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S.A.No.719 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.719 of 2017
CMP.No.18224 of 2017

Saraswathi

...Appellant

Vs.

1.B.A.Krishnan

2.K.Sundar

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 22.11.2016 passed in A.S.No.29 of 2013 by the learned Subordinate Judge of the Nilgiris at Udhagamandalam thereby confirming the judgment and decree passed in O.S.No.22 of 2007 by the District Munsiff Court, Coonoor, dated 12.02.2013.

For Appellant : Mr.A.Bobbie

For Respondents : No appearance



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J U D G M E N T

The unsuccessful plaintiff is the appellant. The suit was filed for recovery of vacant possession of the suit property. The suit was dismissed by the trial Court. The first appeal filed by the appellant was also dismissed. Aggrieved by the concurrent findings against him, the appellant is before this Court.

2. According to the appellant/plaintiff, residential building in 1 ½ cents of land in Old Survey No.770/1 Coonoor Town, equivalent to T.S.No.B/9/19/1 originally belongs to her father namely Kulla Gounder and he settled the said property in favour of the appellant by executing gift deed dated 11.02.1981 under Ex.A1. From that date onwards, he has been in possession and enjoyment of the suit property. It is specifically averred by the appellant in the plaint that the suit property which is a toilet portion was part and parcel of the property gifted to the appellant under Ex.A1.

3. It is further contended by the appellant that yet another built up portion in 1 ½ cents in the very same Survey number bearing door No.49



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was settled in favour of her sister viz., Lakshmi by her father. The respondents are husband and son of her sister deceased Lakshmi. It is also admitted by the appellant that the respondents are in occupation of property gifted to Lakshmi. It is further claimed by the appellant that the respondents were allowed to use the disputed toilet portion under permission from appellant. Now the permission granted to respondents was revoked by the appellant on 05.04.2007 and request made to hand over the possession was rejected. Therefore, the above suit was filed.

4. The respondents filed a written statement denying the averment contained in the plaint that the disputed toilet portion was part of the subject matter of the gift in favour of the appellant. It was their case that they have been in possession and enjoyment of the disputed toilet portion for the past 26 years, ever since from the date of gift deed executed by father of appellant in respect of building bearing door No.49. The allegation regarding the permissive occupation made in the plaint was also specifically denied by the respondents.



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5. Before the trial Court, the appellant was examined as PW.1 and six documents were marked on her side as Ex.A1 to A6. The first respondent was examined as DW.1 and no document was marked on the side of the respondents.

6. The trial Court on consideration of oral and documentary evidence available on record came to the conclusion that the disputed toilet portion was not part of the subject matter of the gift under Ex.A1 and consequently dismissed the suit. Aggrieved by the same, the appellant preferred an appeal in A.S.No.29 of 2013, on the file of the Subordinate Judge of Nilgiris at Udthagamandalam. The First Appellate Court also concurred with the findings of the trial Court. Aggrieved by the same, the appellant is before this Court.

7. The learned counsel appearing for the appellant submitted that the Courts below failed to take into consideration the oral and documentary evidence available on record, while coming to the conclusion that the disputed suit property was not part of the gift deed in favour of the appellant. The



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learned counsel further submitted that the disputed toilet portion found in the approved plan relating to the building gifted to the appellant was marked as Ex.A3 and the same has not been considered by Courts below.

8. Both the Courts below by referring to Ex.A1 came to the conclusion that there is no reference about the suit toilet portion in the said documents. After analysing the evidence available on record, both the Courts below, came to the conclusion that the father of the appellant owned four houses and five toilets. However, in the gift deed executed by him in favour of the appellant and her deceased sister Lakshmi, there is no recital regarding inclusion of toilet portion in the subject matter of the gift.

9. The appellant filed the suit for recovery of possession and therefore, he must establish his rights over the suit property in order to succeed in his prayer. In the case on hand, the appellant is tracing his title to the suit property under Ex.A1 gift deed executed by her father. When there is no reference about disputed toilet portion in her title documents, the appellant is not entitled to claim title over the same. Therefore, both the Courts below



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correctly came to the conclusion that the appellant failed to establish the title over the suit property.

10. Before the trial Court, the appellant alone was examined as PW.1, in order to prove alleged permission granted to the respondents and revocation of the same. Except interested oral testimony of appellant, there is no other evidence supporting appellant's case of permissive occupation.

11. In such circumstances, both the Courts below, correctly came to the conclusion that neither the title of the appellant nor the allegation of permissive occupation were proved by her and consequently dismissed the suits and this Court do not find any perversity in the judgments of the Courts below.

12. In nutshell,

The Second Appeal is dismissed by affirming the judgment and decree passed in A.S.No.29 of 2013 by the learned Subordinate Judge of the Nilgiris at Udthagamandalam, dated 22.11.2016, confirming the judgment and



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decree in O.S.No.22 of 2007 by the District Munsif Court, Coonoor, dated
12.02.2013.

b) In the facts and circumstances of the case, there shall be no
order as to costs; and

c) consequently, connected Miscellaneous Petition is closed.

17.10.2023

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

1. The Subordinate Judge of the Nilgiris at Udhagamandalam.
2. The District Munsiff Court, Coonoor.



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S.SOUNTHAR, J.
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