



S.A.No.902 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.902 of 2023
and
C.M.P.No.28879 of 2023

B.Balakrishnan

... Appellant

Vs.

B.Jayakumar

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 29.11.2019 in A.S.No.6 of 2019 passed by the learned Subordinate Judge, Coonoor, confirming the judgment and decree dated 11.01.2019 in O.S.No.45 of 2013, passed by the learned District Munsif, Kotagiri.

For appellant : Mr.L.Mouli

For respondent : Mr.V.Chinnsamy



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JUDGMENT

The defendant, who has concurrently lost before the Courts below, is the appellant before this court and the facts which have culminated in filing of the above second appeal are briefly set out hereinbelow.

2. For the ease of understanding, the parties are referred to as plaintiff and defendant as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff has filed a suit in O.S.No.45 of 2013 on the file of District Munsif, Kotagiri, seeking permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit schedule property.

2.2. It is the case of the plaintiff that the defendant is his eldest brother and the suit schedule property is the ancestral property of their father. After the death of their father, the plaintiff and the defendant



along with their other two brothers have orally partitioned the property left behind by their father.

2.3. The suit schedule property is a house property situated at Kotagiri Village at Sackatha hamlet measuring 0.02 1/2 acres with specific boundaries consisting of 3 rooms in the ground floor and 3 rooms in the first floor. The first floor has a wooden flooring and there is a stair case going from ground floor to the first floor. The suit schedule house bears Door No.4/141.

2.4. The suit schedule property was allotted to the plaintiff and the adjacent properties were allotted to other brothers and a 1/4th share in the building at Aravenu Bazaar was given to the defendant as his share. The plaintiff, therefore, was the absolute owner of the suit schedule property in which he has been living with his family members ever since the partition. The defendant, who is residing in the undivided building at Aravenu Bazaar trespassed into the suit



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schedule property on 26.10.2013 and assaulted the plaintiff's wife.

The plaintiff had lodged a police complaint with the Kotagiri Police.

The plaintiff would submit that he apprehends that the defendant would once again trespass into the suit property and therefore, he has come forward with the suit for permanent injunction.

2.5. The defendant had filed a written statement *inter alia* denying that there was a partition after the death of their father. It is the contention of the defendant that the property continued to be in joint possession and enjoyment of all the legal heirs. Since the property has not been partitioned the defendant would submit that he has the right to the property.

2.6. It is the case of the defendant that he is not living in the building at Aravenu bazaar, but, is living in the three rooms in the first floor of the suit schedule mentioned property and two rooms in the first floor in Door No.96. The defendant would further submit that



his father had property in Door Nos.96, 97 and 98 in Sackatha hamlet and one portion of the building in Aravenu bazaar and all these properties are yet to be partitioned. The defendant would submit that his possession can be proved through government documents. The allegation that he had assaulted the plaintiff's wife was absolutely false and the police complaint that was filed was found to be false.

2.7. The defendant would further assert that all the sons of Bellie Gowder are jointly living in Door Nos.96, 97 and 98 and therefore, he sought for the dismissal of the suit for permanent injunction.

TRIAL COURT:

3. The Trial Court has framed four issues. On the side of the plaintiff, the plaintiff had examined four witnesses and marked Exs.A1 to A16. On the side of the defendant, the defendant had examined himself as D.W.1 and marked Exs.B1 to B5.



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4. After considering the evidence on record, the learned Judge has decreed the suit as prayed for.

LOWER APPELLATE COURT:

5. Challenging the same, the defendant has filed an appeal in A.S.No.6 of 19, on the file of Subordinate Court, Coonoor.

6. The learned Lower Appellate Judge has also concurred with the finding of the Trial Court and dismissed the appeal, against which, the defendant had filed the above second appeal.

7. Heard the learned counsel on either side and perused the materials available on record.

DISCUSSION:

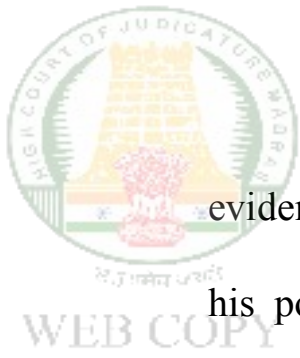
8. A mere perusal of the judgment and decree of the Courts



below would clearly show that the defendant in his written statement had denied the oral partition as claimed by the plaintiff, however, in Ex-A16 which is the legal notice dated 14.04.2012, which he had issued to the plaintiff and his two other brothers, he had stated that even during the lifetime of their father, all the properties have been partitioned amongst the family members and the women were settled by giving Sreedana at the time of their marriage.

9. That apart, P.W.3 and P.W.4, during their cross-examination, have both spoken about the oral partition that has been effected among the family members. That apart, the plaintiff has marked documents to prove his possession of the suit schedule property which were marked Exs.A1 and A2 series. The statement in Ex.A16 - legal notice would clearly prove the case of the plaintiff regarding the oral partition.

10. Therefore, in the light of the above documents and also the



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evidence of P.W.2 and P.W.3 and Ex.A16, the plaintiff has proved his possession over the suit schedule property and both the Courts have rightly dismissed the appeal and rightly decreed the suit. I see no reason to interfere with the concurrent judgment and decree of both the Courts below, particularly, when no substantial question of law has been made out by the appellant and the appellant has not been able to point out any discrepancies in the judgment and decree of the Courts below.

Accordingly, this second appeal stands dismissed. Consequently, connected C.M.P. stands closed. No costs.

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Index : Yes/No
Speaking order/non-speaking order
ssa

To

1. The Subordinate Judge, Coonoor.
2. The District Munsif, Kotagiri.
3. The Section Officer, V.R. Section, High Court, Madras.

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P.T.ASHA, J.,

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