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S.A.No.633 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.633 of 2017
and C.M.P.No.15672 of 2017

D.S.K.Kamala Bai

... Appellant

VS.

Ganga Bai

1.Varada Sah

2.V.Rajendra Sah

3.V.Suresh Sah

... Respondents

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree dated 14.02.2017 made in A.S.No.14 of 2008 on the file of Sub Court, Kanchipuram as confirmed the Judgment and Decree dated 13.07.2007 made in O.S.No.326 of 1999 on the file of the Additional District Munsif Court, Kanchipuram.

For Appellant : Mr.G.Vivekanandan
for M/s.S.Udhayakumar

For R2 : Mrs.Padmajamohan
for M/s.Ashokmenon

For R3 : Mr.S.D.Venkateswaran



S.A.No.633 of 2017

J U D G E M E N T

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The unsuccessful plaintiff in a suit for declaration of title and permanent injunction is the appellant. The suit filed by the appellant as well as her first appeal were dismissed by the Courts below. Aggrieved by the concurrent findings, the appellant is before this Court.

2. According to the appellant/plaintiff, the appellant is the daughter-in-law of the deceased 1st defendant in the suit one Ganga Bai. The 1st respondent is appellant husband's brother and another son of Ganga Bai. The respondents 2 and 3 are grandsons of Ganga Bai through 1st respondent. According to the plaint averment, the appellant's husband purchased the suit property with a dilapidated building in the name of said Ganga Bai out of his own funds and put up a new construction. Therefore, it is the specific case of the appellant that though the suit property was purchased in the name of deceased 1st defendant-Ganga Bai, the funds for purchase of the same was provided by appellant's husband. It was further averred that after purchase of the suit property with dilapidated building, the appellant's husband demolished the same and put up a new construction by spending



S.A.No.633 of 2017

his own funds. By virtue of the said overt act of demolition of the dilapidated building and reconstruction, the possession of appellant's husband had become adverse to the right of Ganga Bai. The appellant also pleaded that taking advantage of old age of deceased 1st defendant Ganga Bai, the respondents 2 and 3/the defendants 3 and 4 obtained certain documents in their favour. However, notwithstanding the same, the plaintiff has been in possession and enjoyment of the suit property after death of her husband. It was also pleaded by the appellant that she had perfected her title by adverse possession by long enjoyment of the suit property over the statutory period. On these pleadings, appellant/plaintiff sought for declaration of her title and injunction.

3. The deceased 1st defendant and defendants 3 and 4 filed separate written statement and resisted the suit. They specifically denied the averment contained in the plaint as if, the suit property was purchased by appellant's husband in the name of deceased 1st defendant. It was averred by the respondents that suit property was purchased by Ganga Bai out of her own funds and neither the appellant nor her husband had any right over the same. It was also contended that the deceased 1st defendant during her life



S.A.No.633 of 2017

time executed two registered Settlement Deeds dated 13.11.1998 and 16.11.1998 in favour of respondents 2 and 3/defendants 3 and 4 settling the front portion in favour of 2nd respondent and back portion in favour of 3rd respondent. It was also contended that after death of appellant's husband, she was allowed to occupy a portion of the suit property on compassionate grounds and the said permission was also revoked by the 1st defendant by issuing a notice under Ex.A6. Therefore, the respondents contended that the appellant was not having any title or lawful possession over the suit property and consequently, sought for dismissal of the suit.

4. Before the Trial Court, appellant was examined as PW.1 and yet another witness was examined as PW.2. On behalf of the appellant, 7 documents were marked as Exs.A1 to A7. The 1st respondent was examined as DW.1 and on behalf of the respondents, 10 documents were marked as Exs.B1 to B10.

5. The Trial Court on appreciation of oral and documentary evidences available on record, came to the conclusion that suit property was not purchased by husband of appellant out of his own earnings. The Courts



S.A.No.633 of 2017

below came to a factual conclusion that the suit property was purchased by deceased first defendant and she validly settled the same in favour of respondents 2 and 3 under registered settlement deeds marked as Exs.B3 and B4 dated 13.11.1998 and 16.11.1998 respectively. The Trial Court also came to the conclusion that appellant failed to prove her lawful possession over the suit property and consequently, dismissed the suit. Aggrieved by the same, the appellant filed an appeal in A.S.No.14 of 2008 on the file of the Sub Court, Kancheepuram. The First Appellate Court also affirmed the findings of the Trial Court and dismissed the suit. Aggrieved by the same, the appellant has come up by way of this second appeal.

6. The learned counsel appearing for the appellant submitted that even in the pleadings of the deceased 1st defendant and in the written statement of the respondents 2 and 3, it was clearly admitted by them that the appellant was in possession of portion of the suit property. When respondents 2 and 3 themselves admitted about possession of appellant over the suit property, the Courts below ought not to have dismissed the suit in respect of relief of injunction.



S.A.No.633 of 2017

7. The appellant/plaintiff came to the Court with a specific plea that the suit property was purchased by appellant's husband in the name of his mother namely Ganga Bai. The certified copy of sale deed in favour of Ganga Bai was marked as Ex.B1. A perusal of the same would suggest that the property was purchased by her under Ex.B1 dated 17.07.1957. Therefore, it is clear that the property was purchased in the name of Ganga Bai under Ex.B1 on 17.07.1957. The Courts below on appreciation of oral evidence of appellant as PW.1 and her age at the time of giving evidence, correctly came to the conclusion that age of the appellant's husband would have been around 15 years at the time of purchase of suit property by Ganga Bai. Therefore, as a minor, he could not have provided any funds for purchase of the suit property. In any event, suit property was originally purchased by Ganga Bai under Ex.B1. If any person claims that funds for purchase of the property was provided by him, it is for him to prove the same.

8. In the case on hand, appellant failed to lead any evidence in support of her plea that funds for purchase of the suit property was provided by her husband. The Courts below on appreciation of evidence of PW.1,



S.A.No.633 of 2017

came to the conclusion that the appellant got married only subsequent to the purchase of the suit property. In such circumstances, PW.1 is not competent enough to depose about the purchase made by Ganga Bai in the year 1957. In the absence of any acceptable legal evidence to support the plea of appellant that the suit property was purchased by her husband in the name of Ganga Bai, both the Courts below correctly came to the conclusion that the suit property was purchased by deceased Ganga Bai out of her own funds. Therefore, the appellant is not entitled to declaration of title as prayer for.

9. As far as possession is concerned, the Courts below observed that after death of appellant's husband, Ganga Bai issued a notice to appellant/plaintiff intimating her that permission granted to her to occupy the suit property was cancelled and she was directed to hand over the possession. Therefore, both the Courts below said that subsequent to termination of permission granted to the appellant, her possession turns into an unlawful possession and therefore, appellant is not entitled to maintain a prayer for injunction against the true owner.



S.A.No.633 of 2017

10. Ex.B9 is a memo in R.C.O.P.No.47 of 1998, which was filed by 1st defendant Ganga Bai to evict the tenant in the suit property. Under Ex.B9, the possession of the suit property had been handed over to the deceased 1st defendant Ganga Bai. Ex.B2 is the certified copy of mortgage deed executed by Ganga Bai in favour of a third party dated 12.09.1967. These documents would go in long way to show the effective control and possession of Ganga Bai over the suit property. The plaintiff has come to the Court with a plea that funds for purchase of the suit property was provided by her husband for purchase of the same in the name of Ganga Bai in the year 1957. The evidence available on record clearly establish that husband of the appellant/plaintiff should have been a minor at the relevant point of time.

11. In such circumstances, the appellant has not come to the Court with clean hands. Therefore, even assuming there is a plea in the written statement that permission granted to appellant was cancelled, this Court is not inclined to grant limited injunction in favour of the appellant as she approached the Court with false plea. It is settled law that injunction is an equitable remedy and only the persons, who are approaching the Court with



S.A.No.633 of 2017

clean hands are entitled to equitable remedy of injunction.

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12. In the case on hand, the appellant approached the Court with a false plea of title over the suit property. Having failed to establish the main relief of declaration, this Court is not inclined to grant a consequential relief of injunction also in favour of the appellant, as he approached Court with unclean hands. Therefore, the findings of the Courts below that the appellant failed to prove her title over the suit property and her entitlement to claim injunction are confirmed and consequently, the second appeal is dismissed.

In Nutshell:-

(i) The Second Appeal is dismissed.

(ii) Consequently, the connected miscellaneous petition is closed.

(iii) In the facts and circumstances of the case, there will be no order

as to costs.

17.10.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
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WEB COPY



S.A.No.633 of 2017

S.SOUNTHAR, J.

dm

To

- 1.The Sub Court,
Kanchipuram.
- 2.The Additional District Munsif Court,
Kanchipuram.

S.A.No.633 of 2017

17.10.2023

10/10