



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.165 of 2016

and

CMP No.3383 of 2016

Ravi alias Palanisamy ... Appellant /Appellant/Defendant

Vs.

Chinna Naicker ... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 09.12.2015 made in A.S.No.3 of 2014 on the file of the Court of the Subordinate Judge, Gobichettipalayam, Erode District, confirming the judgment and decree dated 31.01.2014 made in OS No.227 of 2010 on the file of the Court of the District Munsif, Gobichettipalayam, Erode District.

For Appellant : Mr. T.Dhanasekaran

For Respondent : No appearance

JUDGMENT

The defendant is the appellant in this Second Appeal.

2. The respondent/plaintiff filed the suit seeking for the relief of permanent injunction restraining the defendant from interfering with the possession and enjoyment of the suit property.

3. The case of the plaintiff is that he is the absolute owner of the suit property by virtue of a registered Sale Deed dated 05.05.1972, marked as Ex.A1. The further case of the plaintiff is that he has put up a residential building in the property and was in possession and enjoyment of the same and the Revenue Records was also mutated in the name of the plaintiff. The plaintiff in order to prove his possession and enjoyment of the property has also filed the Property Tax Receipts,



Electricity Bills and also the Family Card, marked as A3 to A18.

4. The defendant is the grandson of the plaintiff. According to the plaintiff, he permitted the defendant to stay in the property and taking advantage of the same, the defendant is attempting to take over the property and prevent the plaintiff from enjoying the property. Hence the suit came to be filed seeking for the relief of permanent injunction.

5. The defendant filed a written statement to the effect that the suit property was purchased and developed out of the income derived from the joint family property and his mother also had a share in the property. It was based on this right, the defendant was living with his family in the suit property. That apart, he also took a stand to the effect that the plaintiff has gifted the property in favour of the defendant more than 20 years prior to the filing of the suit and he is not even living in the suit property for more than 15 years. On these grounds, the defendant sought for the dismissal of the suit.

6. Heard Mr.T.Dhanasekaran, learned counsel appearing for the appellant and carefully perused the findings of both the Courts below.

7. Both the Courts below concurrently found that all the vital documents proved the title and possession of the plaintiff in the suit property. That apart, the Courts below also took into consideration the fact that Exs.B2 to B14 that was relied upon by the defendant actually stood in the name of the plaintiff. Both the Courts also found that the defendant has not proved the fact that the property is a joint family property and the fact that it was gifted in his favour by the plaintiff. Hence, the relief sought for by the plaintiff was granted and it was also confirmed by the Appellate Court.

8. In the considered view of this Court, the findings of both the Courts below is based on the oral and documentary evidence and this Court does not find any perversity in those findings. The learned counsel for the appellant relied upon the Commissioner's Report and submitted that the Commissioner has found that the defendant is in possession of the property. This aspect has also been gone into by the Lower Appellate Court and it was found that a Commissioner cannot be appointed to gather evidence and to ascertain the factum of possession. This finding of the Lower Appellate Court is perfectly in accordance with law. At the best, even if the defendant has been allowed to be in possession of the property by his grandfather, it can only be construed as a permissive possession and that does not give any right to the defendant to stay put in the property.



There are absolutely no substantial questions of law involved in this Second Appeal.

9. In the result, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

jv

To

- 1.The Subordinate Judge,
Gobichettipalayam, Erode District,
- 2.The District Munsif,
Gobichettipalayam, Erode District
3. The Section Officer
VR Section,
High Court Madras.

+1cc to Mr.T.Dhanasekaran, Advocate SR.No.14921

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SJ(CO)
GN(24/03/2022)