



S.A.No.136 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2023

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.136 of 2021
and
C.M.P.No.2750 of 2021

1. R.Murugadoss
2. R.Devakumar
3. R.Harikaran

... Appellants

Vs.

1. G.Govindasamy Gounder
2. G.Vijaya

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 29.01.2020 in A.S.No.13 of 2017 on the file of the Learned Subordinate Court, Gingee, and confirming the judgment and decree dated 27.04.2015 in O.S.No.33 of 2005 on the file of the Learned Additional District Munsif Court, Gingee and consequently decree the O.S.No.33 of 2005 on the file of the Additional District Munsif, Gingee as prayed with costs.



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For appellants : Mr.T.Sai Krishnan

For respondents : Mr.R.Rajarajan

JUDGMENT

The plaintiffs, who have concurrently been unsuccessful before both the Courts below, have filed the above second appeal.

2. When the matter was posted for admission, notice was ordered to the respondents and the respondents have also entered appearance through their learned counsel.

3. The brief narration of the facts which have culminated into the filing of the above second appeal are given below and the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

3.1. The plaintiffs had filed the suit in O.S.No.33 of 2005 on the file of the Additional District Munsif Court, Gingee, seeking the



relief of declaration and injunction in respect of the property which is described below:

சொத்து விவரம்

செஞ்சி வட்டம், கஸ்பா செஞ்சி சக்கராபுரம் கிராமத்தில் நத்தம் புதிய சர்வே 159/11 246 சதுர மீட்டரில் தெருவிற்கு வடக்கு, புதிய சர்வே 159/12 மனைக்கு தெற்கு, புதிய சர்வே 159/10 மனைக்கு கிழக்கு, மேற்படி சர்வே 159/11-ல் வாதிகள் கட்டியுள்ள வீட்டிற்கு மேற்கு இதன் மத்தியில் வடக்கு-தெற்கு 49 அடி, கிழக்கு-மேற்கு 2 அடி இதற்கு சதுர அடி 98, இந்த அளவுள்ள காலிமனை. (புதிய பட்டா எண்.165-ல் சம்மந்தப்பட்டவையாகும். பழைய சர்வே எண். அயன் நஞ்சை சர்வே 23/1B1 1.83 ஏக்கரில் சம்மந்தப்பட்டவையாகும்.)
மதிப்பு ரூ.5,000.00

3.2. It is the case of the plaintiffs that the property measuring to an extent of 1.83 acres comprised in Survey No.23/1B1 at Shankarapuram Village, Gingee, belonged to one Nadaraja Chettiyar. Nadaraja Chettiyar was in possession and enjoyment of the same. The said Nadaraja Chettiyar had thereafter, formed a layout of house sites and had been selling the same.



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3.3. The suit schedule property is one such site comprised in Survey No.23/1B1 which, Nadaraja Chettiyar had sold to one Anandhakumar under a registered sale deed dated 15.07.1987. Anandhakumar, in turn, had sold the property to the plaintiffs under a registered sale deed dated 20.09.1995. From the time of the purchase, the plaintiffs have been in possession and enjoyment of the same.

3.4. At the time of the purchase, the plaintiffs are minors and therefore, the sale was executed in the name of their mother viz., R.Rajeshwari Ammal. At the time of the filing of the suit, the first plaintiff had attained majority and the second and third plaintiffs continued to be minors.

3.5. Under the Natham Site Updating Scheme, the property in question was re-surveyed as Survey No.159/11 measuring 246 sq.m. and the plaintiffs were granted Patta No.165. The plaintiffs had also mutated the revenue records in their name.



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3.6. The plaintiffs would further contend that to the west of the New Survey No.159/11, New Survey No.159/10 was situate and the defendants had purchased this land from the said Nadaraja Chettiyar and he had been allotted Patta No.439 and the property measures an extent of 160 sq.m.

3.7. It is the further case of the plaintiffs that they had not disturbed the defendants' enjoyment of the lands comprised in New Survey No.159/10. Likewise, the defendants have no right to the property purchased by the plaintiffs comprised in New Survey No.159/11. The plaintiffs would submit that on the western wall of the building put up by the plaintiffs, they have kept apart a small passage of 2 feet east-west, through which, the plaintiffs would access to colour wash the walls, etc. The plaintiffs would further submit that they had requested the defendants that they could enter into an agreement for the use of this common passage. However, the defendants had objected to the same and had asserted exclusive right over the same.



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3.8. The plaintiffs would further submit that the defendants had trespassed into this passage and have attempted to put a compound wall, staircase, septic tanks, etc., in this 2 feet lane. Therefore, the plaintiffs had come forward with the present case.

3.9. It is the contention of the first defendant that on 30.07.1987, he had purchased the property measuring east-west 24 feet and north-south 72 feet. It is the contention of the first defendant that he has put up a construction measuring east-west 20.9 feet and north-south 49 feet. The construction is a double storeyed building.

3.10. It is the further case of the first defendant that he had put up 3/4th of the wall in the property of Shanmugam who is his eastern neighbour. The wall in the western side was enjoyed by Shanmugam and the first defendant. The first defendant had constructed a house 10 years ago and he had obtained electricity connection, etc. The first defendant had left out a small portion of the land in his backyard. He would also submit that in this vacant place on the north-east corner, he



has put up a toilet and bathroom.

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3.11. It is also the case of the first defendant that the plaintiffs have put up construction on the entire extent of the property purchased by them and they are attempting to stake a claim over his property.

TRIAL COURT:

4. The Trial Court had framed the following issues:

“ (a) *Whether the plaintiffs are entitled to the relief of declaration of title to the suit properties as prayed for?*

(b) *Whether the plaintiffs are entitled to the consequential relief of permanent injunction?*

(c) *To what other relief the plaintiffs are entitled? ”*



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5. Before the Trial Court, the plaintiff had examined himself as P.W.1 and also examined other two witnesses viz., A.Ranganathan and Dharmalingam as P.W.2 and P.W.3 respectively, and marked Exs.A1 to A10. The first defendant had examined himself as D.W.1 and marked Exs.B1 to B31. That apart, the Advocate Commissioner's report has been marked.

6. The Trial Court had dismissed the suit, aggrieved by which, the plaintiffs had preferred an appeal in A.S.No.13 of 2017 on the file of the Subordinate Court, Gingee.

LOWER APPELLATE COURT:

7. The Appellate Court concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved over the same, the plaintiffs are before this Court.

DISCUSSION:

8. A mere perusal of the sale deed in favour of the



appellants/plaintiffs – Ex.A2 and the sale deed in favour of Anandhakumar - Ex.A1 would clearly show that the plaintiffs have purchased a property measuring an extent of east-west 54 feet and north-south 49 feet, totally an extent of 2,646 sq.ft.

9. The defendants had purchased the property measuring an extent of east-west 24 feet and north-south 72 feet, totally measuring an extent of 1,728 sq.ft. The Commissioner's report and sketch, marked as Exs.C1 and C2, would clearly show that the plaintiffs have constructed in their entire extent of the 54 ft. east-west and 49 ft. north-south. Having constructed in the entire extent, the plaintiffs are attempting to establish a right over the defendants' property.

10. Both the Courts below, on perusing the record, have concurrently held against the plaintiffs. I see no reason to interfere with the concurrent findings of the Courts below, particularly, when the plaintiffs had not made out any substantial question of law.



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Accordingly, this second appeal is dismissed. Consequently,
connected C.M.P. stands closed. No costs.

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03.11.2023

Index : Yes/No
Speaking order/non-speaking order
ssa

To

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



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P.T.ASHA, J.,

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