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S.A.No.155 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.03.2023

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.155 of 2023
and
C.M.P.No.4503 of 2023

Manickathai @ Manickam,
W/o. Kadirvelkalingarayar

.... Appellant

Vs

1. M.R.Chinnasamy
S/o.M.C.Rathinam

2. M.C.Rathinam
S/o.Late M.R.Chinnaswamy Gounder

3. R.Sandhakumar
S/o.Late Ramasamy Gounder

R.Sampathkumar (Died)

4. Chitraleka Sampathkumar
W/o.Late R.Sampathkumar

5. Sumangala Hari
W/o.Hari

6. S.Ganesh Rathinam
S/o.Late R.Sampathkumar

.... Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 10.10.2022



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passed in A.S.No.10 of 2016 on the file of the Subordinate Court, Pollachi, reversing the Judgment and Decree dated 08.02.2016 passed in O.S.No.118 of 2008 on the file of the District Munsif Court, Pollachi.

For Appellants : Mr.K.R.Arun Shabari

JUDGMENT

This Second Appeal is directed as against the Judgment and Decree dated 10.10.2022 passed in A.S.No.10 of 2016 on the file of the Subordinate Court, Pollachi, reversing the Judgment and Decree dated 08.02.2016 passed in O.S.No.118 of 2008 on the file of the District Munsif Court, Pollachi, thereby allowing the suit seeking for permanent injunction.

2. The appellant is the plaintiff and the respondents are the defendants. The case of the plaintiff is that the suit schedule property and other properties belonged to one Ponnammal, wife of M.R.Chinnaswamy Gounder. The first defendant is the son and the defendants 3 and 4 are the grandsons through the eldest son of the said Ponnammal. The second defendant is the son of the first defendant. The plaintiff is the grand daughter of Ponnammal through her daughter deceased Muthammal. While being so, on 23.02.1983, the said Ponnammal executed a registered Will, thereby bequeathed the suit properties in favour of the defendants. The 'E' Schedule property, which is portion of the suit property herein, was



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bequeathed in favour of the plaintiff. Thereafter, the said Ponnammal died on 07.12.1985. However, the defendants 1 to 4 had set up a false case and created annexure to the said Will. The property, which was given to the plaintiff, has been revoked by way of codicil. On demise of the said Ponnammal, the defendants had taken possession and enjoyment of the properties. Therefore, the plaintiff possession was denied by them and she was constrained to file a suit for declaration of her right in O.S.No.24 of 1986 on the file of the Subordinate Court, Udumalpet and it is pending. In the suit properties, there are five big grown up tamarind trees and about 900 silk cotton trees are planted. All of them are grown up and yielding, the entire benefits are enjoying by the defendants. Therefore, now the appellant was threatened by the defendants that they would cut and remove the tamarind trees and silk cotton trees. Hence, the suit.

3. The defendants/respondents resisted the suit and filed written statement stating that the property, which was bequeathed in favour of the plaintiff, was cancelled by her grandmother, viz., the said Ponnammal, by way of codicil. As per the codicil, the plaintiff does not have any right in the suit property. The suit filed by the plaintiff in O.S.No.24 of 1986, only because the plaintiff was unable to defeat the fact



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that the right given to her in the Will has been taken away by the codicil.

After the Will, the defendants had taken possession of the land, there are only four tamarind trees and rest of the lands were vacant. In fact, the defendants by investing more than Rs.30,000/- to the said lands for developing and also planted the silk cotton trees. They are spending Rs.10,000/- per annum to maintain the said trees. There is absolutely no reason at all for the defendants to damage their own properties, subsequently, they invested huge amount to develop the growing silk cotton trees.

4. Based on the pleadings, the Trial Court framed the following issues :-

- (i) Whether the plaintiff is entitled for permanent injunction as prayed for ?
- (ii) What other relief plaintiff is entitled for ?

5. On the side of the plaintiff, she had examined P.W.1 and no exhibit was marked. On the side of the defendants, no one was examined and no document was marked. The Court has marked Ex.C1.

6. On considering the oral and documentary evidences



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adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit. Aggrieved by the same, the second respondent preferred an appeal in A.S.No.10 of 2016 before the Subordinate Judge, Pollachi. The Appellate Court allowed the appeal and dismissed the suit filed by the plaintiff. Aggrieved by the same, the appellant filed the present second appeal.

7. The learned counsel for the appellants has raised the following substantial questions of law:

(i) Does not the burden of proof with respect to the claims made by the second defendant lie with the second defendant alone ?

(ii) Does not the burden of proof lying with the second defendant shift on the plaintiff only after such burden of proof is discharged by the second defendant with requisite evidences ?

(iii) Is not the plaintiff entitled to a relief of permanent injunction, when the 2nd defendant has failed to prove the alleged absence of any trees from the suit property, during the tendency of the first appeal ?

8. Heard, Mr.K.R.Arun Shabari, the learned counsel appearing for the appellant and this Court considered the submission made by the



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learned counsel for the appellants.

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9. The learned counsel appearing for the appellant would submit that it is only for permanent injunction to some trees, which are situated in the suit property. Pending appeal, the Trial Court appointed the Advocate Commissioner. In the suit land, there are five tamarind trees, aged about 40 to 45 years. That apart, 900 to 1000 silk cotton trees are also planted in the suit land. Unfortunately, the First Appellate Court dismissed the suit on the ground that the appellant failed to produce any documents to show that the trees were planted by her grandmother. He further submitted that even according to the defendants, they were taken possession of the suit land, there were five tamarind trees. Now, they are taking steps to cut down those trees.

10. A perusal of the records reveals that the appellant filed a suit for permanent injunction restraining the respondents herein not to cut the trees or destroying and removing any of the trees in the suit land. She is claiming the suit property through a Will dated 23.02.1983. As per the Will, she was bequeathed 'E' Schedule property, executed by her grandmother viz., the said Ponnammal. Whereas, the case of the



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respondents is that as per the subsequent codicil, the share, which was allotted in favour of the plaintiff, was cancelled. Admittedly, the respondents are in possession and enjoyment of the suit schedule property.

11. On perusal of their written statement, they categorically admitted that they are taking possession of the suit property, there were five tamarind trees. Thereafter, they were planted silk cotton trees and they are enjoying the same. They also categorically stated that there is absolutely no reason at all to damage their own property especially after they are invested hard labour and a huge amount to develop the land by growing silk cotton trees. The silk cotton trees so grown by them and they can do anything with them as they please. It shows that they are in possession of the suit property, they had planted silk cotton trees and they were enjoying the same. In fact, the plaintiff filed a suit for declaration in O.S.No.24 of 1986 on the file of the Subordinate Court, Udumalpet, transferred to the file of the District Munsif Court, Pollachi and re-numbered as O.S.No.118 of 2008. It is also seen that it is only filed for declaration.

12. As such the Courts below have analyzed the evidences adduced by the parties, both the documentary and oral in detail, and by



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giving cogent reasons, concluded rightly and dismissed the suit.

Accordingly, this Court is of the considered opinion that no substantial question of law is involved in this appeal.

13. In view of above, this Second Appeal is dismissed and the Judgment and Decree dated 10.10.2022 passed in A.S.No.10 of 2016 on the file of the Subordinate Court, Pollachi, reversing the Judgment and Decree dated 08.02.2016 passed in O.S.No.118 of 2008 on the file of the District Munsif Court, Pollachi, are hereby confirmed. However, the appellant is at liberty to approach the Trial Court, in the suit for declaration for appropriate relief, if so advised. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

02.03.2023

Index : Yes/No

Neutral Citation : Yes/No

Speaking order/Non-speaking order

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To

1. The Subordinate Judge, Udumalpet.
2. The District Munsif, Pollachi.



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G.K.ILANTHIRAIYAN, J.

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