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S.A.No.1030 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.12.2022

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.1030 of 2022

V.S.Vijaya

....

Appellant

Vs

P.Sathyamma

....

Respondent

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 19.09.2018 in A.S.No.220 of 2016 on the file of the V Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 18.01.2016 in O.S.No.4007 of 2014 on the file of the II Assistant Judge, City Civil Court, Chennai by allowing this appeal.

For Appellant : Mr.R.Ramesh

JUDGMENT

This second appeal is directed as against the Judgment and Decree dated 19.09.2018 made in A.S.No.220 of 2016 on the file of the V Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 18.01.2016 made in O.S.No.4007 of 2014 on the file of the II Assistant Judge, City Civil Court, Chennai, thereby dismissing the suit for permanent injunction restraining the defendant from interfering with



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plaintiff's peaceful possession and enjoyment of the suit property.

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The appellant is the plaintiff. She filed a suit for permanent injunction as against the respondent. The case of the appellant is that the respondent, being the next immediate younger sister of the appellant, shifted her residence to the appellant's house. Her schooling education, food, shelter and clothing were taken care by the appellant from her husband's income. While being so, the respondent wanted to purchase the suit property, being a vacant land bearing old Survey No.79/4A & 4B, T.S.No.123, Block No.16 in Bharathi Avenue, Kottur Village, Mylapore Taluk, admeasuring 1 ground 188 sq.ft. The appellant paid the sale consideration to the vendor and the sale deed was executed in favour of the respondent herein. In turn, the respondent had executed a sale deed in favour of the appellant's husband to an extent of 480 sq.ft. Thereafter, the respondent had made construction in the said property to an extent of 900 sq.ft. The appellant's husband also had made construction in the property to an extent of 480 sq.ft. The respondent had requested the appellant's husband to give his consent for mortgaging the entire property both in the name of the appellant's husband and the respondent for her son's education in United States and created a charge by way of mortgaging the entire property on 21.01.1991. The respondent had discharged the same by way



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of a deed of re-conveyance. However, the respondent failed to hand over the documents pertaining to the share of the appellant's husband. The appellant and her family members are residing in the suit property for more than two decades. The respondent resides at USA. The respondent also intended to settle the property in favour of the appellant. However, it was not acted upon. The respondent attempted to vacate the appellant from the suit property by sending the hooligans.

3. The entire averments were resisted by the respondent and filed a written statement stating that out of her own hard earned money and savings, she purchased the suit property comprised in old Survey No.79/4A and 4B, T.S.No.123, Block No.16 in Bharathi Avenue, Kottur Village, Mylapore Taluk, admeasuring 1 ground and 188 sq.ft. She borrowed loan for the construction in the suit properties and completed the construction. Thereafter, she shifted her residence to the suit schedule mentioned property, where she lived from the year 1992 to 1998. Thereafter, it was rented to one Asai Thambi in the year 2002. When the tenant vacated the suit property, the appellant and her family members moved into the suit property, without the permission of the respondent herein. Since, both are sisters, the appellant did not pay any rent for the suit property. The respondent executed the sale deed for an extent of 480 sq.ft alone in favour



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of the appellant's husband and the remaining portion of 2100 sq.ft. was retained by the respondent, which is the suit schedule property.

4. On the side of the appellant, she had examined herself as P.W.1 and marked Exs.P1 to P9. On the side of the respondent, no one was examined and no document was marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit with cost. Aggrieved by the same, the appellant preferred an appeal in A.S.No.220 of 2016 before the V Additional Judge, City Civil Court, Chennai and the same was dismissed and the Judgment and Decree passed by the trial Court was confirmed. Challenging the same, the present second appeal.

5. The learned counsel for the appellant has raised the following substantial questions of law:

- a) Whether the Courts below had erred in passing the decree without verifying the various documents filed by the appellant ?
- b) Whether the Courts below had erred in pronouncing the Judgment as a non speaking order and on wrong interpretation decree passed ?
- c) Whether the Courts below had erred in



deciding one sided by taking into account of P.W.1's witness and Exs.A1 to A9 marked on behalf of the appellant herein and in the contrary, the defendant did not let in any evidence or filed any documents to defend their case ?

d) Whether the Courts below had erred in not considering the facts and circumstances of the case and on wrong surmises ?

6 . Heard, Mr.R.Ramesh, the learned counsel appearing for the appellant and this Court considered the rival submission made by the learned counsel for the appellant.

7. A perusal of the records reveals that admittedly the respondent purchased 1 ground 188 sq.ft. of land. Thereafter, she obtained loan and constructed the house. Ex.A1-Sale Deed dated 21.03.1989 reveals that one Francis Rajan is the owner of the suit property and one Dr.T.M.Swami, is the power agent. After receipt of the entire sale consideration, the power agent executed the sale deed. Though the appellant deposed that her husband rendered financial help while purchasing the suit property, the appellant failed to prove the same by any material. Thereafter, the respondent executed the sale deed in favour of the appellant's husband to an extent of 480 sq.ft. The remaining property was retained by the respondent who constructed the house. Therefore, the appellant is not the owner of the



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property and the respondent repeatedly requested the appellant to vacate from the suit property. Therefore, the present suit is nothing but a clear abuse of process of law and without any right over the property, the appellant had filed a suit.

8. As such the Courts below have analyzed the evidences adduced by the parties both the documentary and oral in detail and by giving cogent reasons, concluded rightly and decreed the suit. Accordingly, this Court is of the considered opinion that no substantial question of law is involved in this appeal.

9. In view of above, this Second Appeal is dismissed and the Judgment and Decree dated 19.09.2018 made in A.S.No.220 of 2016 on the file of the V Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 18.01.2016 made in O.S.No.4007 of 2014 on the file of the II Assistant Judge, City Civil Court, Chennai, is confirmed. There shall be no order as to costs.

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Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
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To



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1.The V Additional Judge, City Civil Court, Chennai.

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2.The II Assistant Judge, City Civil Court, Chennai.



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G.K.ILANTHIRAIYAN, J.

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