



S.A.No.912 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.912 of 2019

Janarthanan

... Appellant

Vs.

1. Muthu Odayar

2. Sridharan

3. Venmathi

... Respondents

Prayer : Second Appeal filed under Section 100 r/w. Order 41 of CPC, 1908 against the decree and judgment dated 13.02.2018 passed in A.S.No.21/2011, on the file of the Additional Subordinate Judge, Puducherry, upholding the decree and judgment dated 15.07.2011 passed in O.S.No.430/2007, on the file of the III Additional District Munsif, Puducherry.

For Appellant : Mr.T.Sai Krishnan

For R1 & R2 : Dr.S.S.Swaminathan

For R3 : No appearance

JUDGMENT

The unsuccessful plaintiff before both the Courts below has filed the present second appeal.



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2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3. The case of the plaintiff in a nutshell is as follows :

The plaintiff filed the suit in O.S.No.430/2007 for a permanent injunction, restraining the defendants, their men and agents from interfering with his peaceful possession and enjoyment of the suit 'B' Schedule property which is described as a 9 feet wall, situate in 'A' schedule property. The plaintiff purchased 'A' schedule property as a vacant site from one Jeeva through his power agent under a registered sale deed, dated 27.04.1995 (Ex.A1), with a rectification deed, dated 18.03.1996. The plaintiff also constructed a residential building during December 1999 after getting necessary approval. The defendants are attempting to interfere with the plaintiff's possession over the 'B' schedule property and one such attempt was made on 14.03.2007. Hence the suit.



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4. The suit was resisted by the defendants on the following

grounds:

- i. The plaintiff's vendor, Jeeva purchased an extent of 3 Kuzhies, 4 veesams from the first defendant and his wife Latha through a registered sale deed, dated 21.11.1981. The said document was registered on 03.12.1981.
- ii. On the Southern east side of the property, there is a strip of land originally owned and possessed by the first defendant and his wife. They had settled the said property in favour of their daughter, the third defendant through a Settlement deed, dated 06.07.2004.
- iii. The property settled in favour of the third defendant is in T.S.No.36/DA/1D and T.S.No.36/DA/1E. A Vinayagar temple is situated on the southern side of the said strip of land. The plaintiff is attempting to encroach upon the property of the third defendant which forced the defendants to give representations before the Member Secretary, Puducherry Planning Authority, the Collector cum Member Secretary, Land Grab cell and the Director of Survey and Land Records, Puducherry for taking necessary steps for



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demarcation of the properties.

- iv. The plaintiff has made wrong and distorted description of the property in order to grab the property of the third defendant. Therefore the suit filed by the plaintiff is liable to be dismissed.

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

- i. *Whether the plaintiff is in possession and enjoyment of suit property?*
- ii. *Whether the plaintiff's remedy is to approach the Directorate of Survey and Land Records and that the suit is not maintainable?*
- iii. *Whether the plaintiff is entitled for permanent injunction as prayed for?*
- iv. *To what relief is the plaintiff entitled?*

6. In the trial Court, the plaintiff examined himself and marked Ex.A1 to Ex.A8. The defendants examined themselves and marked Ex.B1 to Ex.B14.



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7. After full contest, the learned III Additional District Munsif, Puducherry, vide his decree and judgment dated 15.07.2011, dismissed the suit filed by the plaintiff on the following grounds:- :

- i. The plaintiff in his evidence admitted that he did not measure the properties at the time of his purchase.
- ii. FMB (Ex.B14) clearly shows that T.S.No.36/3A/1E and T.S.No.36/3A/1D are situate on the southern and eastern side of T.S.No.36/3A/1C.
- iii. Admittedly the plaintiff has no title over T.S.No.36/3A/1E and T.S.No.36/3A/1D.
- iv. T.S.No.36/3A/1D is situate between the pump house and the plaintiff's property and T.S.No.36/3A/1E is situate between the Varasithi Vinayagar Temple and the plaintiff's property.
- v. The third defendant is the title holder of both T.S.No.36/3A/1D and T.S.No.36/3A/1E as per the settlement deed dated 18.12.2009 (Ex.B1).



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vi. The plaintiff is taking advantage of the boundary description mentioned in his sale deed and is attempting to put up construction in the property of the defendants.

8. Aggrieved over the decree and judgment passed by the trial court, the plaintiff filed an appeal in A.S.No.21/2011, before the Additional Subordinate Judge, Puducherry. The learned Additional Subordinate Judge, after analysing the oral and documentary evidence adduced on both sides, upheld the findings recorded by the trial court vide her decree and judgment dated 13.02.2018, as against which the present second appeal is filed.

9. The second appeal is admitted by this Court on 13.09.2019 on the following substantial questions of law:

i. Whether or not the plaintiff established his title and possession vide Ex.A1 sale deed read with the instructions on computation and adjustment of areas as contained in



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Paragraph - VII of the Government of Puducherry instructions for maintenance of survey marks and land records?

ii. Whether or not the findings of the Trial Court and the first appellate Court perverse in the teeth of the boundaries contained in Ex.A1 and Ex.A8 sale deeds?

10. Heard Mr.T.Sai Krishnan, learned counsel for the appellant and Dr.S.S.Swaminathan, learned counsel for the respondents 1 and 2.

11. At the outset, it may be observed that the plaintiff has filed the suit for a permanent injunction, restraining the defendants, their men and agents from interfering with the peaceful possession and enjoyment of the suit 'B' Schedule property, which is described as a Wall. According to the plaintiff, as per sale deed (Ex.A1), 'B' Schedule property belongs to him. The plaintiff has purchased his property as a vacant land from one Jeeva through his power agent which is in T.S.No.36/3A/1C. The first defendant has executed a settlement deed in favour of the third defendant in respect of his properties in



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TS.No.36/3A/1E and TS.No.36/3A/1D. FMB Sketch (Ex.B14) shows that TS.No.36/3A/1E and TS.No.36/3A/1D are on the southern and eastern side of TS.No.36/3A/1C.

12. It is pertinent to point out that the plaintiff has not mentioned the total extent of 'A' Schedule property i.e., the property purchased by him. However, the plaintiff has admitted during the course of cross examination that he did not measure the property at the time of his purchase and has also deposed that he is in possession of the property as per the boundaries described in his sale deed. It is to be seen that the original vendor, the first defendant had executed a settlement deed in favour of his daughter, the third defendant in respect of 'B' Schedule property and Patta also stands in her name. The first appellate Court in its well reasoned Judgment had come to a definite conclusion that the plaintiff has not established his possession over 'B' schedule property. The observation made by the first appellate Court is extracted hereunder:

"13. Ex.A1 is the certified copy of sale deed, dated

27.04.1995 executed by the power agent of one Jeeva and



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Ex.A2, the rectification deed dated 18.03.1996 executed by Jeeva in favour of the plaintiff. In Ex.A1 and Ex.A2, the property is described as follows:

In Ex.A1:

புதுவை ரிடி, புதுவை சப்.ரிடி. புதுவை முனிசிபாலிட்டியைச்
சேர்ந்த முதலியார்பேட்டை கொம்யூன், கிராம நெ.37, புதுப்பாளையம்
ரெவென்யூ கிராமம் அண்ணா நகர் விரிவாக்கத்தில் வார்டு ஜி பிளாக் நெ.2,
டவுன்சர்வே நெ.36, ரீ சர்வே நெ.8.5 கதாஸ்தர் நெ.1545ல் அடங்கிய
கிழக்கு மேற்கு 31 1/4 அடி, தெற்கு வடக்கு 60 அடி பரப்பளவு 1872
சதுரடி அளவுள்ள காலிமனை.

In Ex.A2:

புதுவை ரிடி, புதுவை சப்.ரிடி. புதுவை முனிசிபாலிட்டியைச்
சேர்ந்த முதலியார்பேட்டை கொம்யூன், கிராம நெ.37, புதுப்பாளையம்
ரெவென்யூ கிராமம் அண்ணா நகர் விரிவாக்கத்தில் வார்டு எச் பிளாக்
நெ.2, டவுன்சர்வே நெ.36.3(A) சீ சர்வே நெ.8/5 கதாஸ்தர் நெ.1545ல்
அடங்கிய 3குழி 4 வீசம் அளவுள்ள காலிமனை.

*14. Ex.A1 and Ex.A2 would reveals that the appellant
/ plaintiff has purchased East-west 31 1/4 feet and North south*



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60 feet total extent of 1872 sq.feet, Ex.B10, the settlement register for the land in town which stands in the name of the plaintiff to a total extent of 1872 sq.ft."

நான் கிரயம் வாங்கிய பத்திரத்தில் இடம் 1872 அடி பரப்பி என்று காண்பிக்கப்பட்டுள்ளது. நான் இந்த வழக்கில் அந்த இடத்திற்கு தான் உரிமை கோருகிறேன். Ex.A1க்கு எழுதப்பட்ட திருத்தல் பத்திரம் Ex.A7 ஆகும். Ex.A7ல் பரப்பிலும் அளவிலும் எந்த திருத்தமும் செய்யப்படவில்லை. Ex.A1, Ex.A7ல் நான் கிரயம் வாங்கிய மனைக்கு தெற்கில் ஜீவாவிற்கு மிகுதி இடம் உள்ளதாக எழுதப்பட்டுள்ளது, ஜீவா யாரிடம் கிரயம் வாங்கினார் என்றால் வழக்கின் 3ம் பிரதிவாதி முத்து உடையாரிடமிருந்து கிரயம் வாங்கினார். நான் Puducherry Planning Authority-ல் approval வாங்கியுள்ளேன். அந்த அபுருவ்டு பிளானில் கிழக்கு மேற்கு 31 1/4 அடி காண்பிக்கப்பட்டுள்ளது. தெற்கு வடக்கில் 60 அடி காண்பிக்கப்பட்டுள்ளது. கிரயம் வாங்கும்போது அளப்பதற்கு நடவடிக்கை எதுவும் எடுக்கவில்லை. அதற்கு காரணம் பம்பு உறவிசிற்கும் நான் வாங்கிய மனைக்கும் இடையே சொந்த இடம் உள்ளது. நான் என்னுடைய பெயருக்கு 1872 ச.அடி பட்டா



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வாங்கியுள்ளேன். என்னுடைய மனைக்கும் பம்பு உறவுசிற்கும்
இடைப்பட்ட இடத்திற்கு பட்டா யார் பெயரில் உள்ளது என்பது
தெரியாது. அந்த துண்டு இடத்திற்கு மட்டும் தனியாக
T.S.No.36/3A/1D என்று பட்டா கொடுத்துள்ளார்கள் என்றால் அந்த
விபரம் எனக்கு தெரியாது.

15. According to evidence of P.W.1, he had claimed the property situate in T.S.No.36/3A/1D, which is situated on the eastern side of the plaintiff's property. The property purchased by the plaintiff has been identified with T.S.No.36/3A/1C. The plaintiff admitted that original owner of the suit property is Muthu Udayar, the first defendant herein.

16. On perusal of Ex.B1, Muthu Udayar and his wife had settled the property in favour of his daughter, third defendant. D.W.2 has clearly deposed that Ex.B1 is the settlement regarding T.S.No.36/3A/1C, which stands in the name of the plaintiff. The plaintiff has also admitted that he had changed patta in his name. FMB of the plaintiff and the defendant's property is Ex.B14, marked through D.W.3.



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17. *In Ex.B14, it reveals that the plaintiff's property T.S.No.36/3A/1C, total extent is marked as North south 22.9 meters i.e., 60 feet, East West 9.65 meters, i.e., on the northern side and 9.5 meters on the southern side 31 1/2 feet. According to plaintiff, he purchased the property under sale deed Ex.A1 total extent of 1872 sq.feet. The extent purchased under Ex.A1 tallying with the extent show in R.S.No.36/3A/1C under Ex.A1. In the plaintiff, the plaintiff has not mentioned the total extent of 'A' schedule property. As per Ex.B14, T.S.No.36/3A/1D is existing between pump house and the plaintiff's property. The third defendant is the title holder of T.S.No.36/3A/1D and T.S.No.36/3A/1E as per Exs.B1, B11, and B14. P.W.1 admitted in his cross examination that he has measured the property at the time of purchase and after purchase. But, claiming to be in possession and enjoyment of the property as per boundaries described in the sale deed as well as his vendor's sale deed. Exs.A1 and B10 would clearly reveals that the plaintiff has been in possession and enjoyment*



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of the property mentioned in Ex.A1 sale deed. Therefore, the plaintiff is not having any title or right over the 'B' schedule mentioned property.

18. The learned counsel for the appellant has argued that where difference between the actual and registered area of either entire survey adopted or its component sub division more does not exceed 5% and no alteration should be in the registered area. But, in this case, the original owner, the first defendant executed the settlement deed in favour of the third defendant and 'B' schedule property has been in possession of the third defendant and the patta is also stands in the name of the third defendant. Therefore, the plaintiff has no claim or right over the 'B' schedule property.

19. In view of the above discussion, this Court comes to conclusion that the trial court has rightly held that the plaintiff is not entitled for permanent injunction the respondents/defendant, their men and successors from obstructing the completion of the construction of the wall,



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interfering with the plaintiffs possession and enjoyment of the suit property. Therefore, this Court is not inclined to interfere the judgment and decree in O.S.No.430/2007, dated 15.07.2011 passed by the learned III Additional District Munsif, Puducherry. The point is answered accordingly."

13. All the observations of the first Appellate Court are based on facts. In the circumstances, the substantial questions of law 1 and 2 are answered against the appellant.

14. In the result,

- i. The Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 13.02.2018 passed in A.S. No.21/2011, on the file of the Additional Subordinate Judge, Puducherry and the decree and judgment dated 15.07.2011 passed in O.S.No.430/2007, on the file of the III Additional District Munsif, Puducherry, are upheld.

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Internet: Yes/No

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Speaking/Non-Speaking order
vum

To

1. The Additional Subordinate Judge, Puducherry.
2. The III Additional District Munsif, Puducherry.
3. The Section Officer, VR Section,
Madras High Court, Chennai.



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