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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No. 1241 of 2013

and

M.P.No. 1 of 2013

Nagarathinam Ammal

...Appellant/Plaintiff

Vs

1. Sivagami

2. K. Sekar

...Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 05.08.2013 in A.S.No.85 of 2012 on the file of the Subordinate Court, Poonamallee and confirming the Judgment and Decree dated 11.08.2012 in O.S.No.456 of 2003 on the file of the District Munsif Court, Ambattur.

For Appellant : Mr.V. Balamurugane

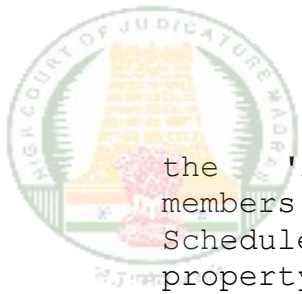
For Respondents : Mr.S.Ilamvaluthi

JUDGMENT

The plaintiff is the appellant in this second appeal.

2. The plaintiff filed a suit seeking for the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property.

3. The case of the plaintiff is that the suit properties originally belonged to one Sakunthala and Lakshmi. The first defendant was also one of the sister of Sakunthala and Lakshmi. The three sisters partitioned the properties through a Koorchit dated 16.06.1983, marked as Ex.A2. After the partition, Sakunthala and Lakshmi appointed a power attorney agent to deal with their shares in the property. The plaintiff purchased a plot to an extent of 892 ½ sq.ft under a registered sale deed dated 18.03.1993, marked as Ex.A6 and this is shown as



the 'A' Schedule property. The plaintiff and her family members constructed a small thatched temple adjacent to the 'A' Schedule property and this was shown as the 'B' Schedule property in the suit schedule.

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4. The further case of the plaintiff is that the defendants are utter strangers to the suit property and they attempted to trespass into the suit properties. Left with no other alternative, the suit came to be filed seeking for the relief of permanent injunction.

5. The defendant filed the written statement and took a stand that the first defendant and her sisters Sakunthala and Lakshmi erected the thatched hut with a deity and they never intended to give this property to anyone. They took a further stand that the plaintiff does not have any right over the 'B' Schedule property and they sought for the dismissal of the suit.

6. Both the Courts below, on considering the facts and circumstances of the case and after analysing the oral and documentary evidence, concurrently held in favour of the plaintiff with respect to the 'A' Schedule property and granted the permanent injunction for this property. The suit was dismissed insofar as the 'B' Schedule property is concerned. Aggrieved by the same, the plaintiff has filed the second appeal.

7. Heard, Mr.V.Balamurugane, learned counsel for the appellant and Mr.S.Ilamvaluthi, learned counsel for the respondents. This Court also carefully perused the materials available on record and the findings of both the Courts below.

8. The issue involved in the second appeal only pertains to the 'B' Schedule property since the relief has already been granted in favour of the plaintiff for the 'A' Schedule property and it has become final. Insofar as the 'B' Schedule property is concerned, both the Courts found that the small thatched temple belongs to the family of the vendors of the plaintiff from time immemorial and it was always treated as a common property in order to perform poojas. Both the Courts also took into consideration, Ex.C1, wherein the Commissioner had given a report stating that even public are performing poojas in the 'B' Schedule property. The Lower Appellate Court refused to entertain Ex.A2-Koorchit and Ex.A7-Settlement Deed, since both these documents are inadmissible in evidence. Apart from these two documents, the plaintiff produced one 'B' Memo, marked as Ex.A8 and kist receipt, marked as Ex.A9 and both the Courts found that the plaintiff cannot establish ownership over



the 'B' Schedule property through these documents. The Courts below took into consideration the fact that there was a serious dispute with regard to the ownership over the 'B' Schedule property and the plaintiff had not sought for the relief of declaration of title. Accordingly, the suit for bare injunction was found not maintainable with respect to the 'B' Schedule property.

9. In the considered view of this Court, the findings of both the Court below with respect to the 'B' Schedule property does not suffer from any perversity and there is no ground to interfere with the same. In any event, no substantial questions of law are involved in the second appeal.

10. In the result, this second appeal is dismissed. Consequently, connected miscellaneous petition is closed. Considering the facts and circumstances of the case, there will be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Lpp
To

- 1.The Subordinate Judge, Poonamallee.
- 2.The District Munsif, Ambattur.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.V.Balamurugane, Advocate sr 21501.

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MG(CO)
SP(12/04/2022)