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S.A.No.1294 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06..04..2023

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.1294 of 2006

- 1.Kesavan (Died)*
2. Perumal
3. K.Kaliyan

*[3rd Appellant brought on record as legal representative of the deceased 1st appellant vide order dated 14.11.2018 made in C.M.P.Nos.15514 to 15516 of 2017 in S.A.No.1294 of 2006]

..... Appellants

-Versus-

Valliammal

.... Respondent

Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 04.07.2006 made in A.S.No.35 of 2005 by the learned Subordinate Judge, Arni, Tiruvannamalai District, confirming the judgement and decree dated 30.03.2005 made in O.S.No.30 of 2022 by the learned District Munsif, Arni, Tiruvannamalai District.

For Appellant(s) : Mr.M.Sriram for Appellants 2 & 3

For Respondent : Mr.V.Baskaran

JUDGEMENT



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The defendants are the appellant. The suit was filed for bare injunction restraining the defendant from interfering with the suit property.

2. The case of the plaintiff is that the property is a government poramboke land. It was encroached upon by one Thakkali @ Ellammal. Her brother was one Kandasamy. The said Kandasamy had one son by name Vijayakumar. The plaintiff is Vijayakumar's wife. In other words, the plaintiff is Ellammal's brother's daughter-in-law. She feared dispossession at the hands of the defendants 1 and 2. Therefore, she has come forward with the suit for injunction. She claims that she took care of Ellammal during her life time and out of natural love and affection, Ellammal had executed a Will / Testament in her favour on 17.11.200. She passed away on 20.11.2001. As the 1st defendant was attempting to alienate the property in favour of the 2nd defendant, suit had been presented.

3. A written statement was filed by the defendant stating that Ellammal had never executed a Will and that the plaintiff and her husband trespassed into the property after the death of Ellammal. According to the defendants, when he had gone away to Chennai for treatment for his health, taking advantage of his absence from the village, the plaintiff broke open the house, took away the documents and settled themselves comfortably in the property.

4. The trial court as well as the first appellate court found that the



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original documents relating to the property had been produced by the plaintiff.

B-Memo produced by the defendants relates to subsequent period. On this basis, the suit was decreed and the appeal suit was also dismissed. Against the concurrent findings, the defendants are before me.

5. Mr.M.Sriram, learned counsel for the appellants 2 & 3 would vehemently contend that the courts below ought not to have gone into the issue of Will/Testament. He would further state that the plaintiff is a trespasser and not entitled to injunction and finally that they had given a police complaint which had not been properly appreciated by the courts below. This is a simple suit for injunction with respect to possession. Therefore, any finding given by the courts below with respect to the Will is obviously not binding in a properly instituted suit for declaration or any other relief that the defendants may seek for. In a suit for injunction all that I have to see is, who is in possession of the property. As the courts below have found that the original documents have been produced by the plaintiff and she is in lawful possession, injunction obviously has to follow. If the defendants are of the view that they have been forcibly or wrongfully dispossessed, their remedy ought to have been for filing suit under Section 6 of The Specific Relief Act or a regular civil suit claiming possession of the property. This is especially so since in paragraph 4 of the written statement, the defendants themselves admitted that the plaintiffs are in



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possession of the property. The findings insofar as the Will and other aspects are concerned the same stand vacated and the second appeal is liable to be dismissed. As I have no called the respondents to object to the appeal, there shall be no order as to costs.

In the result, this Second Appeal is dismissed. The judgement and decree of both the courts below are confirmed. No costs.

06..04..2023

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
kmk

To

- 1.The Subordinate Judge, Arni, Tiruvannamalai District
- 2.The District Munsif, Arni, Tiruvannamalai District.



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V.LAKSHMINARAYANAN, J.

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