



S.A.No.11 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

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Susila

... Appellant

Vs.

1.Pounnammal

2.S.Kumar

3.V.Rama

4.J.Padmavathi

5.S.Murugan

... Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C to allow the Second Appeal setting aside the Judgement and Decree dated on 28.02.2020 made in A.S No. 16/2017 on file of the Subordinate Judge Vaniyambadi, Vellore District confirming the Judgement and Decree dated 15.11.2016 made in O.S.No. 46 of 2014 on the file of the Additional District Munsif Court, Vaniyambadi.



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For Appellant : M/s.J.Saravana Vel

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JUDGEMENT

The plaintiff is the appellant before this Court challenging the judgment and decree passed by the Subordinate Judge, Vaniyambadi, Vellore District in A.S.No.16 of 2017 in and by which the learned Judge has confirmed the judgment and decree of the Additional District Munsif, Vaniyambadi in OS.No.46 of 2014. The facts are set out briefly herein below and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed the above suit O.S.No.46 of 2014 on the file of the Additional District Munsif, Vaniyambadi for a permanent injunction.

3. It is the case of the plaintiff that the suit schedule property originally belonged to one Abdul Slam Shihab. From the said Abdul



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Slam Shihab, the father of the plaintiff and the defendants.

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Mr.K.Shanmugam had purchased the suit property under a registered sale deed dated 01.06.1970. From the date of the purchase, he had been in possession and enjoyment of the same.

4. It is the plaintiff's contention that the said Shanmugam in his old age had desired that he should divide the suit property amongst his legal heirs. With this intent, he had bequeathed the suit schedule property in favour of his 6th son, S.Govindasami on 27.11.2005. The said Shanmugam had died on 22.01.2006 and after his demise, the said Govindasami had become the absolute owner of the suit schedule property.

5. While so, in the year 2012, one Shanmugam, son of Kulandai Gounder started interfering with the peaceful possession and enjoyment of the suit property by Govindasami. Therefore, the said Govindasami had filed suit O.S.No.172 of 2012 against the said



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Shanmugam on the file of the Additional District Munsif, Vaniyambadi seeking the relief of declaration and injunction. The said suit was decreed as prayed for. Meanwhile, the said Govindasami had given a general power of attorney to one P.Kumar. The said Kumar thereafter executed a sale deed dated 04.10.2013 in favour of the plaintiff. From the date of purchase, the plaintiff is in possession and enjoyment of the suit property. It is the further case of the plaintiff that the defendant without having a semblance of right over the suit property had attempted to trespass into the suit property. The plaintiff had successfully prevented the same and since there had been a threat to his title and possession, the plaintiff had come forward with the suit in question.

6. The 2nd defendant had filed a written statement which was adopted by the 4th defendant denying the various allegations contained in the plaint and also stating that in the earlier suit O.S.No.172 of 2012, on the file of the District Munsif Court, Vaniyambadi, the said



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Govindasami by forging the signature of the defendant's father, K.Shanmugam had obtained a decree in his favour for the purpose of validating the forged Will. The defendant would also submit that the sale deed which has been put forward by the plaintiff is a fabricated and forged one. Therefore, they had sought for the dismissal of the suit in question.

7. The defendants 1, 3 and 5 had been set ex parte.

8. The Trial Court had framed the following issues:-

1. Whether the plaintiff is in possession of the suit schedule property?

2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?

3. To what other relief?

9. On the side of the plaintiff, the plaintiff had examined herself as P.W.1 and four other witnesses were examined and Ex.A.1 to



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Ex.A8 were marked. On the side of the defendants, the 2nd defendant had examined himself as D.W.1 and three other witnesses were examined and Ex.B.1 to B.19 were marked.

10. Ultimately, on considering the evidence and pleadings, the learned Trial Judge had proceeded to dismiss the suit. Aggrieved by the said judgement and decree the plaintiff had filed A.S.No.16 of 2017 on the file of the Sub Court, Vaniyambadi, Vellore. The Lower Appellate Judge had also concurred with the judgement and decree of the Trial Court and dismissed the appeal. Aggrieved by the same the plaintiff is before this Court.

11. Heard the learned counsel for the plaintiff/appellant.

12. The plaintiff has claimed her right over the suit property only on the strength of the fact that she had purchased the property from the Power Agent of Govindasami, one P.Kumar and her vendor had got the



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property under a Will dated 27.11.2005 said to have been executed by K.Shanmugan, the original owner of the suit property. The said Will has not been proved in the manner known to law. The plaintiff has also relied upon the judgement and decree passed in O.S.No.172 of 2012 of the District Munsif Court, Vaniyambadi. The Courts below after pursuing the evidence had observed that in the said suit, the alleged Will dated 27.11.2005 had not been proved as per the provision of Section 68 of the Indian Evidence Act and Section 63 of the Hindu Succession Act. Further, there were discrepancies in the statement of the plaintiff and the statement of the plaintiff's side witness P.W.2 with reference to the execution of the sale deed. Since the genesis for the plaintiff's case is the Will dated 27.11.2005 and as the same has not been proved in the manner known to law the Courts below have dismissed the suit.

13. The Courts below have rightly come to the conclusion that the plaintiff has not proved her right, title and interest to the suit



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schedule property and I seen no reason to interfere with the same.

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Further, no substantial question of law has been made out by the plaintiff/appellant. Accordingly, the Second Appeal is dismissed. No costs.

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Index: Yes/No

Speaking order/non-speaking order

Neutral Citation: Yes/No

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To

1. The Subordinate Judge Vaniyambadi, Vellore District
2. The Additional District Munsif Court, Vaniyambadi.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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