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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.886 of 2013

and

M.P.No.1 of 2013

V. Bhagavathi

...Appellant/Appellant/Plaintiff

Vs.

John Kennady (alias) Murugan

... Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 16.03.2012 passed in A.S.No.355 of 2011 on the file of the V Additional Judge, City Civil Court, Chennai, in confirming the judgment and decree dated 29.01.2010 passed in O.S.No.19 of 2005 on the file of the VII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.S.Kumaresan

For Respondent : Mrs. Lakshmi
for Mr.L.Damodharan

JUDGMENT

The plaintiff is the appellant in the Second Appeal.

2. The suit was filed seeking for the relief of permanent injunction restraining the defendant from in anyway interfering with the peaceful possession and enjoyment of the suit property.

3. The case of the plaintiff is that the suit property was originally owned by her husband and he settled the property in favour of the plaintiff through a Settlement Deed dated 30.03.2004. Since the plaintiff was not able to manage the property, she executed a power of attorney dated 19.07.2004 and



the suit itself was conducted by the power agent. The further case of the plaintiff is that originally the suit property was a Government Natham Poramboke land, which was occupied by her husband and her husband has also paid the urban land tax to the Government. That apart, 'B' Memo was also issued to the husband of the plaintiff and he was paying 'B' Memo charges and was in possession and enjoyment of the property. Subsequently, the property was settled in favour of the plaintiff.

4. The grievance of the plaintiff is that the defendant, who is the tenant and running a shop in the adjacent property, has attempted to interfere with the peaceful possession and enjoyment of the property. Aggrieved by the same, the suit came to be filed before the Court below seeking for the relief of permanent injunction.

5. The defendant took the very specific stand that the suit was orchestrated by the power agent and the plaintiff was not even in possession of the property and she is residing elsewhere at Thiruvallur. The further case of the defendant is that by virtue of the present suit, an attempt is being made to convert the pond as a land by claiming that it is in possession and enjoyment of the plaintiff. In short, the defendant had denied the very existence of so called suit property and sought for the dismissal of the suit.

6. Both the Courts below concurrently held that the plaintiff has not established her possession and enjoyment of the property and hence held against the plaintiff. Aggrieved by the same, the present second appeal has been filed before this Court.

7. The learned counsel for the appellant submitted that both the Courts below failed to take note of the documents filed as Ex.A1 to A5, which clearly proved the possession and enjoyment of the plaintiff in the suit property. The learned counsel further submitted that the power agent was managing the property and he had knowledge about the entire facts and hence, non-examination of the plaintiff cannot be fatal to the case of the plaintiff. The learned counsel further submitted that both the Courts below had dismissed the claim made by the plaintiff by referring to reasons which were extraneous and which had nothing to do with the facts of the present case.



8. This Court had carefully considered the submission made by the learned counsel for the appellant and perused the findings of both the Courts below.

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9. Both the Courts below found that there was a discrepancy in the extent of the property between Ex.A2 and the extent that has been shown in the plaint schedule. Both the Courts below found that the extent of property in Ex.A2 was 80 x 40 feet and whereas the extent in the plaint schedule was 55 x 27 feet. The Court below also found that the survey number is described in the suit schedule as Survey No.278/2C2 (part) and whereas in Ex.A2, the survey number has been described as 278/2C. Similarly, even in Exs.A3 to A5, the survey number was shown as 278/C2C. In view of the same, both the Courts below came to the conclusion that the plaintiff was not able to satisfy the Court even with regard to the location and extent of the property for which the relief was sought for.

10. Both the Courts below also found that the plaintiff was living elsewhere in Thiruvallur and the entire case was dealt with by the power agent. When there was a discrepancy in the extent of the property, the plaintiff did not even chose to enter the witness box, neither her husband entered the witness box and explained the Court with regard to the discrepancy. The power agent alone was examined as witness on the side of the plaintiff and obviously he did not have personal knowledge about the prior documents that were given in the name of the husband of the plaintiff. Both the Courts below took adverse inference against the plaintiff. The best evidence that was available in the present case is that of the plaintiff or her husband which were not placed before the Court and both the Courts below rightly drew adverse inference against the plaintiff. The Courts below also took into consideration, the earlier litigation that was orchestrated by the very same power agent and came to conclusion that it is the power agent, who was trying to take advantage of the situation and the plaintiff had disassociated herself and was sitting elsewhere at Thiruvallur.

11. Both the Courts below have rendered their findings based on the oral and documentary evidence that was available on record. This Court does not find any perversity in the findings of both the Courts below. Hence, this Court does not find any ground to interfere with the same. In any event, no substantial questions of law are involved in the second appeal.



12. 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.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

Lpp

To

- 1.The V Additional Judge,
City Civil Court,
Chennai.
- 2.The VII Assistant Judge,
City Civil Court, Chennai.

+1cc M/s.S.Kumaresan, Advocate Sr.11738
+1cc to M/s.L.Dhamodharan, Advocate Sr.11815

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