

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1247 of 2014

A.M.Subramanian

.. Appellant /
Plaintiff in
Trial Court

- Vs -

1. The District Collector,
Cuddalore District,
Manjakuppam, Cuddalore.
2. The Tahsildar,
Kurinjpadi Taluk,
Cuddalore Taluk Office, Cuddalore.
3. The Assistant Director,
Survey and Land Records,
Pudupalayam, Cuddalore.
4. Arumugam
5. Anjalai

.. Respondents /
Defendant in Trial Court

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the Decree and Judgment dated 20.11.2013, made in A.S.No.45 of 2012 on the file of the learned II Additional Subordinate Judge, Cuddalore confirming the Decree and Judgment dated 29.08.2011, made in O.S.No.472 of 2006 on the file of the learned Additional District Munsif, Cuddalore.

For Appellant : Dr.R.Gopinath

For Respondents 1 to 3 : Mr.T.Jayaramaraj
Government Advocate (CS)

For Respondents 4 & 5 : Mr.K.A.Ravindran

J U D G M E N T

The plaintiff in O.S.No.472 of 2006 who has lost the case before both the Courts below has come up with this second appeal. The respondents are the defendants in the suit. The said suit was filed by the appellant/plaintiff for declaration of title and for permanent injunction to restrain the defendants from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property and to set aside the sub-division made by the

defendants 1 to 3 in respect of the suit property in favour of the 4th defendant from the name of the plaintiff's mother as the same is illegal.

2. Before the trial Court, the defendants 1 to 3 remained ex parte. The defendants 4 and 5 contested the suit. The trial Court by decree and judgment dated 29.08.2011 dismissed the suit. As against the same, the plaintiff filed an appeal in A.S.No.45 of 2012 on the file of the learned II Additional Subordinate Judge, Cuddalore. By decree and judgment dated 20.11.2013, the lower appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court. That is how the appellant is before this Court with this second appeal.

3. This second appeal has come up today for admission. The respondents 4 and 5 made appearance through counsel.

4. I have heard the learned counsel appearing for the appellant, the learned Government Advocate (CS) appearing for the respondents 1 to 3 and the learned counsel appearing for the respondents 4 and 5 as well as perused the records carefully.

5. Admittedly, the suit property is comprised in Survey No.77/5 (Old Survey No.117/1) measuring 70 cents. The suit property has been described by means of four boundaries also. According to the case of the plaintiff the suit property was purchased by the plaintiff's mother in the name of the plaintiff when he was a minor by means of a registered sale deed dated 05.04.1965 and from the date of purchase, the plaintiff's mother was in possession of the suit property on behalf of the plaintiff. On attaining majority, the plaintiff took possession and he has been in enjoyment of the same. It is his further case that in the sale deed by mistake instead of mentioning the Survey No. of the property as 117/1, it has been wrongly mentioned as Survey No.120/2. But the property has been duly described by means of four boundaries in the sale deed. Patta for the property was therefore rightly transferred in the name of the plaintiff and the land in Survey No.117/1 was sub divided and new Survey No. was assigned to the suit property as Survey No.77/5 and the defendants 4 and 5 have got no right whatsoever over the suit property. Without the knowledge of the plaintiff, the suit property was sub divided and patta has been issued in the name of the 4th defendant, with these allegations suit was laid by the plaintiff.

6. In the written statement filed by the defendants 4 and 5 the above contentions were disputed. According to the defendants, the suit property measuring 34 cents comprised in old S.No.117/1 and new S.No.77/5 originally belonged to one Arumugam son of Raman who has purchased the suit property by a registered sale deed dated 19.04.1948. After having enjoyed the property for several years, he died intestate. From the legal heirs of Arumugam, it is alleged that the 4th defendant purchased the same by means of a

registered sale deed dated 19.03.1990 and thus according to the 4th defendant, he has been in possession and enjoyment of the 34 cents. Survey number of the suit property has been sub divided and new survey number has been assigned as 77/5B. The rest of 34 cents of the suit property belonged to his grandfather Subburaya Pandaram who had purchased the same by means of a registered sale deed dated 30.08.1923. It is also stated that the first defendant has executed a registered settlement deed in favour of the fifth defendant dated 12.09.2003 in respect of 34 cents. Thus, the fifth defendant is the absolute owner of 34 cents and the 4th defendant is the owner of the other 34 cents. Thus, the entire suit property belong to the defendants 4 and 5. It is also stated that patta was not rightly transferred in their name.

7. Based on the above pleadings, the trial Court framed appropriate issues and on the side of the plaintiff as many as three witnesses were examined and 25 documents were exhibited. On the side of the defendants five witnesses were examined and 29 documents were exhibited. Having considered all the above, the trial Court dismissed the suit, which was confirmed by the lower appellate Court and that is how the appellant is before this Court with this second appeal.

8. The learned counsel appearing for the appellant would submit that the Courts below were not right in dismissing the suit because the suit property is covered under the sale deed dated 05.04.1965. The learned counsel would further submit that though survey number of the property has been wrongly mentioned as 120/2, four boundaries would duly correlate the suit property with that of the property comprised in the sale deed dated 05.04.1965. The learned counsel would further submit that the Courts below have not appreciated the facts and law involved in their proper prospective.

9. The learned counsel appearing for the respondents 4 and 5 would submit that there is no substantial question of law involved in this matter and that two Courts below have appreciated the facts and found that the suit property has not been defined properly.

10. The learned Government Advocate, who is assisted by the Tahsildar, Cuddalore Taluk would submit that the old survey number 117/1 and the survey number 120/2 represents two different properties and they are not one and the same. He would further submit that the new survey number 77/5 relates to old survey number 117/1. He would further submit that the new survey number 77/5 has been further sub divided and the patta has been issued to the defendants 4 and 5.

11. I have considered the above submissions.

12. The question is whether the property purchased by the mother of the plaintiff under sale deed dated 05.04.1965 is the suit property or not. Admittedly, survey number of the property is mentioned as 120/2 and not as 117/1 in the sale deed. The contention of the plaintiff is that though the survey number has been so mentioned in the sale deed, four boundaries would clearly go to indicate that the subject matter of the said sale deed is the suit property. The Courts below have considered this issue properly and have come to the conclusion that there is no proof that the property mentioned as survey number 120/2 in the sale deed dated 05.04.1965, represents the suit property.

13. In my considered opinion, assuming that the survey number of the suit property has been wrongly mentioned in the sale deed, in order to ascertain as to whether the property which is the subject matter of the sale deed dated 05.04.1965 represents the suit property or not, one can go by four boundaries as it existed in the year 1965. If the plaintiff could prove the four boundaries in the year 1965 and correlate the same with the sale deed dated 05.04.1965, the plaintiff may have a case for consideration. But, absolutely there is no evidence for the same. Two Courts below have appreciated these facts and have come to the conclusion that the sale deed upon which the plaintiff relies on does not relate to the suit property at all. In this finding, I do not find any perversity. Further the records available before this Court would go to show that the property comprised in survey numbers 117/1 and 120/2 are two different properties. Further, I do not find any substantial question of law involved in this appeal warranting admission.

14. In the result, the appeal fails and the same is accordingly dismissed. No costs.

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Sd/-

Asst.Registrar (CS III)

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Sub Asst. Registrar

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To

1. The II Additional Subordinate Judge,
Cuddalore.

2. The Additional District Munsif,
Cuddalore.

3. The Section Officer
V.R. Section,
High Court, Madras.

1 cc to Government pleader, Sr. 6609
1 cc to Dr.R.Gopinath, Advocate, Sr. 7078

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JPO (CO)
kk 6/3



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