



S.A.(MD)No.66 of 2004

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE **S.SOUNTHAR**

S.A.(MD)No.66 of 2004
and
C.M.P(MD)No.181 of 2004

1.Appadurai Nadar

2.Kathirazhagan

...Appellants

-Vs-

Viji @ Appadurai

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 27.11.2001 made in A.S.No.86 of 2001 on the file of the Additional District Court, Fast Track Court No.1, Thanjavur, confirming the judgment and decree, dated 07.06.2001 made in O.S.No.124 of 2000 on the file of the District Munsif Court, Thiruvaiyaru.

For Appellants : Mr.G.Karnan

For Respondent :No Appearance



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JUDGMENT

The defendants in the suit for permanent injunction are the appellants herein. The respondent herein filed a suit for permanent injunction and the same was decreed by the trial Court. The first appeal filed by the appellants was also dismissed by the appellate Court. Challenging the concurrent findings, the appellants have filed the present appeal.

2.According to the respondent/plaintiff, the suit property was originally owned by one Govindasamy Nattar. He executed a Will, dated 14.01.1999 bequeathing the suit property in favour of the respondent/plaintiff. The said Govindasamy Nattar died on 19.01.1999 and thereafter, the patta for the suit property was mutated in favour of the respondent, as per the Will and the respondent had been in possession and enjoyment of the suit property. It was further claimed that the appellants herein claiming that they had purchased the suit property from the wife of Govindasamy Nattar attempted to interfere with the possession of the respondent and hence, he was constrained to file a suit for permanent injunction.



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3.The second appellant filed a written statement and the same was adopted by the first appellant. It was claimed by the appellants in their pleadings that Govindasamy Nattar executed a settlement deed in favour of Parvathi Ammal and the Will relied upon by the respondent was a concocted document. The appellants have denied the possession of the respondent over the suit property. The appellants claimed that they were the owner of the property and hence, sought for dismissal of the suit.

4.Before trial Court, the respondent/plaintiff was examined as PW-1 and the two attestors to the Will relied upon by the respondent/plaintiff were examined as PW-2 and PW-3.

5.The trial Court held that the Will relied upon by the respondent was proved and granted a decree for permanent injunction against which, a first appeal in A.S.No.86 of 2001 on the file of the Additional District Court, Tanjore, was filed by the appellants. The first appellate Court affirmed the findings of the trial Court. Hence, the appellants are before this Court.



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6.At the time of admission, this Court by order, dated 24.08.2004, formulated the following substantial questions of law:

“1) When the plaintiff himself admitted in his plaint that the donor had settled the property in favour of the vendor in the year 1943 itself and the donor lived with the settlee for more than 43 years as husband and wife and also recited in the Will that he had settled properties to his wife, whether the Courts below are right in decreeing the suit for injunction against the defendants, who are the real owners of the property?

ii)Whether the Courts below are right in not considering the vital issue that whether the plaintiff is entitled to maintain the suit for injunction without a prayer for declaration of title or setting aside the admitted settlement deed in favour of vendor of the defendants and the sale deed in favour of the defendants ?

iii)Whether the courts below are right in not considering the judgments cited by the appellants in 1998 (2) Law Weekly 333, 1998 (3) MLJ 567, 2001 (1) Law Weekly 488 and 1996 (1) Law Weekly 608?”

7.Even though learned Counsel entered appearance on behalf of the respondent, there is no representation for the respondent.

8.The learned Counsel appearing for the appellants submitted that the appellants filed a suit for declaration of title and recovery of possession in respect of the very same suit property along with two other items and the said suit was



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decreed as prayed for. It is also stated that the Second Appeal preferred against the said decree in S.A.(MD)No.484 of 2006 was dismissed for default on 11.12.2012. In view of the same, the learned Counsel for the appellants submitted that declaration of appellants' title as well as decree for recovery of possession has attained finality.

9.The present suit has been filed by the respondent only for permanent injunction based on his alleged possession. The Courts below, by taking into consideration the revenue documents filed by the respondent, came to the conclusion that the respondent/plaintiff established his possession over the suit property. In fact, the appellants also said to have filed a suit for recovery of possession, therefore, the possession of the respondent, is an admitted fact. In such circumstances, the decree of permanent injunction granted by the Courts below by relying on the revenue documents produced by the respondent/plaintiff need not be disturbed. It is settled law that even the original owner of the property is not entitled to take law into his hands and interfere with the possession of the person in settled possession of the property. In this regard, reference may be had to ***Rame Gowda (Dead) and others vs M.Varadappa Naidu (dead) and others***,



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reported in **2004 (1) SCC 769**. Hence, questions of law framed at the time of admission are answered against the appellant. However, it is made clear that the decree impugned in this Second Appeal will not come in the way of appellants in executing a decree for recovery of possession obtained by them. Till the said decree is executed in the manner known to law and until the appellants recover the possession by following due process of law, it is not open to him to interfere with the possession of the respondent except by due process of law. With this clarification, the second Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

04.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Additional District Court, Fast Track Court No.1, Thanjavur,
- 2.The District Munsif Court, Thiruvaiyaru.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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