



S.A.No.127 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 127 of 2018

1.Navaneetham
2.Elangovan
3.S.P.Eswaran
4.ChandraAmmal

...Appellants

Vs.

Dhanabackiammal
...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.45 of 2014 dated 13.03.2017 on the file of Subordinate Judge, Vellore confirming the Decree and Judgment passed in O.S.No.565 of 2006 dated 18.06.2014 on the file of Principal District Munsif Court, Vellore.

For Appellants : M/s.R.T.Sundari

For Respondent : Mr.M.Sathish Kumar

JUDGEMENT

The unsuccessful defendants are the appellants. The respondent/plaintiff filed a suit for bare injunction restraining the defendants from interfering with



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her peaceful possession and enjoyment of the suit property. She also sought for permanent injunction restraining the defendants from putting up any construction in the suit property. Pending the suit, the defendants appeared to have put up construction in the middle portion of the suit property. Therefore, the plaintiff amended the plaint and sought for mandatory injunction seeking direction to defendants to demolish the illegally put up construction in the middle portion of the suit property. The suit filed by the respondent/plaintiff was decreed by the Trial Court. Aggrieved by the same, the appellants/defendants preferred an appeal in A.S.No.45 of 2014 on the file of Sub-Ordinate Court, Vellore. The First Appellate Court also concurred with the findings of the Trial Court. Aggrieved by the same, the appellants/defendants are before this Court by way of second appeal.

2. According to the appellants/defendants, the suit property originally belonged to one Unnamalai Ammal. The said Unnamalai Ammal had three sons namely Govindarajan, Narayanasamy and Krishnan. She died 60 years ago leaving behind her sons as legal heirs to succeed her estate. The son of Unnamalai Ammal namely Govindarajan had three daughters namely the plaintiff, the 4th defendant and one Santhi. The legal heirs of said Santhi are



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defendants 1 to 3. It was averred by the appellants that Unnamalai Ammal son Govindarajan and his brothers namely Narayanasamy and Krishnan were settled down in Malaysia long back. The respondent/plaintiff got married in the year 1961. As the entire family of Govindarajan's sons and his brothers got settled down in Malaysia, Govindarajan Mudaliyar and his brothers handed over the suit property to the respondent/plaintiff and surrendered possession by allowing the plaintiff to enjoy the suit property as absolute property without any reservation. It was pleaded by the respondent/plaintiff that the suit property was given to her in the year 1961 as sridhana for her marriage and from that date onwards, she had been enjoying the property as an exclusive owner. The defendants namely the legal representatives of one Santhi/deceased sister of plaintiff and her another sister, the 4th appellant do not have any share in the suit property. Earlier one Subramaniam and his mother Valliammal claimed right over the suit property and hence, the respondent/plaintiff was constrained to file a suit in O.S.No.285 of 1983 on the file of learned District Munsif Court, Vellore for declaration of title and injunction against the said Valliammal and Subranmanian. The appellants 1, 2 and 4 were also made as parties to the said suit. The 3rd appellant was also given a notice of the proceedings for his appointment as guardian of the 1st and 2nd appellants, who were minors at that



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point of time. Though 3rd appellant received notice, he failed to contest the suit and represent the minor appellants 1 and 2. In such circumstances, the Court guardian was appointed representing the minor appellants 1 and 2 in the said suit. The above said suit in O.S.No.285 of 1983 was dismissed after trial. Subsequently, the respondent/plaintiff preferred an appeal in A.S.No.69 of 1996. The said appeal was partly allowed declaring the title of the respondent/plaintiff over the present suit property excluding the northern 2 feet wall which was shown as B schedule property in the said suit. The declaration and injunction prayed for in the earlier suit was granted in respect of A schedule property which is the present suit property. Since the plaintiff's title over the suit property based on family arrangement was already declared in O.S.No.285 of 1983, the appellants/defendants who were parties to the earlier suit were not entitled to question the title of the respondent/plaintiff again. Since the defendants without having any manner of right attempted to interfere with the possession of the plaintiff, she was constrained to file a suit for the above said relief.

3. The appellants/defendants filed a written statement denying the title and possession of the respondent/plaintiff over the suit property. The defendants in their written statement specifically denied the plea of plaintiff that suit property



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was given to her as sridhana in the year 1961 by Govindarajan and his brothers.

The defendants also claimed possession over the suit property. It was also averred by the defendants that they never made any attempt to put up new construction in the suit property. It was further averred by the defendants in their written statement that the decree passed in O.S.No.285 of 1983 would not bind them as 1st and 2nd defendants, who were minors at that point of time were represented by Court guardian in the said suit. On these pleadings, they prayed for dismissal of the suit.

4. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that title of the respondent/plaintiff was declared even in the earlier suit in O.S.No.285 of 1983 as modified in A.S.No.69 of 1996. The Trial Court also confirmed that the judgment and decree passed in earlier litigation would bind the appellants herein and consequently, the respondent was entitled to decree as prayed for. Aggrieved by the said judgment and decree, the appellants preferred an appeal in A.S.No.45 of 2014 on the file of Sub-Court, Vellore. The First Appellate Court also confirmed the findings of the Trial Court. Aggrieved by the same, the appellants have come by way of second appeal.



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5. The learned counsel for the appellants submitted that the earlier suit between the parties was not in respect of the very same suit property and in fact, the earlier suit was only in respect of 2 feet northern wall and hence, the Courts below erred in coming to the conclusion that in view of the declaration decree granted in earlier suit, the respondent was entitled to decree as prayed for. The learned counsel submitted that the plaintiff/respondent, who pleaded right over the suit property under sridhana miserably failed to prove the same and hence, both the Courts below committed error in coming to the conclusion that plaintiff/respondent was entitled to decree as prayed for. The learned counsel for the appellants submitted that earlier litigation between the parties was not in respect of the same suit property and the same was only in respect of the northern portion of the wall.

6. Both the Courts below, on proper appreciation of Ex.A27 to Ex.A45, correctly came to the conclusion that A schedule property in the earlier suit is the present suit property. In fact, the Trial Court in earlier litigation granted decree only in respect of the B schedule northern wall portion. Aggrieved by the same, the respondent/plaintiff preferred an appeal in A.S.No.69 of 1996. The appeal



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was partly allowed by granting declaration in respect of A schedule property. The Courts below, on proper appreciation of documents relating to the earlier litigation, came to the conclusion that the title of the respondent/plaintiff over the suit property was declared in the earlier suit to which the appellants 1, 2 and 4 herein were parties. In fact, notice in earlier hearing was issued to 3rd appellant in his capacity as guardian of 1st and 2nd appellants and he failed to appear before the Court. Thereafter, the Court guardian was appointed to represent the minor appellants 1 and 2, who were minors during earlier litigation. In such circumstances, the Courts below correctly concluded when title of respondent was declared in earlier suit, the present suit filed by the respondent for bare injunction is deserved to be decreed.

7. Though the learned counsel for the appellants submitted that the respondent failed to prove that the suit property was gifted to her as Sridhana, the said point was considered in the earlier litigation and the plea of Sridhana raised by the respondent was upheld and her title was declared. In such circumstances, the appellants are not entitled to contend that respondent failed to prove that the suit property which was given to her as sridhana gift at the time of marriage. Therefore, the contentions raised by the learned counsel for the



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appellants are not acceptable to this Court. The Courts below, on proper appreciation of evidence available on record, came to correct conclusion that title of respondent was declared in earlier suit and consequently, she is entitled to relief of injunction and mandatory injunction sought for in the present suit.

8. In such circumstances, I do not find any substantial questions of law arising for consideration in this second appeal calling for interference while exercising jurisdiction under Section 100 of CPC.

9. Accordingly, the second appeal stands dismissed.

a) by affirming the judgment and decree passed in A.S.No.45 of 2014 dated 13.03.2017 on the file of Subordinate Judge, Vellore confirming the decree and judgment passed in O.S.No.565 of 2006 dated 18.06.2014 on the file of Principal District Munsif Court, Vellore.

b) In the above facts and circumstances of the case, there will be no order as to costs.

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Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

1. The Subordinate Judge, Vellore
2. The Principle District Munsif, Vellore.



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