suit for the aforesaid relief.

4. It is the case of the defendant before the trial Court that, the construction was put up only in the property belong to Tirunallar Commune Panchayat and partly belong to Sri Darbaranyaswamy Devasthanam. The defendant has already completed the construction. The property is also wrongly described and the piece of land is exclusively possessed by the defendant. The suit is barred for non joinder of necessary party, namely, the Devasthanam and the panchayat and hence, the suit is liable to the dismissed.

5. Before the trial Court, on the side of the plaintiffs, P.Ws.1 to 3 have been examined and as many as 4 documents were exhibited as Ex.A1 to Ex.A4. On the side of the defendants, D.Ws.1 to 6 have been examined and Ex.B1 to Ex.B20 were marked as documents and Exs.X1 to X9 were exhibited as third party documents and Exs.C1 and C2 are the Court exhibits, namely, report of the Commissioner and the survey sketch.

6. The trial Court, on considering the oral and documentary evidence, came to the conclusion that the defendant has put up construction in the common area and the plaintiffs



have not proved their case by adducing necessary evidence, dismissed the suit. Challenging the same, the plaintiffs have filed the appeal before the lower Appellate Court. On considering the oral and documentary evidence, the lower appellate Court dismissed the appeal thereby confirming the judgment and decree of the trial Court. As against the same, the defendants are before this Court with this second appeal.

7. In the second appeal, the following substantial questions of law were framed by the appellants:

"(i) Are not the Courts below in error in dismissing the suit of the plaintiffs, when the plaintiffs established the case for removal of the offending construction made by the defendants in common undivided property?

(ii) Are not Courts below in error in placing the burden on the plaintiffs when it was the admitted fact by the defendants that the property in S.No.53/59 was a common property and when the defendants had not specifically pleaded as to the extents of property over which they claimed the exclusive right? "

8. Heard the learned counsel for the appellant and the learned counsel for the respondents.

9. It is seen that the trial Court has observed that the defendants disputed the title of the plaintiffs and the burden lies with the plaintiffs to prove their title over the suit property. Every co-owner has got right to use the property in the way beneficial to them without causing any injury to the other co-sharers. It is not the case of the plaintiffs that the alleged construction made by the defendant was materially interfered with the use of the property by the other co-owners or their rights or cause damage or injury to the common property. It is also observed by the trial Court that some part of the construction was only done in the lands, which are not belong to the plaintiffs. As such the plaintiffs could not claim the relief as prayed for and accordingly, the trial Court dismissed the suit.

10. In appeal, the lower appellate Court has observed that the suit property was undivided one and in a small portion of the suit survey number, the defendants constructed a bathroom and a latrine and the major portion is in S.No.159/62 and hence, the act of taking possession of an area less than the share or equal to the share of the defendant is permissible and the said construction is in backyard only, which is meant for



construction of bathroom and latrine. The total extent is 6 Ares 44 Ca. However, the constructed area is 9.4 Ca., which is less than the share of Ramani Gurukkal. Accordingly, the lower appellate Court also dismissed the appeal thereby confirming the findings of the Court below. Thus, such concurrent finding does not require interference, as there is nothing on record to show that it was perverse, being based on no evidence or contrary to the evidence on record.

11. In view of the above, there is no ground to interfere with the impugned judgment and decree. Accordingly, the second appeal is dismissed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

RR

To

1. The Additional District Judge,
Pondicherry.
2. The Principal District Munsif,
Karaikal.
3. The Section Officer,
V.R. Section, High Court,
Madras.

+2cc to Mr.R.Karthikeyan, Advocate SR.No.6917
+1cc to Mr.T.Saikrishnan, Advocate SR.No.6666

S.A.No.992 of 2008

AD(CO)
GN(30/03/2022)