



S.A.No.752 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2024

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.752 of 2021
and
C.M.P.No.14720 of 2021

Mani @ Saradha

... Appellant

...Versus...

1.Lakshmi

2.Kamala

3.S.Saroja

(Notice to the 3rd respondent may be dispensed
with as she was set ex-parte)

...Respondents

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.89 of 2019 dated 11.02.2020 on the file of the learned II Additional Sub Judge, Salem, reversing the judgment and decree made in O.S.No.359 of 2018 dated 16.09.2019 on the file of the learned II Additional District Munsif, Salem.

For Appellant :: Mr.V.Sekar



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J U D G M E N T

The appellant is the plaintiff in O.S.No.359 of 2018 on the file of the learned IInd Additional District Munsif, Salem.

2. For the sake of convenience, the parties are referred to as per their ranking before the lower Court.

3. The appellant filed a suit in O.S.No.83 of 2008 on the file of the learned District Munsif Court, Mettur, for a bare injunction against the defendants/respondents.

4. The defendants/respondents filed a written statement claiming that they have 1/4th share in the property, whereby the plaintiff also filed O.S.No.83 of 1988 for partition before the learned District Munsif Court, Mettur. Since another suit in O.S.No.277 of 2017 on the file of the learned Sub-Judge, Mettur was filed and both the suits are said to be pending. Meanwhile, the case is taken on file and after trial, the learned District Munsif has held that the plaintiffs are entitled for injunction and the counter claim made by the defendants in the partition suit, on the strength of the co-owner was rejected and aggrieved against the said decree and judgment dated 16.09.2019 made in O.S.No.359 of 2018, the defendants have preferred A.S.No.89 of 2019.



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5. Pending appeal, he also filed I.A.No.5 of 2020 under Order 41 Rule 27 and Section 151 of C.P.C to receive the additional documents. Counter has been filed in the said I.A.

6. The lower Appellate Court has formulated 7 points for determination and also a specific point for consideration was framed as to whether the plaintiff has proved the exclusive possession of the property and whether I.A.No.5 of 2020 is to be allowed or not?

7. After considering the oral evidence and also taking note of the documentary evidence and exhibits filed on behalf of the defendants, the trial Court has come to the conclusion that the matter is to be finally adjudicated in a comprehensive manner in the partition suit and also relied upon Exs.X1, X2 and X3 and also Exs.B3 and B5 and accordingly, it was held that as against the co-owner, there cannot be any injunction with respect to particular property and accordingly, the I.A was allowed and the appeal was allowed and hence the Second Appeal.

8. Heard the learned counsel appearing for the appellant/plaintiff.

9. After perusing the judgment passed by the lower Appellate Court, the lower Appellate Court has elaborately discussed the fact that the plaintiff has not proved the exclusive possession over the suit



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property and based upon the oral evidence of D.W.3 coupled with Exs.A8 to A10, the lower Appellate Court has rightly come to the conclusion that the burden of proof in respect of Exs.A8 to A10 is on the shoulders of the plaintiff and therefore, in the absence of any official seal affixed in the said order under Ex.A2 and also taking note of the fact that Ex.A9 and Ex.A10 are not proved in the manner known to law has disbelieved the case of the plaintiff as to the alleged exclusive possession over the suit property and accordingly, dismissed the appeal. Since the finding rendered by the lower Appellate Court is based upon the oral and documentary evidence, I am not unable to find any reasons to interfere with the said judgment.

10. Accordingly, this Second Appeal is dismissed. As I find no perversity or illegality or material error in the judgment of the lower Appellate Court. It is hereby made clear that the other two suits in O.S.No.83 of 2008 and O.S.No.277 of 2017 are pending before the two different Courts. Parties are left open to agitate their plea before the appropriate forum and the said Court shall consider the case on merits without being influenced by the findings rendered in this Second Appeal.



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11. In the result,

[i] This Second Appeal is dismissed.

[ii] The judgment and decree in A.S.No.89 of 2019 dated 11.02.2020 on the file of the learned II Additional Sub Judge, Salem, reversing the judgment and decree made in O.S.No.359 of 2018 dated 16.09.2019 on the file of the learned II Additional District Munsif, Salem, are confirmed.

[iii] No costs. Consequently, connected C.M.P is closed.

01.04.2024

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Internet:Yes/No

Speaking Order:Yes/No

To

- 1.The II Additional Sub Judge, Salem.
- 2.The II Additional District Munsif, Salem.
3. The Section Officer, V.R.Section, High Court, Madras.



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RMT.TEEKAA RAMAN,J.,

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Judgment in
S.A.No.752 of 2021 and
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