



WEB COPY



S.A.No.265 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.265 of 2017

1.Viruthambal
2.Allirani

...Appellants

Vs.

1.Chidambaram
2.Ambujavalli

...Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 20.08.2015 made in A.S.No.52 of 2014, on the file of the Principle District Judge, Ariyalur, by reversing the judgment and decree dated 09.04.2013 made in OS.No.166 of 2009, on the file of the District Munsif Court, Jayamkondam.

For Appellants : Mr.R.Prabakar
for C.V.Ramachandra Moorthy

For Respondents : No appearance



WEB COPY



S.A.No.265 of 2017

JUDGMENT

The unsuccessful plaintiffs in the suit are the appellants, who have filed a suit for bare injunction. The suit was decreed by the trial Court. The findings of the trial Court was reversed by the Appellate Court. Aggrieved by the same, the plaintiffs are before this Court.

2. According to the plaintiffs, the suit property originally belonged to one Srinivasan Padayachi, who is the paternal grand father of plaintiffs and he had two wives. The father of the plaintiffs namely Jaganathan, born through first wife of the said Srinivasan Padayachi. The first defendant in the suit is the younger brother of the said Jaganathan born through the second wife of Srinivasan Padayachi. After death of Srinivasan Padayachi the property was divided between Jaganathan and Chidambaram. Northern half share was allotted to the share of Chidambaram and Southern half was allotted to the share of Jaganathan. The father of the plaintiffs and the second defendant namely Jaganathan died on 08.11.2008. After his death, the suit property namely Southern half allotted to the share of Jaganathan was divided between the plaintiffs and the second defendant into three sharers in north-south



S.A.No.265 of 2017

directions. The defendants attempted to encroach the properties allotted to the share of the plaintiffs and hence, the above suit was filed for injunction.

3. The first defendant filed a written statement denying the description of the suit property. According to the first defendant, southern $\frac{1}{2}$ of the property allotted to the share of Jaganathan was divided among his children in East - West directions. A portion of the property on Southern extremity was allotted to the share of the first plaintiff and the portion on immediate north of the property allotted to the first plaintiff was allotted to the share of the second plaintiff. The portion on the Northern extremity on Southern half was allotted to the share of the second defendant and the same has been described as MNOP in the plan appended with the written statement. The first defendant also pleaded that he purchased the share allotted to the second defendant by way of a registered document dated 09.04.2009 as Ex.B1.

4. On these pleadings, the parties went to the trial and the first plaintiff was examined as PW1 and six documents were marked as Ex.A1 to Ex.A6 on their side of plaintiffs. The defendants 1 & 2 were examined as DW1 & DW2 and four documents were marked as Ex.B1 to Ex.B4 on the side of



S.A.No.265 of 2017

defendants. The trial Court also appointed an Advocate Commissioner and he filed his report and plan, which were marked as Ex.C1 and Ex.C2.

5. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the portion of the property allotted to Jaganathan was divided among his children in north-south directions and granted decree for injunction as prayed for. Aggrieved by the same, the first respondent filed an appeal in A.S.No.52 of 2014 on the file of the Principal District Court, Ariyalur. The first Appellate Court found that the appellants/plaintiffs failed to establish their possession over the suit property and consequently dismissed the suit by allowing the appeal. Aggrieved by the same, the appellants are before this Court.

6. The learned counsel for the appellants by taking this Court to the evidence of DW1 submitted that DW1 in his evidence clearly admitted that the portion of the property allotted to the share of the Jaganathan was divided among his children in north-south direction. Therefore, the case pleaded by the appellants was clearly admitted by the first respondent. In such circumstances, the first Appellate Court ought not to have come to the conclusion that the



S.A.No.265 of 2017

appellants failed to prove the possession over the portion of the property allotted to their share. The learned counsel further submitted that in order to prove the appellants' possession they have produced revenue records like patta and the same has not been considered by the first Appellate Court.

7. A perusal of the averments found in the plaint and written statement would suggest that there is a serious dispute with regard to the mode of division among the heirs of Jaganathan. According to the appellants/plaintiffs, the heirs of Jaganathan divided the property in North-South directions. However, the same was seriously disputed by the first respondent in his written statement. According to the first respondent, the property of Jaganathan was divided among his heirs in East-West directions.

8. It is also further claimed by the first respondent that the share of the second defendant in the Northern extremity of Jaganathan's property was sold in favour of the first respondent under Ex.B1 dated 09.04.2009. Ex.B1 is the registered sale deed where under the property allotted to the second defendant in East-West direction was allotted to the first respondent. Therefore, the same cannot be ignored.



S.A.No.265 of 2017

WEB COPY

9. In such circumstances, there is a serious dispute with regard to the mode of division among the heirs of Jaganathan. Further, the first plaintiff was examined as PW1 and during the course of her evidence, she clearly admitted that the first defendant cut the trees in the suit property. She also admitted that after cutting the trees the first defendant planted cashew saplings in the said portion of suit property. Therefore, there is a clear admission by the first plaintiff that the suit property is in effective possession of the first respondent. Therefore, the first Appellate Court based on the admission of the first plaintiff (PW1) came to the definite conclusion that the plaintiffs failed to prove their possession over the suit property. When there is clear admission even on the part of PW1 with regard to the possession of the first respondent over the suit property, the plaintiffs are not entitled to get the relief of injunction as prayed for.

10. Accordingly, the findings rendered by the first Appellate Court with regard to the possession of the suit property requires no interference by this Court. As far as dispute with regard to the mode of division among the heirs of Jaganathan is concerned, it is always open to the



S.A.No.265 of 2017

plaintiffs to file appropriate suit for declaration of their title in respect of the possession of allegedly allotted shares and seek appropriate consequential relief.

11. a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the First Appellate Court.

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

06.10.2023

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

To

- 1.The Principle District Judge, Ariyalur.
- 2.The District Munsif Court, Jayamkondam.



WEB COPY



S.A.No.265 of 2017

S.SOUNTHAR, J.
dna

S.A.No.265 of 2017

10.10.2023