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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.752 of 2015

1. K.Selvam @ K. Kathirvelu
2. K.Pannerselvam @ K. Sairam

... Appellants/Appellants/Plaintiffs

Vs.

1. K.Arumugam
2. A.Karpagam ... Respondents/Respondents/Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 30.01.2014 in A.S.No.286 of 2012 on the file of the XVII Additional Judge, Chennai, confirming the Judgment and Decree dated 23.12.2010 in O.S.No.1107 of 2010 on the file of the XVI Assistant City Civil Court, Chennai.

For Appellants : Mr.A.K.Venkatesan

For Respondents : Mr.J.Senthil Kumar

JUDGMENT

The plaintiffs are the appellants in this second appeal.

2. The plaintiffs filed a suit seeking for the relief of recovery of possession and for damages against the defendants. The case of the plaintiffs is that the suit property originally belonged to their father late M.Krishnan. He executed two registered settlement deeds dated 25.01.2006, marked as Exs.A1 and A2 in favour of the plaintiffs. As per the settlement deed, the said M.Krishnan retained his life interest and vested remainder was given in favour of the plaintiffs. The said M.Krishnan is said to have died on 12.05.2009. Thereby, the plaintiffs are claiming absolute right over the suit property.

3. The further case of the plaintiffs is that the second defendant is their sister and the first defendant is the



brother-in-law and the husband of the second defendant. According to the plaintiffs, they are permissive occupants in the suit property to an extent of 400 sq.ft and they were allowed to reside in the property by their father. Thereafter, the second defendant started seeking for a share in the suit property and was indulging in quarrel against the plaintiffs. The defendants were asked to vacate the property and there were exchange of legal notices in this regard. Since the defendants did not vacate the property, the present suit came to be filed for the reliefs stated supra.

4. The case of the defendants is that the suit property was jointly owned by the above said M.Krishnan and his wife. They had inherited the property by virtue of a settlement deed dated 14.12.1983, which was marked as Ex.B1. According to the defendants, the said M.Krishnan did not have any exclusive right over the suit property and hence he is not entitled to settle the entire property in favour of the plaintiffs. The second defendant is claiming for a share in the suit property since her mother was also a joint owner in the property and she died intestate. The second defendant filed a partition suit in O.S.No.10058 of 2009 claiming for her share. The second defendant has also questioned the settlement deeds executed in favour of the plaintiffs. Accordingly, the defendants have sought for the dismissal of the suit.

5. Both the Courts below held against the plaintiffs and dismissed the suit. Aggrieved by the same, the present second appeal has been filed by the plaintiffs.

6. Heard, Mr.A.K.Venkatesan, the learned counsel appearing for the appellants and Mr.J.Senthi Kumar, the learned counsel appearing for the respondents. This Court carefully perused the materials available on record and the findings of both the Courts below.

7. Both the Courts below categorically found that the suit property was jointly owned by the above said M.Krishnan and his wife by virtue of Ex.B1. Consequently, both the Courts below held that the above said M.Krishnan did not have the exclusive right over the suit property and he was not entitled to settle the entire property in favour of the plaintiffs. That apart, the partition suit that was filed by the second defendant, was decreed and a preliminary decree was passed during October 2013. By virtue of the same, the second defendant was also entitled for a share in the property. Under such circumstances, both the Courts below held that the second defendant was in



possession and enjoyment of the property as a co-sharer and not in her capacity as a permissive occupant. In view of the same, both the Courts below concurrently held that the plaintiffs are not entitled for the relief sought for in the suit.

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8. In the considered view of this Court, the findings were rendered by both the Courts below based on the materials available on record and based on the fact that the second defendant had already obtained a preliminary decree in the partition suit and as a consequence, she was also treated as a co-sharer in the property. This Court does not find any perversity in the findings of both the Courts below. In any event, no substantial questions of law are involved in the second appeal.

9. In the result, the second appeal is dismissed. Considering the facts and circumstance of the case, there will be no order as to costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1. The XVII Additional Judge,
City Civil Court, Chennai
2. The XVI Assistant Judge,
City Civil Court, Chennai.
3. The Section Officer,
V.R. Section,
High Court, Madras-104.

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