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S.A.No.1216 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.1216 of 2019
and
CMP.No.26479 of 2019

R.Shakkila Rani

...Appellant

Vs.

V.Yuvaraj

... Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the decree and judgment of the learned Subordinate Judge, Arakkonam, in A.S.No.10 of 2017 dated 10.04.2019 reversing the decree and judgment of the learned District Munsif, Arakkonam, in O.S.No.164 of 2007 dated 18.11.2016.

For Appellant : Mr.J.Shanmuga Sundara Babu

For Respondent : Mr.P.Krishnan



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JUDGMENT

The defendant in the suit is the appellant. The respondent herein filed a suit for bare injunction restraining the appellant from interfering with the peaceful possession and enjoyment of the suit property and also disconnecting the electricity supply and water supply in the suit property. The suit was dismissed by the trial Court and the appeal filed by the respondent/plaintiff was allowed. Aggrieved by the same, the unsuccessful defendant has come up with this Second Appeal.

2. According to the respondent/plaintiff, the suit property originally belonged to the father of the parties namely Veeraragavalu Naidu, having purchased the same vide a registered a sale deed dated 19.11.1970. It was claimed by the respondent that the father of the parties executed a Will on 15.06.1989 in favour of the respondent and his eldest son Jayachandra Naidu in respect of the suit property. Subsequently, the same was cancelled and he executed another Will on 19.05.1992 in favour of the appellant, respondent



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and two other children. Thereafter again he executed a third Will on 07.01.1994 bequeathing the suit property in favour of the defendant and his eldest son Jayachandra Naidu. Subsequently, the said Will was also cancelled and he executed a last Will dated 16.12.1997 bequeathing the suit property in favour of all his children namely the appellant, the respondent, Jayachandra Naidu and Sumathi Bai. As per recitals of the said Will the suit property has to be sold and sale proceeds has to be distributed equally among his children. The respondent also claimed that the original Will dated 16.12.1997 was in the custody of the appellant/defendant. The respondent/plaintiff also claimed that he and his elder brother Jayachandra Naidu were residing in the suit house. The appellant and another sister Sumathi Bai were permanently residing at Chennai. Since the appellant attempted to interfere with the possession of the respondent, he was constrained to file a suit for the above said relief.

3. The appellant herein filed a written statement and resisted the suit on the ground that the father of the parties Veeraragavalu Naidu executed his last Will dated 07.01.1994 bequeathing the southern side of the suit property in favour of the appellant/defendant. The northern side of the suit property was bequeathed in favour of the elder son of Veeraragavalu Naidu



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namely Jayachandra Naidu. The said Veeraragavalu Naidu died on 05.01.1998 and after his death the appellant became the absolute owner of the suit property.

4. It was also claimed that when the father was alive he allowed the respondent/plaintiff to reside in the suit property as a tenant on monthly rent of Rs.75/- during March 1992. However, he failed to pay rent till September 1994 and therefore, at the request of the respondent, Veeraragavalu Naidu paid a sum of Rs.1,000/- and the respondent received the same and vacated the premises. After the death of father Veeraragavalu Naidu, the respondent attempted to interfere with appellant's possession. Therefore, she filed a suit for injunction in OS.No.111 of 1999 on the file of the District Munsif Court, Arakkonam. Thereafter, the respondent approached the appellant requesting her to permit him to reside in the suit property on monthly rent. Therefore, the appellant permitted the respondent to reside in the suit property for a monthly rent of Rs.600/- during April 1999. Further the respondent/plaintiff failed to pay rent as agreed and hence, the appellant/defendant issued a legal notice dated 01.05.2007 to the respondent requesting him to vacate the premises and also demanded arrears of rent. The



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respondent also issued a notice and claimed that the father executed another Will on 16.12.1997 cancelling earlier Will dated 07.01.1994 in favour of the appellant. It was also claimed that as per the last Will executed by Veeraragavalu Naidu on 07.01.1994 the appellant was the owner of the property and hence she sought for dismissal of the suit for injunction filed by the respondent.

5. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the appellant was the real owner of the suit property as per Will dated 07.01.1994 executed by Veeraragavalu Naidu. Therefore, the suit for injunction filed by the respondent was dismissed on the ground that no injunction suit would lie against the real owner.

6. Aggrieved by the dismissal of the suit, the respondent preferred an Appeal in A.S.No.10 of 2017 on the file of the Subordinate Judge, Arakkonam. The first Appellate Court based on the admission of DW1 and DW3 came to the conclusion that the respondent's possession over the suit property was proved and hence, he was entitled to injunction. Aggrieved by



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the said judgment, the appellant herein has come up with this Second Appeal.

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7. The learned counsel for the appellant submitted that once the First Appellate Court came to the conclusion that the appellant was the owner of the property based on the registered Will of Veeraragavalu Naidu on 07.01.1994, it ought not to have granted decree for injunction against the real owner of the property. I am unable to agree with the submission made by the learned counsel for the appellant since in the written statement filed by the appellant she clearly admitted that the respondent was allowed to reside in the suit property on monthly rent of Rs.600/- from April 1992. It was also averred by the appellant that the respondent failed to pay the rent as agreed and hence legal notice was issued by the appellant on 01.05.2007 to the respondent requesting him to vacate the premises and pay arrears of Rs.600/- from April 1992 to April 2007. Therefore, even in her pleadings the appellant admitted the lawful possession of the respondent. As pointed out by the first Appellate Court the brother of the parties namely Jayachandran who was examined as DW1 in his cross examination admitted the possession of the respondent. Further the appellant herself examined as DW1 and she also admitted that the



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suit property was let out to the respondent. Therefore, the possession of the respondent is lawful. In such circumstances, the respondent is entitled to a right not to be vacated except by due process of law. Therefore, the decree for injunction granted by the first Appellate Court is in accordance with law and the same requires no interference.

8. At this juncture, the learned counsel for the appellant submitted that liberty may be given to the appellant to file a suit for recovery of possession based on his title. The decree for injunction granted in favour of the respondent is only to protect his possession from unlawful interference by the defendant. It is always open to the appellant to file a suit for recovery of possession and workout her remedy in accordance with law if it is permissible under law. With these clarifications the Second Appeal is dismissed as it does not involve any substantial question of law to interfere with the findings arrived by the Courts below.

9. a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the Courts below.



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b) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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

To

- 1.The Subordinate Judge, Arakkonam.
- 2.The District Munsif, Arakkonam.



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S.SOUNTHAR, J.
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