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S.A.No.903 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.903 of 2023
and
C.M.P.No.28882 of 2023

B.Balakrishnan

... Appellant

Vs.

B.Magesh

... 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.5 of 2019 passed by the learned Subordinate Judge, Coonoor, confirming the judgment and decree dated 11.01.2019 in O.S.No.47 of 2014, passed by the learned District Munsif, Kotagiri.

For appellant : Mr.L.Mouli

For respondent : Mr.V.Chinnsamy

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.

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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.47 of 2014 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 elder brother and the suit schedule property is an 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 ½ acre with specific boundaries consisting of a ground floor and a first floor. There is a stair case going from the ground floor to the first floor. The suit schedule house is situate at Kotagiri Village at Sackatha hamlet and is comprised in S.No.2041/55 bearing D.No.4/140.

2.4. The suit schedule property was allotted to the plaintiff and the adjacent properties were allotted to other brothers and a building was given to the defendant as his share at Aravenu Bazaar in an oral partition entered into after the death of their father. 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 schedule property on 26.05.2014 and thereby, he had broken the back door of the suit schedule house. 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 in Door No.97A and two rooms in the first floor of the suit schedule mentioned property. 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 broken the back door of the suit schedule house 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 three issues. On the side of the plaintiff, the plaintiff has examined three witnesses and marked Exs.A1 to A13. On the side of the defendant, the defendant has examined himself as D.W.1 and marked Exs.B1 to B4.



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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.5 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, D.W.1, during his cross-examination, has deposed that all the properties of their father have been orally partitioned amongst the family members and each sharer is in possession and enjoyment of their respective shares.

9. That apart, P.W.2, during his cross-examination, had 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 to A6.

10. Therefore, in the light of the above documents and also the evidence of P.W.2, 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



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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
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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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