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S.A.No. 404 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2024

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No.404 of 2014

Govindaraju (died)
2. Padmavathy
3. Ramamurthy
4. Rajasekar

... Appellants / Plaintiffs

Vs.

Chandra Mooppanar

... Respondent / Defendant

(Appellants 2 to 4 are brought on record as legal heirs of the deceased sole appellant vide order of the Court dated 03.03.2020 made in C.M.P.No.1902, 4906 and 4907 of 2018 in S.A.No.404/2014)

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree dated 27.09.2013 made in A.S.No.12 of 2012 on the file of the Additional District Judge, Ariyalur, concurrent judgment and decree dated 28.11.2005 made in O.S.No.158 of 2002 on the file of the Additional District Munsif Court, Ariyalur.

For Appellants : Ms.Divya Bharathi
for Mr.C.Prabakaran

For Respondent : Mr.A.Murugesan



S.A.No. 404 of 2014

JUDGMENT

WEB COPY Heard Ms.Divya Bharathi, the learned counsel for the appellants and Mr.A.Murugesan, the learned counsel for the respondent.

2. The plaintiff is the appellant who has filed a suit for declaration of title and mandatory injunction against the defendant. The trial Court dismissed the suit and the appeal preferred by the plaintiff also got dismissed by confirming the judgment of the trial Court. Now the plaintiff has filed the second appeal challenging the judgment and decree of the first appellate Court.

3. The short facts which are seen from the plaint filed by the plaintiff are as under:

The suit property is the ancestral property of the plaintiff and was originally belonged to three persons by names Chinnathambi Mooppanar, Ayyavu Mooppanar and Chellakannu Mooppanar and each of them have an undivided 1/3rd share in the suit property. The entire property measures North to South 108 ft. and East to West 36 ft. and each of three sharers have got 1/3rd share measuring 36 x 36 ft. The plaintiff's father Perumal Mooppanar is the son of one of the share holders by name Ayyavu Mooppanar.



S.A.No. 404 of 2014

The plaintiff is the grandson of Ayyavu Moopanar. The plaintiff's father constructed a house in the middle portion by leaving 2 ft. space in the southern space and 5 ft. on the northern space of the house for carrying out the maintenance work.

3.1 The defendants have purchased both the Northern and Southern moieties from the legal heirs of the respective original owners namely Chinnathambi Moopanar and Chellakannu Moopanar. After the defendant had purchased the property he put up a tiled house by encroaching upon 5 ft., space left on the northern side of the plaintiff's house which is described as II Item of the suit schedule property. The 2 ft., space in the southern side of the house has been described as I Item of the suit property. The defendant had put up a hut in the I Item of the suit property subsequent to the filing of the suit and hence the suit has been amended appropriately. In view of the same the plaintiff has sought a relief of declaration, permanent injunction along with recovery of possession.

4. The defendant resisted the suit by raising the following contention:

It is true that the portions both in northern and southern side were originally belonged to three pangalis namely Chinnathambi Moopanar,



S.A.No. 404 of 2014

Ayyavu Moopanar and Chellakannu Moopanar. The measurement as stated by the plaintiff is not correct. The plaintiff has not let out any space on the southern side and northern side as pleaded by him. As the plaintiff's father has not left any space on the northern side and southern side, there is no windows fixed on the northern side of the plaintiff's house. No provision has been made for draining the rain water in the northern side of his house. The defendant has put up his house five years prior to the date of the suit with the plaintiff's knowledge and without any objection.

5. On the basis of the above said pleadings, the trial Court has framed the following issues:

“1. தாவா 1 வது இன சொத்தில் வாதி, பாத்தியத்துடன் அனுபவத்தில் இருந்து வருவது உண்மையா ?

2. தாவா 2 வது இன சொத்து வாதிக்கு பாத்தியப்பட்டதா அதில் அவருக்கு கவாதீனப் பரிகாரம் கோர உரிமை உண்டா ?

3. தாவா 1, 2 இனச் சொத்துக்களை பொழித்து வாதி கேட்கும் பரிகாரங்கள் வாதிக்கு கிடைக்கக்கூடியதா ?

4. வேறு என்ன பரிகாரம் ?

Additional issue:

நீதிமன்ற கட்டணம் 1 வது அயிட்டிச் சொத்தைப் பொறுத்து



S.A.No. 404 of 2014

மதிப்பு குறைவாக உள்ளது என்று பிரதிவாதி கூறும் கருத்து

WEB COPI ஏற்புடையதா ?”

6. During the course of trial on the side of the plaintiff two witnesses were examined as P.W.1 and P.W.2 and Exs.A1 to A3 were marked. On the side of the defendants two witnesses were examined as D.W.1 and D.W.2 and Exs.B1 to B6 were marked. The Commissioner's report and plan were marked as Exs.C1 to C4. The trial Court has dismissed the suit and the first appeal preferred by the plaintiff has also been dismissed and now the plaintiff have filed the present Second Appeal.

7. The Second Appeal is admitted on the following substantial question of law:

“ Whether in law the courts below are right in dismissing the suit filed by the plaintiff without considering Ex.A3? ”

8. Ms.Divya Bharathi, the learned counsel for the appellants / plaintiffs, submitted that even the Commissioner's report and plan would show that south side portion of the defendant's land measures 42 ft., which is



S.A.No. 404 of 2014

inclusive of the portion which was encroached by the defendant on the poromboke land; the northern side land purchased by the defendant measures 34 ft., but on the ground, the defendant's house including the tiled portion measures 38 ft.; within the above said northern and southern portion, the plaintiff's portion should be 36 ft., but on the ground it measures only 28.10" and hence the remaining space left by the plaintiff on the southern side and the northern side have been encroached by the defendant; the Courts below did not take into consideration of these essential facts and dismissed the suit; hence the Second Appeal should be allowed.

9. Mr.R.Murugesan, the learned counsel for the respondent / defendant, submitted that the plaintiff did not prove that the whole of the portion is measuring 108 ft., from North – South; hence the plaintiff cannot claim that his father and his ancestor own 36 ft. on North – South; the suit has been dismissed basing on the documents produced and the measurements available on ground; the plaintiff has admitted in his cross-examination that in the sale deeds of the defendant the southern portion is shown only as property belonging to Govindaraju (plaintiff) and it was not mentioned as vacant space; even the ground level measurement does not show that the entire North – South portion of the suit property is 108 ft. and hence it is



S.A.No. 404 of 2014

right for the courts below to dismiss the plaintiff's claim.

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10. The suit property and its appurtenances which belonged to both the plaintiff and the defendant were originally owned by three common ancestors namely Chinnathambi Mooppanar, Ayyavu Mooppanar and Chellakannu Mooppanar. While the plaintiff claims that each of the ancestors had an undivided 36 ft., North – South, the defendants deny the same. It appears that the trial Court and the first appellate Court have given more significance to the oral evidence. In fact, the documentary evidence and the Commissioner's report would play a crucial role in deciding the dispute.

11. The sale deed of the defendant's predecessor in title dated 15.09.1976 pertains to the southern portion and it is marked as Ex.A3. The measurement of the property shown in the above sale deed was North – South is 36 ft. However, when the defendant purchased it subsequently in the year 2000 he has mentioned the North – South measurement as 39 ft. instead of 36 ft. The predecessor of the said property had passed title only to the extent of the property purchased by him vide subsequent sale deed dated 12.07.2000 (Ex.A6). But the description of the property in the sale deed shows an extent of 39 ft. and for which his vendor did not have any title.



S.A.No. 404 of 2014

This essential fact has been omitted to be noticed by the Courts below. In the written statement of the defendant he himself has admitted that he have been enjoying 6 ft., on the natham property by annexing it with their property.

12. The claim of the defendant is that in Ex.B6 (sale deed dated 12.07.2000), the plaintiff himself has affixed his signature as witness and hence he is estopped from denying the entitlement of the defendant as stated in the sale deed. Just because the plaintiff had attested the sale deed, it will not make him a party to the document and thereby amount to admitting the terms and conditions of the sale deed. Hence, the defendant ought not to have taken advantage on the said fact and claimed that Ex.B6 would confer title in respect of 39 ft. The other portion purchased by the defendant's mother vide Ex.B2 dated 03.03.1956 is 20 ft. and the extent of the property purchased by the defendant vide Ex.B3 vide sale deed dated 04.03.1974 is 15 ft. Both the portions through Exs.B2 and B3 would work out to 35 ft. North – South.

13. Consolidating all these facts would only convey that the whole of the properties are in three portions on the ground now and two portions have been purchased through Exs.B2 and B3 and one portion has been purchased



S.A.No. 404 of 2014

through Ex.B6 by the defendant. As stated already the defendant's vendor could have conveyed title to the defendant only to 36 ft., and rest of the portion could have been an addition by the defendant himself in his sale deed contrary to the parent document Ex.A3.

14. The Commissioner's report would show that the plaintiff's house measures North – South 28 ft., and 10". The portion of the defendant on the southern side of the plaintiff's house would measure 42 ft., which is inclusive of 6 ft., encroached on the street. The northern side purchased by the defendant measures 33.4 ft. on ground. The plaintiff claims that he has got 2 ft., vacant land on the southern of his house and 5 ft. vacant land on the north of his house. Excluding the encroachment on the southern side the patta property of the respondent can only be 36 ft. Even though the defendant's predecessor in title had purchased only 35 ft., vide Exs.B2 and B3, in the subsequent sale deed Ex.B6 in favour of the defendant it has been stated that the South to North measurement is 39 ft.

15. The property as appears on the ground now would substantiate the fact that each sharer of the suit property could have owned an undivided interest of 1/3 which would be more or less equal to 36 ft. As the plaintiff



S.A.No. 404 of 2014

would establish the fact that the portions on the northern side and the portions on the southern side measure more or less the same extent, it would only show that each of the owner had an undivided share of 1/3 which would approximately come to 36 ft. each. But these essential factors are omitted to be noticed by the Courts below.

16. As the first appellate Court did not advert to set right the discrepancies in the appreciation of evidence by the trial Court, the same is liable to be set aside. Thus the substantial question of law is answered in favour of the appellants.

17. In the result, this Second Appeal is allowed and the judgment and decree dated 27.09.2013 made in A.S.No.12 of 2012 on the file of the Additional District Judge, Ariyalur, is hereby set aside and the suit in O.S.No.158 of 2002 on the file of the Additional District Munsif Court, Ariyalur, is decreed. No costs.

03.12.2024

Index:Yes
Speaking Order
Neutral Citation Case : Yes
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S.A.No. 404 of 2014

To:

WEB COPY

1. The Additional District Judge, Ariyalur.
2. The Additional District Munsif Court, Ariyalur.



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S.A.No. 404 of 2014

R.N.MANJULA, J.

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S.A. No.404 of 2014

03.12.2024