

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.Nos.239 and 240 of 2009
and M.P.Nos.1 and 1 of 2009

Sellapagounder ... Appellant in both S.A.Nos.239 and
240 of 2009/Defendant

-vs-

1. Samiyappan

2. Chellamuthu

3. Arunachalam ... Respondents in both S.A.Nos.239
and 240 of 2009/Plaintiff

Prayer in S.A.Nos.239 and 240 of 2009:- Appeals under Section 100 of the Civil Procedure Code, against the judgments and decrees dated 31.07.2008 made in A.S.No.5 of 2006 and A.S.No.9 of 2007 respectively on the file of the Additional District and Sessions Court / Fast Track Court No.III, Dharapuram, reversing the judgment and decree made in O.S.No.153 of 2003 on the file of the District Munsif Court, Kangeyam, dated 09.02.2005.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.Ma.P.Thangavel

C O M M O N J U D G M E N T

The unsuccessful defendant before the Courts below has preferred these Second Appeals, aggrieved by the judgments and decrees granted for declaration of title and permanent injunction.

2. Originally, the suit properties were in Survey No.957/A3C and presently resurveyed as Survey No.1214/6C. The suit properties originally belonged to one Chellappa Gounder, S/o.Chinnasami Gounder, who had derived title, pursuant to a partition deed dated 29.12.1965. The total extent of the suit properties are 0.06 cents. The said properties were sold by the owner, Chellappa Gounder in favour of one Nachammal on 05.05.1971. Thereafter, the said Nachammal was in possession of the suit properties till her death. The respondents /

plaintiffs had purchased the properties on 10.09.2002 from the legal heirs of the said Nachammal. Each of the plaintiff had purchased independently 0.02 cents by separate sale deeds. In the plaint, the suit properties are described as 'A', 'B' & 'C' schedule respectively. Each of the suit schedule properties measures about 17' East-West, 51' North-South. On the North of the suit properties lies the lands belonging to the defendant. While so, the defendant who has got no right or title over the suit properties had attempted to trespass into the same on the Northern side, which constrained the plaintiffs to file the suit.

3. The suit was resisted by the defendant, denying the plaint averments as follows:-

The defendant claimed that the said Nachammal, predecessor of the vendor of the plaintiffs was never in possession of the suit properties as per the measurements given in the schedule. According to the defendant, the plaintiffs have deliberately given the measurements of the suit properties, in which they had already encroached with an intention to cover up the same. As the measurements given by the plaintiffs are false, the defendant had prayed for dismissal of the suit.

4. Before the trial Court, on the side of the plaintiffs, the first plaintiff examined himself as P.W.1 and four more witnesses were examined as P.W.2 to P.W.5 and Exs.A1 to A11 were marked. On the side of the defendant, the defendant examined himself as D.W1 and three witnesses were examined as D.W2 to D.W4 and Exs.B1 to B11 were marked. Exs.X1 to X5 were marked through D.W3. Exs.C1 to C3 were marked as Court documents.

5. On an elaborate consideration of the facts and evidence, the trial Court moulded the relief of declaration and granted the relief of declaration with respect to 'A', 'B', 'C' portion marked in Ex.C2 and 'A' 'B' measuring 42.9', 'B' 'C', measuring 53', 'C' 'D', measuring 49' and 'A' 'D' measuring 51'. Accordingly, the right of the plaintiffs' had been declared jointly as above with the consequential relief of permanent injunction. Aggrieved by the above findings, the plaintiffs preferred an appeal in A.S.No.5 of 2006 and the defendant preferred an appeal in A.S.No.9 of 2007. The lower appellate Court allowed the appeal filed by the plaintiffs in A.S.No.5 of 2006 and dismissed the appeal filed by the defendant in A.S.No.9 of 2007, modifying the decree of the trial Court to suit the measurements in Ex.C3. Aggrieved by the said decision, the above Second Appeals have been preferred.

6. When the Second Appeals came up for admission, only notice was ordered.

7. Heard Mr.N. Manokaran, learned counsel appearing for the appellant and Mr.Ma.P. Thangavel, learned Counsel appearing for the Respondents 1 to 3 and perused the records.

8. The learned counsel for the appellant contended that the report of the Advocate Commissioner is not a conclusive proof to decide the rights of the parties. It is only an aid to arrive at a conclusion on the basis of oral and documentary evidence. Hence, the appellant assailed the findings of the lower appellate Court, based on its conclusions under Exs.C1 to C3. It was also further contended that the Commissioner's report and plan and Surveyor plan which are marked as Exs.C1 to C3, found to be not correct by the lower appellate Court. However, the same had been relied on by the lower appellate Court.

9. The plaintiffs have filed the suit for declaration, based on the sale deeds under Exs.A3, A4 & A5 dated 18.09.2002, executed in their favour, by the legal heirs of Nachammal. The said sale deeds have got definite measurements of 17' East-West and 51' North-South. However, the defendant had denied the right and title of the vendor of the plaintiffs. In order to dispute the case of the plaintiffs, the vendor of plaintiffs' vendor was examined as DW.2 on the side of the defendant. He has clearly and categorically admitted that the suit properties were sold to one Nachammal from whose legal heirs, the plaintiffs had purchased the suit properties. He had also further deposed that there is no encroachment either by the Eastern side owner or by the Western side owner and that the Southern boundaries are intact. Only on the Northern side of plaintiffs' properties, there is a difference in the measurements of the suit properties. The Courts below, having rejected the contention of the defendant by holding that only the Eastern and Western owners of the suit properties had encroached upon the plaintiffs' portion, had held that the sale deeds under Exs.A3 to A5 are proved and valid and the measurements found thereon are correct. The defendant had produced Ex.B5, which is a patta in the name of Karuppana Gounder.

10. The lower appellate Court had found that the defendant had not mentioned the Southern boundary in Ex.A1-Partition Deed. When, both the parties claimed right from the common owner through Ex.A1-Partition deed and claimed to have purchased a specific extent with specific boundaries, there cannot be any dispute. As per Ex.A1, the predecessor in title of the defendant was given only 75 cents of land, East of the channel. While so, it is un-understandable as to how the defendant has got his possession to an extent of 1.25 cents. A perusal of the resurvey measurement would go to show that the patta was issued in favour of the defendant, who has given the extent of

properties a little more than what he is entitled to under Ex.B1-sale deed. Therefore, the Courts below have rightly found that the measurements given in the patta issued to the parties during resurvey seems to be different from the measurements found in their respective title deeds.

11. Before the trial Court, an Advocate Commissioner who was also appointed, had reported his inability to identify the suit properties, as there are no resurvey boundary stones fixed on the earth and without the survey and schedule stones fixed, the Revenue Department could not have measured the property and issued the patta.

12. Admittedly, the Southern boundary of the suit properties is a Street and on the East-West side of the suit properties, there are also buildings. The Commissioner and the Surveyor have also measured the suit properties and reported that North-South measurements of the suit property is 51'. When the Southern boundary is a Street, which is not alterable by the parties and when there is no encroachment or disturbance by the East-West owners, the measurement of the suit properties have to be taken only from South-North. As per the sale deeds also, the measurements with respect to North-South is only 51'. Based on the same, the Courts below have declared the right and title to the plaintiff of the suit.

13. The lower appellate Court has also discussed the measurements given in the documents under Exs.A3 to A5 and also Exs.C1 to C3 and came to a conclusion that the measurements mentioned in Ex.C3 are correct. The lower appellate Court, by considering the evidence on record, came to the conclusion with supportive reasons on all issues and contentions.

14. From the above factual matrix, the Courts below have held that the defendant had not produced any documentary evidence in support of his plea of measurement of the suit properties and there is no question of law that would emerge from the sustainable findings of fact arrived at by the Courts below.

15. Though the lower appellate Court had agreed with the findings of the trial Court, however, dismissed the first appeal by the defendant after analysis of factual aspects in threadbare and came to the conclusion that the plaintiffs are entitled to a decree for declaration. In this case, D.W2, who was the plaintiffs' vendor's vendor from whom the defendant also derives title, has deposed that the plaintiffs had purchased as per sale deeds-Exs.A3 to A5. Unless, there is something contra about the evidence of D.W2, the credibility of the witness cannot be discounted. It is a well settled principle that pure findings of fact remain immune from challenge before this Court in the

Second Appeal. In such circumstances, no substantial question of law arises for consideration for the exercise of jurisdiction under Section 100 of Civil Procedure Code.

16. In the result, both the Second Appeals are dismissed, confirming the common judgment and decree of the lower appellate Court. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

srn

To

1. The Additional District and Sessions Court /
Fast Track Court No.III, Dharapuram
2. The District Munsif Court, Kangeyam
3. The Record Keeper, V.R.Section,
High Court, Madras.

+2 ccs to M/s.N.Manokaran, Advocate, sr.59123, 59122
+1 cc to M/s.Ma.P.Thangavel, Advocate, sr.58986

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