



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.02.2022

Coram:

THE HONOURABLE Mr.JUSTICE N.ANAND VEKATESH

Second Appeal No.1016 of 2013

S. Ponnusami

S/o.Subbaraya Gounder

..Plaintiff/Appellant/Appellant

.Vs.

N.balasubramanian

..Defendants/Respondent/Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 17.12.2012 passed in A.S.No.59 of 2011 on the file of learned Subordinate Judge, Tirupur confirming the judgment and decree dated 22.7.2011 passed in O.S.No.45 of 2006, on the file of the learned District Munsif, Tirupur.

For Appellant : Mr.Kingston Jerold

For Respondent : Mr.R.Srinivas

JUDGMENT

The plaintiff is the appellant in this Second Appeal.

2.The case of the plaintiff is that the suit property originally belonged to one Venkatachala Gounder. He had two wives. The said Venkatachala Gounder had a son and daughter, who predeceased him and Venkatachala Gounder also died in the year 1952 leaving behind the two widows. Thereafter, one of the widow died and the property was in possession and enjoyment of the other widow viz., Muthammal. The further case of the plaintiff is that the said Muthammal died intestate in the year 1986. The plaintiff claims that he is the grandson of one Nachimuthu Gounder, who is the elder brother of Venkatachala Gounder and thereby, he became entitled to the properties and he was in possession and enjoyment of the properties. Even during the lifetime of Muthammal, the suit properties were leased out to various tenants and the plaintiff claims that he was managing the property and he was receiving the rents from the tenants.



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3.The grievance of the plaintiff is that the defendant, who had no right or title over the property had attempted to dispossess the plaintiff and hence, the plaintiff proceeded to file the suit seeking for the relief of permanent injunction.

4.Heard Mr.Kingston Jerold, learned counsel for the appellant and carefully perused the findings rendered by both the Courts below.

5.Both the Courts below on appreciation of the facts and circumstances of the case found that the defendant had earlier filed a substantive suit for declaration of title and permanent injunction against the plaintiff and his own vendors in O.S.No.52 of 2006, before the I Additional District Judge, Coimbatore. The said suit was decreed in favour of the defendant and the judgment made in O.S.No.52 of 2006 was marked as Ex.D-8. Both the Courts also took into consideration the fact that an appeal was filed against the judgment and decree before this Court and it is pending in A.S.No.597 of 2010. In view of the same, both the Courts found that the issues that were raised in the present suit, the property that is involved in the present suit and the parties who are agitating the case, are all the same in relation to the earlier suit which is pending by way of an appeal before this Court in A.S.No.597 of 2010. Hence, both the Courts below rightly did not go into the merits of the case since the substantive suit is now pending before this Court by way of an appeal and if any findings are rendered in this suit, it will have a serious impact on the pending appeal before this Court. There is also a possibility of multiplicity of proceedings and rendering of two conflicting judgments. Hence, both the Courts found that the plaintiff has to necessarily await for the final decision in the appeal that is pending before this Court.

6.In the considered view of this Court, both the Courts below have rightly restrained themselves from deciding the case on merits. This Court does not find any ground to interfere with the conclusion arrived at by both the Courts below. The appeal pertains to the year 2010 and it must already at the stage of final hearing and it will be left open to the parties to put forth all their grounds in the pending appeal before this Court. No substantial questions of law are involved in the present Second Appeal.



7. In the result, this Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

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Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

KP
To

1. The Subordinate Judge, Tirupur.

2. The District Munsif, Tirupur.

3. The Section Officer
V.R. Section, High Court,
Madras.

+2 Ccs to Mr. R. Srinivas, Advocate sr 10386.

Second Appeal No. 1016 of 2013

SVI (CO)
SP (07/03/2022)