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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.651 of 2014
and MP No.1 of 2014

1. Sulochana

2. Jayaganth

1. Mani

2. A.Ponnusamy

3. Easwari

...Appellants/Plaintiffs

Vs.

...Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 06.02.2014 passed in A.S.No.64/2013 on the file of the Subordinate Court, Sathyamangalam, Erode District against the decree and judgment dated 19.07.2013 passed in OS. No.112 of 2010 by the District Munsif Court, Sathyamangalam, Erode District as far as the eastern 5 Anganams of the suit property is concerned by allowing this Second Appeal.

For Appellants : Mr.I.C.Vasudevan

For Respondents : No appearance

JUDGMENT

The plaintiffs are the appellants in this Second Appeal.

2. The plaintiffs filed the suit seeking for the relief of declaration and permanent injunction on the ground that the suit properties and other properties originally belonged to one Karuppanna Gounder. He had five sons and they divided the properties by virtue of a Partition Deed dated 12.06.1968. One of the son namely S.K.Ponnusamy is the husband of the first



plaintiff and the father of the second plaintiff and he was allotted the properties described in the 'E' Schedule to the Partition Deed dated 12.06.1968. The further case of the plaintiffs is that the said Ponnusamy died on 09.06.2001 and on his demise, the plaintiffs became entitled to the property and they were in possession and enjoyment of the same.

3. The grievance of the plaintiffs is that they wanted to demolish the existing house and were attempting to put up a new construction and this was prevented by the defendants. Hence the plaintiffs filed the suit seeking for the relief of declaration and permanent injunction.

4. The Trial Court on appreciation of the oral and documentary evidence found that the plaintiffs are not entitled for any relief and dismissed the suit in its entirety. Aggrieved by the same, the plaintiffs filed AS No.64 of 2013 before the Sub Court, Sathyamangalam. The Lower Appellate Court on appreciation of the oral and documentary evidence and after considering the findings of the Trial Court, found that the plaintiffs have made out a case for an extent of 5 Anganam and hence partly decreed the suit for this extent. Aggrieved by the same, the present Second Appeal has been filed before this Court.

5. The learned counsel for the appellants submitted that Ex.B1 which is the parent document clearly describes the boundaries of the suit property and hence those boundaries will prevail over the extent that was mentioned in the document. The learned counsel further submitted that the defendants did not adduce any evidence to show that they were in possession and enjoyment of the property. The learned counsel further submitted that both the Courts below did not take into consideration the Partition Deed that was marked as Ex.A1 and the Lower Appellate Court ought to have decreed the suit for the entire 10 Anganam and should not have confined the decree only for 5 Anganam. The learned counsel therefore submitted that the judgments of both the Courts below require the interference of this Court.

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

7. In the present case, the plaintiffs were basing their case on the Partition Deed which was marked as Ex.A1. There was a dispute with regard to the extent of property and the



plaintiffs were not coming forward to file the parent document which is the Sale Deed dated 22.02.1932 through which the above said Karuppanna Gounder had purchased the properties. This document was marked on the side of the defendants as Ex.B1. The Lower Appellate Court on carefully considering this document, found that only 5 Anganam house was conveyed in favour of Karuppanna Gounder through Ex.B1. The Lower Appellate Court also took into consideration the evidence of P.W.1 in this regard.

8. The Lower Appellate Court further took into consideration the fact that Exs.A2 to A13 did not really help in establishing the extent of property in which the plaintiffs were claiming to be in possession and enjoyment. In the absence of the same, the Lower Appellate Court had to necessarily consider Ex.B1 and the oral evidence of the witnesses and had rightly come to a conclusion that the Trial Court ought not to have dismissed the suit in its entirety. Therefore, the Lower Appellate Court reversed the finding of the Trial Court and had granted the relief sought for by the plaintiffs for an extent of 5 Anganam on the western side of the suit property.

9. In the considered view of this Court, the findings of the Lower Appellate Court was based on the materials available on record and this Court does not find any perversity in the said finding. In any case, this Court does not find any substantial questions of law involved in the present Second appeal.

10. 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.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jv
To

1. The Subordinate Judge,
Sathyamangalam,
Erode District



2. The District Munsif,
Sathyamangalam,

3. The Section Officer,
V.R.Section, High Court of Madras.

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NR(CO)
SP(17/05/2022)