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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.563 of 2016  
and  
C.M.P.No.10347 of 2016

Mrs.Rajeswari ...Appellant/Appellant/Defendant  
Vs.

Mrs.Jayalakshmi @ Lakshmi ... Respondent/Respondent/Plaintiff

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 11.08.2015 passed in A.S.No.133 of 2015 on the file of the XV Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 25.02.2015 passed in O.S.No.5118 of 2012 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

For Appellant : M/s.J.R.K.Bhavanandham

For Respondent : M/s.S.Suseela Devi

#### JUDGMENT

The defendant is the appellant in this Second Appeal.

2.The respondent/plaintiff filed the suit seeking for the relief of delivery of possession of the suit property.

3.The case of the plaintiff is that she is the owner of the suit property by virtue of a Settlement Deed dated 14.05.2003 executed by her grandfather Govindasamy. This document was marked as Ex.A1. According to the plaintiff, she was taken care only by her grandfather and her uncle, right from her early days and her marriage was also performed only by her grandfather in the year 2002 and she is living in her matrimonial home.

4.The further case of the plaintiff is that the defendant came to the suit property in the year 1998 at the time of her mothers' death ceremony and thereafter, she continued to remain



in the property. It is further stated that the defendant along with her nephew filed a suit against the plaintiff, her grandfather and other uncle in O.S.No.722 of 2005 seeking for the relief of partition and for declaring her right of residence in the suit property. The defendant claimed for 1/4<sup>th</sup> share in the suit property. This suit was dismissed by Judgment and Decree dated 08.09.2010 with respect to all the other reliefs except the relief of permanent injunction. This Judgment has become final. In view of the same, the plaintiff had to file an independent suit seeking for the relief of delivery of possession. Accordingly, this suit came to be filed against the defendant.

5.The defendant filed the written statement and she claimed that she has been in continuous possession and enjoyment of the suit property from the year 1998 onwards and this was not objected by anyone and therefore, she had perfected her title by adverse possession. The defendant also questioned the maintainability of the suit on the ground of limitation. The defendant accordingly sought for the dismissal of the suit.

6.Both the Courts below after considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, concurrently held in favour of the plaintiff and decreed the suit as prayed for. Aggrieved by the same, this Second Appeal has been filed by the defendant.

7.Heard M/s.J.R.K.Bhavanandham, learned counsel for the appellant and M/s.Suseela Devi, learned counsel appearing on behalf of the respondent.

8.This Court also carefully perused the materials available on record and the findings of both the Courts below.

9.The title of the plaintiff in the suit property has been determined by both the Courts below through the Settlement Deed which was marked as Ex.A1. Insofar as the plea taken by the defendant, both the Courts found that the defendant was taking mutually destructive defence. On the one hand, the defendant claims for a right and title over the property to an extent of 1/4<sup>th</sup> share in the earlier suit and the same was rejected by a competent civil court. In the present case, the defendant started claiming title through adverse possession. Both the Courts held that such mutual destructive pleas cannot be taken by the defendant and accordingly, the defence taken by the defendant was rejected by both the Courts below.

10.It is now the settled law that a defendant can take an alternative plea and even inconsistent pleas. However, even insofar as the defendant is concerned, mutually destructive



pleas are not permitted. The defendant cannot be allowed to claim right and title over the property in one proceeding and change her stand in the subsequent proceedings by claiming title through adverse possession. Both the Courts rightly rejected the defence taken by the defendant and this Court does not find any perversity in those findings. In any event, no substantial question of law is involved in this Second Appeal.

11. In the result, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Considering the relationship between the parties, the appellant is granted three months time to vacate and handover the possession of the suit property to the respondent. Consequently, connected civil miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The XV Additional Judge,  
City Civil Court, Chennai.
2. The XVIII Assistant Judge,  
City Civil Court, Chennai.

Copy to:  
The Section Officer,  
V.R. Section,  
High Court, Madras.

+1cc to M/s.J.R.K.Bhavanantham, Advocate, S.R.No.29716

+1cc to M/s.S.Suseela Devi, Advocate, S.R.No.29034

S.A.No.563 of 2016  
and  
C.M.P.No.10347 of 2016

SR-II (CO)  
SU(18/05/2022)