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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.177 of 2012
and M.P.No.1 of 2012

1.Subramanian

2.Manikandan

3.Sathishkumar

...Appellants/Defendants

Vs.

Raja Pillai

... Respondent/Plaintiff

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree passed in A.S.No.46 of 2010 dated 28.06.2011 on the file of the Court of Subordinate Judge, Chidambaram in confirming the Judgment and Decree passed in O.S.No.57 of 2008 dated 13.08.2010 on the file of the Court of District Munsif cum Judicial Magistrate, Kattumannar Koil.

For Appellants : Mr.A.Muthu Kumar

For Respondent : Not Ready in Notice

JUDGMENT

The defendants are the appellants in this Second Appeal.

2.The respondent/plaintiff filed a suit seeking for the relief of permanent injunction on the ground that the suit properties originally belonged to one Anjalai Ammal and she executed the Settlement Deed dated 23.03.1965 in favour of the plaintiff, marked as Ex.A1 and thereby, the suit property was settled in favour of the plaintiff. The further case of the plaintiff is that this document was acted upon and the plaintiff was in possession and enjoyment of the suit property.



3.The grievance of the plaintiff is that the defendants attempted to trespass into the suit property without any right or title over the property. Aggrieved by the same, the suit came to be filed.

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4.The defendants filed a written statement and took a stand that the suit property was a joint family property which was jointly enjoyed by both the plaintiff and the defendants. The further case of the defendants is that the father of the plaintiff died and thereafter, several attempts were made for partition of the properties and the defendants were seeking for half share in the property. It is stated that one of the suit property is a punja land in which the defendants have put up a bore well for agricultural purposes and the electricity service connection also stands in the name of the 1st defendant. The defendants have taken a stand that the Settlement Deed does not bind them, since they also have a share in the property and the properties cannot be exclusively dealt with by the above said Anjalai Ammal. Therefore, the defendants had sought for the dismissal of the suit.

5.Both the Courts below on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a categoric conclusion that the plaintiff has made out a case and that the defendants do not have any right over the suit property and accordingly, the suit was decreed in favour of the plaintiff. Aggrieved by the same, the defendants have filed this Second Appeal.

6.Heard the learned counsel for the appellant and carefully perused the materials available on record and also the findings rendered by both the Courts below.

7.This Court framed the following substantial question of law at the time of admitting the Second Appeal:

- i. Whether the Courts below erred in law in holding that the plaintiff is owner of the suit properties when he failed to prove Ex.A1-Settlement Deed by examining any attesting witness to the said settlement deed?
- ii. Whether the Courts below erred in law in holding that the suit properties are not joint family properties of the plaintiff and the first defendant, when they had executed a registered mortgage deed, Ex.B3 along with their father?
- iii. Whether the Court below erred in law ignoring the admission of the plaintiff (PW1) that the electricity service connection for the bore well in the third item of the suit property stands in the name of the first defendant



when his evidence is very clear and Ex.B1, Ex.B2 (series) and Ex.B4 support the same?

8.In the present case, the specific plea that was put forth by the defendants is that the suit properties are the joint family properties and that the same could not have been exclusively dealt with under Ex.A1 Settlement Deed by Anjalai Ammal. Both the Courts below after taking into consideration the evidence available on record, categorically found that the suit properties are not joint family properties. This finding rendered by both the Courts below is based on evidence and this Court does not find any perversity in those findings.

9.The defendants also took a stand as if there was an oral partition between the parties and the respective shares were enjoyed by the defendants. To substantiate this claim, there was absolutely no evidence before the Courts below and hence, both the Courts below gave a categoric finding that there is no proof of any partition of the suit properties.

10.The defendants also came up with a stand as if in one of the items of the suit property, there is a bore well and there is a service connection that is standing in the name of the 1st defendant. Both the Courts below after analyzing the evidence available on record found that no service connection stands in the name of the 1st defendant with respect to the suit property.

11.In the considered view of this Court, all the findings that were rendered by both the Courts below are based on the evidence available on record and there is no perversity in those findings. The substantial questions of law that were framed by this Court are answered against the appellant. This Court does not find any ground to interfere with the Judgments and Decrees of both the Courts below.

12.In the result, the Second Appeal stands dismissed. Considering the facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar



To

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- 1.The Subordinate Judge,
Chidambaram.
- 2.The District Munsif cum Judicial Magistrate,
Kattumannar Koil.
- 3.The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.A.Muthukumar, Advocate SR.No.17684

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and M.P.No.1 of 2012

SSN(CO)
CB(05/04/2022)