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S.A.Nos.78 and 79 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.Nos.78 and 79 of 2017

1.Pachaiammal

2.Nagarathinammal

3.Minor.Chinna

4.Minor.Purusothaman

... Appellants (in both SAs)

(A1 Died, A2 to A4 (already on record) are LR's of the deceased A1 vide Court order dated 22.11.2023 made in S.A.Nos.78 and 79 of 2017)

VS.

1.Sengamma naidu

2.Balaiah naidu

... Respondents (in both SAs)

3.K.Kuppaiah naidu

... Respondent in SA.No.79/2017

PRAYER in S.A.Nos.78 of 2017: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree in A.S.No.2 of 2008 dated 20.09.2013 on the file of the learned Sub Judge at Ponneri



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which was confirmed the Judgment and Decree in O.S.No.26 of 1998 dated 28.09.2006 passed by the learned District Munsif at Ponneri.

PRAYER in S.A.Nos.79 of 2017: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree in A.S.No.29 of 2010 dated 20.09.2013 on the file of the learned Sub Judge at Ponneri which was confirmed the Judgment and Decree in O.S.No.1518 of 1981 dated 28.09.2006 passed by the learned District Munsif at Ponneri.

For Appellants : Mr.K.Mahendran
(in both SAs)

For R1 : Mr.P.Rajendra Kumar
for M/s.N.R.Anantha Ramakrishnan
(in both SAs)

For R2 : Mr.R.Arun
(in both SAs)

For R3 in
SA.No.79/2017 : No Appearance

COMMON JUDGEMENT

Second Appeal No.78 of 2017 is arising out of suit for recovery of possession filed by the appellants/plaintiffs. The suit was dismissed by the Trial Court and the findings of the Trial Court were affirmed by the First



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Appellate Court. Aggrieved by the concurrent findings against them, the appellants have come by way of this second appeal.

2. Second Appeal No.79 of 2017 is arising out of suit for declaration of title and permanent injunction filed by the appellants/plaintiffs. The suit was dismissed by the Trial Court. Aggrieved by the same, the appellants herein preferred first appeal and the same was also dismissed by the First Appellate Court. Hence, the appellants have come by way of this second appeal.

3. According to the appellants/plaintiffs, the suit property originally belonged to B.Kanthammal wife of B.Venkatappa Naidu and she executed a registered Settlement Deed in favour of deceased 1st plaintiff-Lakshimipathy (the appellants herein were brought on record as legal representatives of deceased 1st plaintiff and impleaded as plaintiffs 2 to 5). The respondents without having any manner of right over the suit property attempted to interfere with the possession of the appellants/plaintiffs. Hence, the appellants were constrained to file a suit for declaration of title and injunction in O.S.No.1518 of 1981. The said suit was initially decreed



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exparte and thereafter, the *exparte* decree was set aside. It was also averred by the appellants that when the above suit for declaration of title and injunction was pending, the respondents herein trespassed into the suit property and therefore, they were constrained to file a suit for recovery of possession based on their title in O.S.No.26 of 1998.

4. The above suits filed by the appellants were resisted by the defendants by denying the title of appellants' Settlor namely B.Kanthammal. According to the respondents, the suit property originally belonged to Lakshammal wife of Allasami. The said Lakshammal had five issues namely Adhiammal, Pottiammal, Errammal, Krishnammal and Venkatappa Naidu. Hence, all the five issues of Lakshammal were entitled to equal share in the suit property. It was further averred that the relationship between B.Venkatappa Naidu and his wife B.Kanthammal got strained and therefore, she got separated from her husband and living separately. It was further averred by the respondents that after death of Lakshammal, as B.Venkatappa Naidu was the only male issue, the patta for the suit property was transferred in his name. However, he could not claim exclusive right over the suit property.



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5. Both the suits filed by the appellants were tried together and evidence was recorded in a suit for declaration of title and permanent injunction filed by the appellants in O.S.No.1518 of 1981. The 1st appellant-Pachaiammal was examined as PW.1 and 3 documents were marked on the side of the appellants/plaintiffs as Exs.A1 to A3. On behalf of the respondents, the 3rd respondent-Balaiah Naidu was examined as DW.1 and 4 documents were marked as Exs.B1 to B4.

6. The Trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellants/plaintiffs failed to prove the exclusive title of their Settlor-B.Kanthammal and hence, dismissed both the suits. Aggrieved by the same, the appellants preferred appeals in A.S.No.2 of 2008 and A.S.No.26 of 2010 on the file of the Sub Court, Ponneri. The First Appellate Court concurred with the findings reached by the Trial Court and consequently, dismissed the appeals. Aggrieved by the concurrent findings, the unsuccessful appellants/plaintiffs have come by way of these second appeals.



7. The learned counsel appearing for the appellants submitted that execution of Settlement Deed dated 26.05.1978 under Ex.A1 by B.Kanthammal in favour of deceased 1st plaintiff was not at all disputed and in such circumstances, the Courts below committed a serious error in negating the prayer for declaration of title and also other consequential relief for recovery of possession. The learned counsel further submitted that when patta for the suit property stood in the name of B.Venkatappa Naidu, the husband of B.Kanthammal, the Courts below ought not to have non-suited the plaintiffs overlooking the said document. The appellants/plaintiffs came to the Court with a specific case that property originally belonged to B.Kanthammal and she settled the same in favour of 1st plaintiff.

8. The respondents in their written statement had specifically denied the title of appellants' Settlor namely B.Kanthammal. Therefore, it is incumbent on the appellants to prove the exclusive right of B.Kanthammal to execute Settlement Deed in their favour. The appellants/plaintiffs failed to produced any evidence to show that B.Kanthammal had exclusive title over the suit property. When 1st appellant was examined as PW.1 during cross examination, she clearly admitted that suit property belonged to



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B.Venkatappa Naidu and his parents. She also admitted that since

B.Venkatappa Naidu was the only male heir for his parent, patta came to be issued in his name. By taking into consideration the said admission made by the 1st appellant as PW.1, both the Courts below rightly came to the conclusion that B.Kanthammal had no exclusive title over the suit property.

9. Even assuming B.Kanthammal's husband B.Venkatappa Naidu had any right in the suit property, at the most, he could have got only a share in the property of his parents along with his sisters and in such circumstances, the Settlor of the appellants-B.Kanthammal could not have got exclusive title over the suit property. Even assuming she was a heir of B.Venkatappa Naidu. In such circumstances, the conclusion reached by the Courts below that appellants' Settlor-B.Kanthammal had no exclusive title over the suit property is based on the admissions of the 1st appellant as PW.1. Further, there is no acceptable evidence available on record to show the exclusive title of said B.Kanthammal.

10. In such circumstances, I do not find any perversity in the conclusion reached by the Courts below that appellants failed to prove their



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exclusive title over the suit property. Once this Court comes to the conclusion that the appellants have no exclusive title over the suit property, the other consequential relief prayed for by them like injunction and recovery of possession should also fail. It is settled law, in a suit for declaration of title, the plaintiffs must win on their own strength and they cannot rely on the weakness of the defence. Therefore, I do not find any substantial question of law arising for consideration in these second appeals. Accordingly, both the Second Appeals are dismissed.

In Nutshell:-

(i) The Second Appeals are dismissed.

(ii) In the facts and circumstances of the case, there shall be no order as to costs.

30.11.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
dm



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To

1.The Sub Judge at Ponneri.

2.The District Munsif at Ponneri.



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S.SOUNTHAR, J.

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