



WEB COPY

S.A. No.29



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2024

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

S.A. No. 297 of 2022

Narendran ... Plaintiff/ Appellant/ Appellant

Vs.

1. Rajendran (died)
2. Radhakrishnan
3. Vinothkumar
4. Ramesh ... Defendant/ Respondents/ Respondents

Second Appeal filed Under Section 100 of Civil Procedure Code against the Judgment and Decree dated 06.12.2021 made in A.S. No.39 of 2019 on the file of the Sub-Ordinate Court, Tiruvarur, confirming the Judgment and Decree made in O.S. No.46 of 2010 dated 28.06.2017 on the file of the District Munsif, Tiruvarur.

For Appellant : M/s. S. Kavitha
(For G. Nagarajan)

For RR 1 to 4 : M/s. A. Arunbabu



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JUDGMENT

This second appeal filed by the plaintiff challenging the concurrent finding passed by both Courts below dismissing the suit for recovery of possession of the suit property to the extent of 2968 square feet in Survey No.46/7F, Thirukkannamangai village.

2. The case of the plaintiff is that originally the suit property was originally purchased by one Veerasamy, who is the paternal grandfather of the plaintiff, as per sale deed dated 20.09.1948. He died interstate living behind the plaintiff's father and one Kalyani and Veerammal. The said Veerammal also died living behind no legal representatives. On 07.01.1975, the said Veerasamy executed a WILL bequeathing the properties to the plaintiff's father Karuppaiyan and died on 07.10.1976 and based on the WILL, plaintiff's father was in possession and enjoyment of the suit properties. The plaintiff's father Karuppaiyan died on 17.11.1999 leaving behind the plaintiff herein as his legal representative. In the year 2000, Kalyani, who is the daughter of the testator, and her husband Kaalimuthu, demanded partition of the suit property and he has informed them about the execution of the WILL, thereby they had not come to



claim any right, subsequently. In the month of December 2007, the defendants invaded the suit property, constructed a small house and also approached the concerned Tahsildar and obtained patta in their favour. Hence, the plaintiff had issued legal notice to the defendants, demanded them to hand over the suit property and after exchange of legal notices between the parties, the plaintiff has come forward with the suit.

3. The case of the defendant is that, in the year 1960, the said Veerasamy had executed a sale deed in favour of the Kaalimuthu, who is the son-in-law of Veerasamy, thereby he has sold 14 cents, comprised in S.No.46/7, in which the plaintiff's father was also a witness to the document. Hence, Veerasamy has no power to execute the WILL for the land, which was already sold. In the year 2001, the suit property was sold to the second defendant by the sons of Kaalimuthu. Based on this sale deed, the defendants were in possession and enjoyment of the suit property to the extent of 2968 square feet in Survey No.46/7F. Subsequently, the defendants have also mutated the property to bring them on Municipal record and after obtaining necessary permission, they have also constructed a house.

4. Based on the pleadings made on both sides, the following issues



were framed by the Trial Court.

1. *Whether the plaintiff is entitled to relief, as claimed for?*
2. *Whether the appropriate Court fee has been paid?*
3. *Whether the plaintiff is entitled to claim the cost of the suit from the defendant?*
4. *Whether the plaintiff is entitled to other relief?*

5. On the side of the plaintiff, P.W.1 was examined and Exs.P.1 to P.15 were marked, on the side of the defendants, D.W.1 and D.W.2 were examined and Exs.D.1 to D.6 were marked. After considering the representations on both sides and evidence placed on record, the Trial Court has accepted the case of the defendants and also held that there was a sale deed executed in favour of one Kaalimuthu, by which Veerasamy transferred his interest to the extent of 14 cents of land in Survey no.46/7. Further, held that the WILL was not properly proved, thereby rejected the claim of the plaintiff and dismissed the suit.

6. Challenging the judgment and decree of the Trial Court, the plaintiff had filed an appeal in the lower Appellate Court, after hearing the parties, the lower Appellate Court confirmed the judgment and decree of the



Trial Court.

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7. Aggrieved over the dismissal of the suit by the lower Appellate Court, the plaintiff has filed this second appeal. This Court has not admitted the appeal and ordered notice regarding admission to the respondents.

8. The learned counsel appearing for the appellant/ plaintiff submits that the Trial Court had dismissed the suit without considering the fact that the defendants have never come forward to co-operate with the learned Advocate Commission, for taking measurement to show the physical feature of the suit property. He further submitted that both Courts have failed to appreciate the fact that the suit property was purchased by the Veerasamy in the year 1948, and the suit property was all along in possession of the plaintiff and his predecessors. Only in the year 2007, the defendants have entered into the suit property illegally and constructed a house based on the sale deed dated 11.01.2021 and further both Courts have failed to appreciate the WILL and evidence placed on record, thereby prays to set aside the judgment and decree of the Trial Court and the Appellate Court.

9. Per contra, the learned counsel appearing for the respondents/



defendants submits that this appeal has been filed challenging the concurrent finding of both Courts that Veerasamy, grandfather of the plaintiff had transferred his interest to the extent of 14 cents out of 21 cents of the suit property in Survey No.46/7, in favour of Kalimuthu and therefore, the said Veerasamy is not having right to execute a WILL over the entire 21 cents of the suit property in favour of the plaintiff's father. He further submitted that the learned Advocate Commissioner had recorded that some portion of the suit property was acquired in the acquisition proceedings, the plaintiff and defendants were paid compensation to the extent of land acquired from their possession. He further submitted that the defendant were in possession of the suit property from the year 2001 and prior to that, their vendors were in possession of the land and further, records were also mutated earlier in favour of the defendant's vendors. Therefore, without any evidence, the plaintiff has filed suit for recovery of possession and both Courts have rightly rejected the claim of the plaintiff and dismissed the suit, hence prays to confirm the judgment and decree of the Courts below.

10. I have considered the submissions and perused the evidence placed on record.



11. In this case, the defendants have produced the sale deed dated 22.10.1960, which is marked as Ex.B.2. Subsequently, based on Ex.B.2, patta was also issued in favour of the defendant's predecessor in title i.e., Kaalimuthu, which is marked as Ex.B.4 and Ex.B.1 is the sale deed dated 11.01.2001, executed by the sons of Kaalimuthu in favour of the second defendant. Whereas, the plaintiff had relied on the WILL dated 07.01.1975 executed by Veerasamy, marked as Ex.A.15, and marked the sale deed dated 20.09.1948 - Ex.A.1, however, the plaintiff had not produced any document to show that the plaintiff and his predecessors were in continuous possession of the suit property.

12. The Trial Court after considering the evidence placed on record had found that since 14 cents out of 21 cents of land purchased by Veerasamy as per Ex.A.1, were already sold in favour of Kaalimuthu by the Veerasamy in the year 1960, as per Ex.B.2, he was not having any right to execute a WILL to the entire extent of the land in favour of the plaintiff's father in the year 1975. Further, both Courts below have held that the plaintiff was not able to prove the execution of the WILL in favour of the plaintiff's father.

13. This Court has found that the Courts below have elaborately discussed the validity of the WILL and also the right of Veerasamy in execution



of the WILL to the total extent of the land and rightly held that, after selling 14 cents of land in favour of Kaalimuthu, the plaintiff's grandfather - Veerasamy has no right to deal with that 14 cents of land. Both Courts have further held that the defendants have categorically established their case that based on the sale deed - Ex.B.1, the title to the property transferred in their favour, hence the plaintiff, who is not having any matter of right over the suit property and he is not entitled to seek for possession of the property.

14. Since, the power of this Court, while considering the Second Appeal under Section 100 of Civil Procedure Code is very limited and unless there is any substantial question of law arose, no second appeal could be entertained. In this case, only factual aspect about the right of the testator Veerasamy to execute the WILL, after sale of 14 cents of land including the suit property is considered by both Courts below and no substantial question of law is involved in this appeal. thereby, this Court is not inclined to interfere in the concurrent finding of both Courts below.

15. Accordingly, this second appeal is dismissed. No cost.

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Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To:

1. The Section Officer,
VR Section,
High Court, Madras.



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K. RAJASEKAR, J.

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