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S.A.No. 877 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2024

CORAM:

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A. No.877 of 2010
and M.P.Nos.1 of 2010 & 1 & 2 of 2011

1. Kaliyan
2. Kolanji
3. Selvam
4. Balu

... Appellants

Vs.

Pazhaniyammal (deceased)

2. Senthil Kumar
3. Gnanajothi
4. Selvakumar
5. Pazhamalai

... Respondents

(R2 to R5 are brought on record as L.R's. of the deceased sole respondent vide order dated 01.06.2023 made in C.M.P.Nos.13848, 13849, 13850 of 2016 & 4368 of 2023 of 2019 in S.A.No.877/2010)

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree dated 31.03.2010 in A.S.No.1 of 2009 on the file of the Principal Subordinate Judge, Vridhachalam confirming the judgment and decree dated 28.11.2008 in O.S.No.200 of 2002 on the file of the I Addl. District Munsif, Vridhachalam, thereby allow the second appeal.



For Appellant : Mr.L.Palani Muthu

For Respondents : Mr.D.Shivakumaran for R2 to R5

JUDGMENT

The defendants are the appellant herein and the plaintiff is the respondent herein.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the trial Court.

3. The brief facts which give raise to the instant Second Appeal is that the plaintiff has instituted a suit for declaration and for permanent injunction or in alternative for delivery of possession in respect of the property situated at Door No.36 of Vridhachalam town.

4. According to the plaintiff, originally the suit property belongs to Chinna Konar, who has got three sons by name Chokka Konar @ Nathan Konar, Aali Konar and Petha Konar. The issue is in respect of the line of Chokka Konar and Petha konar. The plaintiff is the granddaughter of Chokka Konar through his second son Chidambaram. According to the plaintiff, the said Chidambaram executed a sale deed in favour of her wife Anjalai Ammal vide



S.A.No. 877 of 2010

sale deed dated 19.08.1964. After the demise of Anjalai Ammal the property

devolved upon on her only daughter Palaniammal who is the plaintiff.

According to the plaintiff the suit property is her absolute property. Since the defendants who are also related to the plaintiff has interfered the possession of the suit property, the same necessitated to file the instant suit.

5. The said suit was resisted by the defendants by contending that the suit property was purchased by Betha Konnar by virtue of the sale deed of the year 1920 from one Arunachala Chettiyar. After that he settled the property in favour of her daughter Dhanabakkiam and his grandson Kaliya Konnar. While so, during the lifetime of Dhanabakkiam who died issueless, had executed a Will in favour of second and fourth defendants vide Will dated 17.04.1983. Therefore, according to the defendants, the suit property is not the family property and that the same was purchased by their grandfather. Therefore, they would contend that the suit property is their absolute property and the plaintiff cannot have the right over the same.

6. Before the trial Court, the plaintiff examined two witnesses and marked as many as thirty documents. On behalf of defendants two witnesses were examined and as many as 18 documents have been marked. Apart from



S.A.No. 877 of 2010

the above documents, as Court documents, Commissioner's report,

Commissioner's plan and Surveyor's plan were marked as C1 to C3.

7. The trial Court, after having considered the oral and documentary evidence, has found that the defendants themselves have admitted that the property bearing Door No.36 belongs to the plaintiff. Thus, the trial Court granted decree that the suit property is the absolute property of the plaintiff and ultimately decreed the suit.

8. Not satisfying with the order of the trial Court, the defendants have preferred the first appeal. However, the first Appellate Court has concurred with the finding of the trial Court and found that the defendants have not established any right over the suit property and ultimately dismissed the Appeal. Aggrieved with the order of the first appellate Court, the defendants have approached this Court by way of filing this Second Appeal.

9. The learned counsel for the appellants / defendants would contend that when the property is not the family property of Chinna Konar, and that when the property was purchased by Petha Konar independently from one Arunachala Chettiyar, the trial Court ought to have believed the sale deed which



S.A.No. 877 of 2010

stands in the name of the Petha Konar and subsequent transfer through settlement deed and the Will, and ought to have dismissed the suit. It is also contended by the learned counsel for the appellants that the trial Court has wrongly relied upon Ex.A2 and erroneously granted decree in favour of the plaintiff. It is also contended by the learned counsel for the appellants that though the Advocate Commissioner's report are in their favour, the trial Court mechanically perused the plaint and decreed the suit. It is the further contention of the learned counsel for the appellants that the first Appellate Court did not comply the mandatory provisions of Order 41 Rule 31 C.P.C. Hence the learned counsel for the appellant contend that the order of both the Courts below are perverse and both the Courts have concurrently erred in concluding the matter in favour of the plaintiff. Hence prayed to interfere the same.

10. However the learned counsel for the respondents 2 to 5 would submit that, the trial Court has relied upon the admissions made by the defendants in his written statement, wherein the defendants have categorically admitted that the property bearing Door No.36 belongs to the defendants. Therefore, when the defendants themselves admits the ownership over the property bearing Door No.36, the judgment rendered by the Court below based upon the admission of the defendants is a well merited one, and cannot be construed as perverse, since



S.A.No. 877 of 2010

any material before the Court.

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13. It is also relevant to refer that both the Courts below have extensively considered the material. Even the trial Court, though arrived at a conclusion that both the party have established their title over the suit property, having the defendant admitted that the plaintiff is in possession and enjoyment of Door No.36, has found there is nothing wrong to grant decree in favour of the plaintiff. It is pertinent to mention here that not only upon the admission made by the defendants in respect of the ownership of plaintiff over Door No.36, the plaintiff has also filed as many as 30 documents, which has been relied by both the Courts below to hold that the plaintiff has been in possession and enjoyment of the suit property.

14. This Court is of the firm view that both the Courts below have arrived at a conclusion based upon the available material. Though the learned counsel for the appellants relies upon the Commissioner's report, to substantiate his contention that the plaintiff's property is on the North side of the suit property, this Court is not in a position to agree with the above submission as there are no materials produced before this Court to substantiate the same. Therefore this Court is of the firm view that the finding of fact recorded by both the Courts



S.A.No. 877 of 2010

below is well merited and the appellants did not make out any case to interfere with the well considered finding of the Courts below. Further, from the submission of the learned counsel for the appellants, this Court could not find any substantial questions of law.

15. In view of the reasons stated above, this Second Appeal is dismissed and judgment and decree dated 31.03.2010 made in A.S.No.1 of 2009 on the file of the Principal Subordinate Judge, Vridhachalam, is hereby confirmed. No costs. Connected miscellaneous petitions are closed.

29.04.2024

Index: Yes/No
Speaking Order / Non-speaking order
bkn



S.A.No. 877 of 2010

To:

WEB COPY

1. The Principal Subordinate Judge,
Vridhachalam
2. The I Addl. District Munsif,
Vridhachalam



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S.A.No. 877 of 2010

C.KUMARAPPAN, J.,

bkn

S.A. No.877 of 2010

29.04.2024