



S.A.No.267 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

ORDER RESERVED ON : 10.07.2024

ORDER PRONOUNCED ON : 06.08.2024

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

S.A.No.267 of 2021

1.K.N.Bellie (Died)

2.Devi.B

3.Sasikala

4.Prema Sankaran

5.Sivakumar

6.Jayanthi

7.Vijaykumar. B

Appellants 2 to 7 brought on record as Lrs of the deceased sole appellant viz. (K.N.Bellie) vide Court order dated 14.03.2022 made in CMP.8771/2021 in S.A.267/2021.

...Appellants

VS

Kamala Arjunan

...Respondent

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure Code, 1908 to set aside the Judgment and Decree dated 16.10.2020 in A.S.No. 29 of 2017 on the file of Subordinate Judge, Udhagamandalam reversing the Judgment and Decree dated 23.08.2016 passed in O.S.No. 52 of 2010 on the file of District Munsif, Udhagamandalam and allow the Appeal by dismissing the suit.



S.A.No.267 of 2021

For Appellants : Mr.T.Pramod Kumar Chopda, Senior Advocate
for Mr.P.Prithvi Choda

For Respondent : Mr.N.Krishnakumar
for M/s.Sarvabhauman Associates.

JUDGMENT

The Second Appeal is filed against the reversing judgment of the lower appellate court. The defendant in the suit is the appellant in the Second Appeal.

2. The parties will be referred to as per their rank in the trial court.

3. The facts in brief as follows:

The defendant was the absolute owner of total extent of 3.69 acres of agricultural land in R.S.Nos.359/1 and 359/1B, he having obtained the same under the partition deed dated 15.02.1969 and sale deed dated 16.02.1990. The defendant out of the total extent of 3.69 acres obtained by him as aforesaid sold 1.50 acres of agricultural land in R.S.Nos.359/1 & 359/1B (old) and New R.S.No.382 of Ithalar village, with specific boundaries to the plaintiff under sale



S.A.No.267 of 2021

deed dated 02.12.2005. According to the plaintiff she developed a tea garden in the extent of 50 cents of the land out of 1.50 acres. While so, the defendant attempted to interfere with the plaintiff's peaceful possession and enjoyment of the suit property and therefore on threat of dispossession, the plaintiff filed the suit for permanent injunction restraining the defendant his men, agent etc. from interfering with her peaceful possession and enjoyment of the suit properties.

4. The defendant filed written statement admitting his ownership of the total extent of 3.69 acres of land in R.S.No.359/1 and 359/1B. The defendant also admitted the plaintiff's title to an extent of 1.50 acres in R.S.No.359/1B of Ithalar village by virtue of sale deed executed by him in her favour on 02.02.2005. The defendant denied the plaintiff's averment that she planted tea plants in the suit property. According to the defendant, a part of the plaintiffs suit schedule property, was acquired by the Government for the purpose of laying road to Belithila lease with the consent and knowledge of the plaintiff. It was the defendant's further case that some persons on the eastern side of the plaintiff's property encroached into the



S.A.No.267 of 2021

suit property. The plaintiff in collusion with the said encroachers on the eastern side wanted to enter the defendants land to the extent acquired by the panchayat for laying the road. The defendant stated that taking advantage of the ex-parte interim injunction order granted in her favour, the plaintiff destroyed the tea plants in the defendant's land on 29.03.2010 to 31.03.2010 and therefore the defendant preferred a police complaint against the plaintiff. As regards dispossession of the plaintiff by the defendant was concerned, the defendant stated that the defendant was not there in the village when the alleged dispossession of the plaintiff took place. The defendant therefore submitted that the defendant was in peaceful enjoyment of the balance of 2.19 acres of tea estate and it was the plaintiff who tried to trespass into his lands.

5. Before the trial court the plaintiff examined herself as P.W1 and also examined one other witness as P.W2. The defendant examined himself as D.W1. The plaintiff marked Ex.A1 to Ex.A5 and the defendant did not file any documents. The Commissioners report and sketch were marked as Ex.C1 and



S.A.No.267 of 2021

Ex.C2 as Court documents.

WEB COPY

6. The trial court after framing necessary issues dismissed the suit holding that there was a dispute as regards the boundaries of the lands and the plaintiff having instituted the suit, the burden was on the plaintiff to prove her exclusive title and possession over the suit property. The trial Court found that the plaintiff having failed to establish the identity of the suit property, she was not entitled to the relief of permanent injunction. The trial court also found that the plaintiff was a Co-Pattadar and therefore she could not claim injunction against the defendant. The trial court therefore dismissed the suit. Aggrieved by the judgment and decree of the trial court, the plaintiff filed the appeal before the Sub-Court, Udthagamandalam and the lower appellate court on an appreciation of the entire evidence on record found that the boundaries given in the suit schedule correlated with the boundaries given in the sale deed of the plaintiff and therefore the identity of the suit property was established by the plaintiff. The lower appellate court rejected the objection of the defendant that plaintiff was trying to usurp his lands



S.A.No.267 of 2021

because of the encroachment by the owners on the eastern side of her property and that the plaintiff was trying to reclaim the extent lost by her towards acquisition from his lands on its finding that the plaintiff was not claiming more extent than that which she purchased from the defendant. The lower appellate court also found that the finding of the trial court that there was no cause of action for the suit and also that injunction could not be granted against Co-pattadar was erroneous. The lower appellate court held that the trial court failed to note that there was a difference between Co-owner and Co-pattadar and therefore the suit against the Co-pattadar for injunction was maintainable. Aggrieved by the reversing judgment and decree of the lower appellate court, the defendant has filed the above Second Appeal.

7. At the time of admission, this Court framed the following substantial questions of law:

“1. Whether the learned Subordinate Judge is correct in reversing the judgment and decree passed by the trial Court?

2. Whether the learned Subordinate Judge is correct in granting



S.A.No.267 of 2021

WEB COPY

permanent injunction without identifying the boundaries and demarcating the suit property by plaintiff? ”

8. The learned counsel for the defendant submitted that the plaintiff miserably failed to establish the identity of the suit property by specific boundaries and therefore the trial Court was right in dismissing the suit. The learned counsel further submitted that the lower appellate court failed to note that the suit for injunction does not lie on mere apprehension of dispossession. The learned counsel submitted that the lower appellate court failed to note that the plaintiff was trying to encroach the defendant's lands because of encroachment of the eastern side owners of her property and also because she lost a portion of her lands in the acquisition.

9. The learned counsel for the plaintiff on the other hand submitted that the plaintiff having established the identity of the suit property and her right, title and possession of the same the lower appellate court was justified in granting the relief of injunction in her favour. The learned counsel further submitted that the issue



S.A.No.267 of 2021

raised in the second appeal being a pure question of fact the same could not be decided in second appeal under Section 100 CPC.

10. I have heard both the learned counsels and perused the records.

11. The undisputed facts of the case are that the defendant was the owner of the total extent of 3.69 acres in R.S.No.359/1 and 359/1B in Ithalar village by virtue of a partition deed dated 15.02.1969 and sale deed dated 16.02.1990. It is also undisputed that vide registered sale deed dated 02.02.2005, the defendant sold 1.50 acres of land in R.S.No.359/1B in the said Ithalar village to the plaintiff. The dispute is with regard to the interference by the defendant with the plaintiffs peaceful possession and enjoyment of the property purchased by her from the defendant.

12. It is true that the schedule of property given in the plaint tallies with the schedule of property under Ex.A1 i.e. sale deed of the plaintiff. The plaintiff



S.A.No.267 of 2021

admittedly purchased 1.50 acres of land out of total extent of 3.69 acres with specific boundaries. In the suit schedule as also the plaint schedule the boundaries of the land purchased by the plaintiff are as follows:

North :The land of Gopal K.N. Sevanan

South :The land of B.K. Raju & Peelan

East :Late Karodi Gowder & P.T. Joghee's land

West :The Defendant's land

13. It is to be seen if the plaintiff has identified the lands on ground on the basis of above boundaries given in the sale deed as well as the suit schedule. I digress from the issue on hand for a moment, to highlight that the plaintiff admits that part of her property i.e. 12.50 cents out of 0.25 acres of land was acquired for laying a panchayat road. Therefore the plaintiff could not have prayed for injunction for the entire extent of 1.50 acres. The plaintiff ought to have prayed for injunction for 1.37 ½ cents only.

14.It is the case of the defendants that the owners of the eastern boundary of



S.A.No.267 of 2021

the plaintiff encroached into her lands so she was trying to recover the encroached portion as well as the acquired portion from the defendants lands. In this regard, the Advocate Commissioners report is relevant. The Advocate Commissioner in his report categorically stated that when the plaintiff was requested to identify the suit property as per her sale deed, she was able to identify the boundaries on the south, east and west only. The plaintiff disputed the extent of 0.62 acres in the northern side stating that it belonged to one Mr.Gopalan. The Advocate Commissioner further found that the entire extent of 3.69 acres in R.S.No.359/1 and 359/1B was identified by the defendant but the said Gopalan and Ramakrishnan objected to the portions marked in Orange and Yellow in his plan stating that they were in possession and enjoyment of the same. The Advocate Commissioner further stated that as per Ex.A3, an extent of 1.65 acres in R.S.No.359/1B was identified but the extent of 2.04 acres in R.S.No.359/1 covered under the document Ex.A2, could not be identified, as the said document had no boundaries to survey the same. According to the advocate commissioner his report was based on the identification of the property by the defendant and his



S.A.No.267 of 2021

counsel. The Commissioner further stated that because of the objection raised by the plaintiff, her counsel, Mr.Gopalan and Mr.Ramakrishnan he and his Government surveyor were not able to survey the total extent of 3.69 acres in R.S.No.359/1 and R.S.No.359/1B and hence he was not able to demarcate the plaintiff's lands of 1.50 acres and 2.19 acres of the defendants property. The Advocate Commissioner recorded the physical features of the entire extent of 3.69 Acres identified by the defendant and marked the same in green, brown, yellow and orange colour in his report. The report refers to the brown colour portion as that acquired by the Government for formation of the panchayat road, the yellow and orange colours as disputed portions (i.e.) the possession of the adjacent owners Gopalan and Ramakrishnan. From the Advocate Commissioners report, it is clear that the plaintiffs 1.50 acres could not be identified, as the eastern side owner's disputed the same. It is pertinent to note that the plaintiff has not objected to the commissioner report and plan.

15. At this juncture it is relevant to refer to the plaintiffs deposition which is



WEB COPY

"பெள்ளியிடம் இருந்து 1½ ஏக்கர் பூமியை கிரயமாக பெற்றேன். இந்த சொத்தை அளந்து பார்த்து தான் வாங்கினேன் என்று கேட்டால் பிரதிவாதி இடத்தை காட்டினார் நான் கிரயமாக பெறுவதற்கு சம்மதம் தெரிவித்தேன் ஆனால் அளந்து பார்க்கவில்லை."

"நீதிமன்ற ஆணையர் தாக்கல் செய்த அறிக்கைக்கு ஆட்சேபணை தெரிவித்து நான் மனு தாக்கல் செய்துள்ளேனா என்று கேட்டால் இல்லை."

"தாவாவில் குறிப்பிட்டுள்ள படி தாவா சொத்தின் வடக்கு பக்கத்தில் கோபால் மற்றும் செவன்ன பூமி அமைந்ததாக குறிப்பிட்டுள்ளது தவறு என்ற சொன்னாலும் செவனன் பூமி மட்டும் தான் உள்ளதென்று சொன்னாலும் சரிதான்....."

"தாவா சொத்தான 1-½ ஏக்கர் பூமி ரோட்டிற்கு மேலும் கீழும் உள்ளது. அந்த ரோட்டை நான் தான் அரசாங்கத்திற்கு கொடுத்துவிட்டேன்."

அந்த ரோட்டை என்னுடைய பூமியின் வழியாக தான் செல்கிறது என்று சொன்னால் சரிதான்."

16. From the evidence of the plaintiff, it is clear that even at the time of purchase, her property was not identified and specifically demarcated. The plaintiff having admitted that the northern side owner of her lands was only Sevenan, it is clear that Gopalan had no right in the yellow and orange portions. The plaintiff further admits that her property lies on both sides of the road. While



S.A.No.267 of 2021

so, the plaintiff cannot claim the entire extent in the green portion of the Commissioners report. It is also to be noted here that after selling 1.50 acres out of 3.69 acres, the defendant admittedly retained only 2.19 acres. In the commissioners report the measurement of green portion is 2.32 acres. Therefore the plaintiff may be justified in claiming some extent in green colour portion also.

17. In the Commissioner's report the Brown portion is shown as 12.50 acres out of 25 cents and the yellow portion as 50 cents and the orange portion as 62 cents. If the said extents are added the total extent comes to 124.5 cents, therefore the plaintiff will also have some portion in green colour portion. Further the plaintiff having admitted the orange and yellow portions are occupied by Gopalan and Ramakrishnan, son of Sevanan, without the said persons, the plaintiff cannot identify her lands. The plaintiff claims that she has lands on either side of the road, which will necessarily mean that she has lands in the yellow and orange portions also, but the plaintiff admits that yellow and orange portions are occupied by Gopalan and Ramakrishnan, son of Sevenan. The plaintiff in the



S.A.No.267 of 2021

Commissioners report admitted that the orange portion measuring 0.62 cents belonged to Gopalan and Sevenan and hence she requested the Commissioner to measure the lands in their presence. As already stated the defendant is entitled only to 2.19 acres, but the extent of green portion is 2.32 acres. If the balance 0.13 cents is added then the extent owned by the plaintiff under the sale deed dated 02.02.2005 (i.e.) 137.5 cents (1.50 acres – 12.5 cents acquired for road) is arrived at.

18.From the above discussion, it is clear that there is some dispute as to the identity of the plaintiffs property. Unless the plaintiff properly identifies the suit property, she cannot succeed. The plaintiff has not been able to establish the location of her lands. Admittedly, there are certain claims from Gopalan and Ramakrishnan, son of Sevanan, to the orange and yellow portions. Therefore in the absence of the said persons the plaintiff's land cannot be clearly identified. In my view the lower appellate Court erred in thinking that because the boundaries in the sale deed tallied with the boundaries in the suit schedule, the lands stood



S.A.No.267 of 2021

identified. The identity of the lands should be with reference to the location on ground also and not merely on paper. It is trite that relief of injunction cannot be granted unless and until the lands are identified.

19. In the light of the above discussions, both the substantial question of law are answered in favour of the defendant and the judgment and decree of the lower appellate court is set aside and the judgment and decree of the trial court is confirmed. Accordingly, the Second Appeal is allowed. No costs.

06.08.2024

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

dsn/ah

To

1. The Subordinate Judge,
Udhagamandalam.

2.The District Munsif,
Udhagamandalam.



WEB COPY



S.A.No.267 of 2021

N.MALA,J.

dsn

PRE-DELIVERY JUDGMENT IN
S.A.No.267 of 2021

JUDGMENT PRONOUNCED ON
06.08.2024



WEB COPY



S.A.No.267 of 2021