

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.06.2022

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

S.A.No.443 of 2022
and
CMP.No.9173 of 2022

Girithiri Prasath (Died)

1.Sabari

2.Meera

3.Gowri Manogari

...Appellants / Defendants in Trail Court

Vs

1.Seenivasan

...1st Respondent / Plaintiff in Trail Court

2.Dhanalakshmi

...2nd Respondent / 5th Defendantin Trail Court

The Second Appeal filed under Section 100 of CPC, against the judgment and decree made in A.S.No.15 of 2019 dated 13.10.2020 on the file of the Sub Court, Rasipuram confirming the judgment and decree made in O.S.No.116 of 2012 dated 07.04.2017 on the file of the District Munsif Court, Rasipuram.

For Appellants : Mr.K.Venkatasubban
For M/s.Sarvabhauman Associates.

JUDGMENT

The defendants in O.S.No.116 of 2012 on the file of the District Munsif Court, Rasipuram, having suffered a decree of permanent injunction before the District Munsif Court by judgment dated 07.04.2017 and subsequent reversal in A.S.No.15 of 2019 on the file of the Sub Court, Rasipuram, by judgment dated 13.10.2020 are the appellants herein.

2.The brief facts necessitating the lis between the appellants herein and the respondents, are that the father of the original defendant, one Balusamy, and the father of the 1st

respondent herein / one Velusamy and also the 2nd respondent Dhanalakshmi, were apparently entitled to an equal share in the suit schedule properties and accordingly they had also been put in separate possession of three separate portions. Possession had been taken and parties are enjoying their respective portions accordingly.

3.The father of the 1st respondent, Velusamy on whom 1/3rd undivided share had been allotted had executed a settlement deed in favour of his wife / mother of the 1st respondent. The parents of the 1st respondent died leaving behind the 1st respondent to enjoy the properties.

4.Both the appellants and the 1st respondent appear to be neighbours, which is possible, probably owing to the fact that they had divided the properties among themselves. Naturally this also led to differences, necessitating the appellants herein to file O.S.No.111 of 2012 on the file of the District Munsif Court, Rasipuram seeking permanent injunction restraining the first respondent from interfering with peaceful possession and in turn the 1st respondent also filed the present suit from which this Second Appeal has emanated namely O.S.No.116 of 2012 seeking the very same relief.

5.It is stated by the learned counsel for the appellants herein that the appellants had been granted a decree in O.S.No.111 of 2012. Similarly, the 1st respondent herein had been granted a decree in O.S.No.116 of 2012. The appeal filed by the appellants was not given due credence by the First Appellate Court, necessitating the appellants herein to file the present Second Appeal.

6.The only point raised as an issue by the learned counsel for the appellants is that, the appellants are also in possession of a small portion of the property which had been allotted to the 1st respondent and therefore, since no direct finding had been given with respect to such possession, decree for permanent injunction would adversely affect the right and interest of the appellants herein. However, it must be pointed out that such possession of the appellants is contrary to the division of the properties between the family of Balusamy on the one hand whom the appellants represent, and the family of Velusamy whom the 1st respondent represents and the 2nd respondent herein. If the appellants are in possession of a portion of property of the 1st respondent, then it is for the 1st respondent to seek necessary relief against the appellants herein. If the possession of the appellants is prior to institution of O.S.No.116 of 2012 then, such fact should have been pleaded in O.S.No.116 of 2012. The decree for permanent injunction would lie with respect to attempt to take possession and if

possession was earlier, then perpetual injunction should have been sought by the respondent herein.

7.It is for the 1st respondent to work out his remedies and the decree for permanent injunction need not be interfered with, but the fact of actual possession will have to be examined only by the 1st respondent who will have to take necessary steps to recover possession or declare that the appellants are trespassers in his portion.

8.The appellants will have to suffer the decree of permanent injunction and it is for the 1st respondent to workout his remedies independently or in manner known to law.

9.The Second Appeal is dismissed with the above observations, since no question of law arises for consideration. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

smv

To

1. The Subordinate Judge,
Rasipuram.
2. The District Munsif,
Rasipuram.

+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.37365

S.A.No.443 of 2022

PMK[co]
NSK/14/07/2022