



S.A.No.966 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.11.2022

CORAM

THE HON'BLE Ms.JUSTICE P.T.ASHA

S.A.No.966 of 2022 and
C.M.P.No.20504 of 2022

Kamala ... Appellant / Appellant / Petitioner

Vs

1.Hariharan

... 1st Respondent / 2nd Respondent / Plaintiff

2.Jarinabegam

... 2nd Respondent/2nd Respondent / Defendant

Ramasamy Naidu (Died)

... 3rd Respondent / 3rd Respondent / 1st defendant

PRAYER : Second Appeal filed under Section 100 of CPC praying to set aside the judgement proceedings in A.S.No.31/2017 in O.S.No.78 of 2006 pending on the file of the learned Additional District Court, Mayiladuthurai.

For Appellant : Mr.S.Chinnasamy

For Defendants : Mr.B.Jawahar for R1



S.A.No.966 of 2022

J U D G M E N T

WEB COPY

The third party in a suit for partition has filed the above appeal challenging the dismissal of his obstruction application filed in E.A.No.32 of 2012 in E.P.No.132 of 2011.

2. The brief facts which are required to dispose of this appeal are as follows:-

The first respondent/plaintiff had filed a suit O.S.No.78 of 2006 on the file of the Subordinate Court, Mayiladuthurai seeking partition of the suit property against the deceased 3rd respondent. The suit was decreed and thereafter, the final decree was also passed. Pursuant to which, the plaintiff had filed an execution proceedings for recovery of his share. The appellant has filed the obstruction petition when the bailiff had gone over to take possession on 10.03.2012. It is the contention that the plaintiff and the second defendant are attempting to illegally evict the appellant from the property, in which, she is in possession for over 40 years. She would submit that the decree is not binding on her. The appellant has also alleged that she has filed a suit for injunction against the second



S.A.No.966 of 2022

respondent herein in O.S.No.42/2011 before the District Munsif Court, Sirkali.

3. The second respondent herein had filed a counter, which was adopted by the first respondent. It is contented that the second respondent herein, as plaintiff had filed a suit O.S.No.381/1988 against the first respondent herein for partition and since that came to be dismissed, an appeal in A.S.No.81/1995 was filed which again ended in a dismissal. Thereafter, challenging the said judgment and decree, S.A.No.600 of 1998 was filed by the second respondent herein. This Court has passed a judgment in the above second appeal that respondents 1 and 2 are entitled to equal share in the suit properties. Thereafter, the first respondent herein had filed a final decree proceeding and in the same, the first respondent was allotted the southern share and the second respondent was allotted the northern portion by orders of Court. That apart, the appellant had filed O.S.No.42 of 2011 on the file of the District Munsif, Sirkazhi and the same is pending. Therefore, the present petition is not maintainable and has to be dismissed on the ground that for a



S.A.No.966 of 2022

WEB COPY

similar relief, the appellant cannot approach two authorities.

4. The learned Subordinate Judge, Mayiladuthurai, by order dated 18.08.2017 was pleased to dismiss the said petition. The learned Judge had observed that the appellant / petitioner has not spelt out how she is entitled to the property and is in possession of the same and her plea of adverse possession does not contain the ingredients required for holding that she has prescribed title to the property. The learned Judge, on perusing the evidence, held that the respondents have proved that the petitioner was in possession of the property only as a tenant and dismissed the said petition. Challenging the said order, the appellant had filed an appeal in A.S.No.31 of 1997 on the file of the Additional District Court, Mayiladuthurai. The learned Judge had also concurred with the finding of the Court below and consequently, dismissed the petition. Challenging the same, the appellant is before this Court.

5. Heard the learned counsel for the appellant and perused the materials available on record.



S.A.No.966 of 2022

6. From the documents, it is seen that the suit property belonged to one Sowrirajan. The first respondent, Hariharan is the son of Sowrirajan, who is born through one Kasambu Ammal. One Mangamma is the 2nd wife of Sowrirajan. After the death of Sowrirajan, Mangamma had returned to her brother, Ramasamy's house. Thereafter, she had executed a Power of Attorney in favour of the said Ramasamy Naidu. The said Ramasamy Naidu on the basis of this Power of Attorney had executed a Sale Deed in favour of the second respondent herein. The records would further show that that by judgment and decree in S.A.No.600 of 1998, the suit properties had been partitioned equally between Mangammal and Hariharan. Since the sale in favour of the second respondent had been effected by the said Mangammal, the properties had been divided between the respondents 1 and 2. Thereafter, the 2nd respondent / plaintiff had filed E.P.136 of 2010 seeking delivery of the northern portion allotted to her and the same was delivered to her. Thereafter, the 1st respondent herein / 2nd defendant had filed a petition seeking delivery of possession of his share of the southern portion in E.P.No.132 of 2011. At this juncture, the obstruction petition



S.A.No.966 of 2022

WEB COPY

has been filed by the appellant. In her evidence as P.W1, she would submit that in the year 1961, she had got married and 6 years later, she had moved the suit village and when she had come to the suit village, the suit property was a vacant site and she and her husband had entered possession and put up the house. However, during her cross examination, she would submit that she had entered into possession of the property with the permission of the original owner, Sowrirajan. She has also conceded that none of the revenue records stand in her name. Therefore, once the petitioner admits that she is in permissive occupation she cannot maintain an obstruction petition and she is bound to deliver possession of the property to the original owner. Therefore, the judgment of the Courts below is very much in order and does not require any re-consideration. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

30.11.2022

Index:Yes / No
Speaking Order : Yes/No
srn

6/8



S.A.No.966 of 2022

WEB COPY

- To
1. The Additional District Judge, Mayiladuthurai.
 2. The Section Officer, V.R. Section High Court, Madras



WEB COPY



S.A.No.966 of 2022

P.T.ASHA, J.,

srn

S.A.No.966 of 2022

and

C.M.P.No.20504 of 2022

30.11.2022