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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

Second Appeal No.544 of 2016
and CMP No.9891 of 2016

1. G. Mohan

2. M.Vasumathi ..Plaintiffs/Respondents 1 & 2/Appellants

Vs.

1. R.Srinivasan

2. G.R.Prakash ...Defendants 1 & 2/Appellant/Respondents 1 & 2

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 30.10.2014 made in A.S.No.62 of 2014 on the file of XVIII Additional Judge, City Civil Court, Chennai and reversing the judgment and decree dated 1.3.2013 made in OS No.1156 of 2012 on the file of VI Assistant City Civil Court, Chennai.

For Appellants : Mr.V.Manisekaran

For Respondents: Mr.R.Rajesh, for R1
Mr.A.Jenasenan, for R2

JUDGMENT

The plaintiffs are the appellants in the Second Appeal.

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

3. The case of the plaintiffs is that the suit property along with other properties originally belonged to the father-in-law of the first plaintiff and the father of the second plaintiff and the defendants. The defendants are the brothers of the second plaintiff. The further case of the plaintiffs is that the father of the second plaintiff and the defendants



executed a Will dated 05.06.1992 in favour of the plaintiffs and thereby the 'B' Schedule Property was bequeathed in their favour. The further case of the plaintiffs is that the possession was also handed over to them and they constructed a house and they started residing in the property. The father of the second plaintiff and the defendants, died on 15.11.2001 and thereafter, the Will came into effect.

4. The grievance of the plaintiffs is that the defendants who had no right title or interest over the suit property attempted to interfere with the possession and enjoyment of the property. Hence the present suit came to be filed seeking for the relief of permanent injunction.

5. The defendants took a specific stand that their father died intestate leaving behind six legal heirs and each legal heir is entitled for $1/6^{\text{th}}$ share in the property. They also took a stand that the Will that was relied upon by the plaintiffs is a forged and fabricated document. The defendants therefore sought for the dismissal of the suit.

6. The second defendant filed an independent suit in OS No.8632 of 2005 against the first defendant, second plaintiff and other legal heirs seeking for the relief of partition and for allotment of $1/6^{\text{th}}$ share in the suit property.

7. Both the suits were tried together and the Trial Court by a judgment and decree dated 01.03.2013, decreed the suit filed by the appellants in OS No.1156 of 2012 and also partly decreed OS No.8632 of 2005 by declaring that the second defendant in the suit as plaintiff is entitled for $1/6^{\text{th}}$ share in one item of the suit property situated at Velacherry.

8. Aggrieved by the same, the second defendant in OS No.1156 of 2012, filed two appeals in AS No.62 of 2014 and AS No.63 of 2014. Both the Appeals were taken up together and through a common judgment dated 30.10.2014, AS No.62 of 2014 was allowed and thereby the judgment and decree in OS No.1156 of 2012 was set aside. Whereas AS No.63 of 2014 was dismissed and thereby the judgment and decree passed in OS No.8632 of 2005 was confirmed.

9. The judgment and decree passed in AS No.63 of 2014 has become final and no Appeal was filed by the second defendant in OS No.1156 of 2012. However, the plaintiffs in OS No.1156 of 2012 challenged the judgment and decree in AS No.62 of 2014 in the present Second Appeal.



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10. This Court has carefully considered the submissions made by the learned counsel for the appellants and the materials available on record.

11. The Lower Appellate Court on carefully considering the evidence available on record and after carefully analysing the findings of the Trial Court, came to a categorical conclusion that Ex.B2 Will dated 05.06.1992 is not valid. The Lower Appellate Court came to this conclusion on finding that there were three attestors to the Will and out of the same, the particulars of the first two attestors was not even available. The only other attestor was examined as D.W.3 and this witness deposed that the Will was executed by the deceased Ramachandran and he never deposed that the testator had signed the Will in his presence and that he saw him affixing his signature. In fact D.W.3 in the course of cross-examination deposed that the deceased Ramachandran prepared the Will and thereafter obtained his signature. The Lower Appellate Court also found that the Will was executed under suspicious circumstances since almost all the legal heirs of the deceased Ramachandran were excluded from any share in the property.

12. The Lower Appellate Court also found that the second plaintiff who was claiming to be in possession and enjoyment of the second schedule of the property, was only a co-owner of the property and the other legal heirs of the deceased Ramachandran, also had a right over the property. Hence the Lower appellate Court refused to grant the relief of permanent injunction since the possession of one co-owner shall be on behalf of the other co-owners also and a co-owner cannot seek for an injunction in respect of the enjoyment of a common property against another co-owner. The Lower Appellate Court also rejected the faint claim made by the plaintiffs as if they have perfected their title through adverse possession, since such a claim was not even available in the pleadings.

13. In the considered view of this Court, the Lower Appellate Court had rendered its findings based on the oral and documentary evidence and 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.

14. 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.

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Sd/-
Assistant Registrar (CS-CCC)

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Sub Assistant Registrar

jv

To

1. The XVIII Additional Judge,
City Civil Court, Chennai
2. The VI Assistant Judge,
City Civil Court, Chennai.
3. The Section Officer,
V.R.Section, High Court of Madras.

+1cc to Mr.V.Manisekaran, Advocate SR.No.11419

+1cc to Mr.R.Rajesh, Advocate SR.No.12265

+2ccs to Mr.A.Jenasenan, Advocate SR.No.11878

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AK (CO)
GMY (30/03/2022)