

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2015

CORAM

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

SECOND APPEAL No. 532 of 2015

&

M.P. No. 1 of 2015

P. Perumal ..Appellant/Plaintiff

Vs.

Thangam @ Thangamani ..Respondent/Defendant

Prayer: Second Appeal against the judgment and decree dated 19.11.2014 passed in A.S. No. 28 of 2014 on the file of the I Additional Sub Judge, Erode, confirming the judgment and decree dated 30.10.2014 passed in O.S. No. 147 of 2011 on the file of the District Munsif cum Judicial Magistrate, Kodumudi.

For Appellant :: Mr.V.S. Kesavan

J U D G M E N T

The plaintiff in O.S. No. 147 of 2011 on the file of the learned District Munsif cum Judicial Magistrate, Kodumudi, is the appellant herein. The respondent is the defendant in the suit.

2. The suit in O.S. No. 147 of 2011 was filed by the plaintiff/appellant herein for permanent injunction restraining the defendant/respondent herein from, in any manner, interfering with his possession and enjoyment of the suit property. The suit property, measuring to an extent of 4019 ½ sq.ft, has been described by four boundaries also. The Trial Court, by judgment and decree dated 30.01.2014, decreed the suit only in part, thereby declining to grant a decree in respect of an extent of 375 sq.ft of the suit property, situated to the immediate south of the house of the defendant.

3. Challenging the denial of decree in respect of 375 sq.ft of land, the plaintiff filed an appeal in A.S. No. 28 of 2014 before the learned I Additional Subordinate Judge, Erode. However, the defendant did not file any appeal challenging the

decree granted in favour of the plaintiff in respect of the suit property barring an extent of 375 sq.ft. The Lower Appellate Court, by judgment and decree dated 19.11.2014, dismissed the appeal, thereby confirming the judgment and decree of the Trial Court. Challenging the same, the plaintiff is before this Court in this second appeal.

4. This second appeal has come up today for admission and I have heard the learned counsel for the appellant and also perused the records carefully.

5. The case of the plaintiff/appellant, in brief, is as follows:

The suit property was originally classified as a Natham land. The plaintiff purchased the suit property measuring an extent of 4019 $\frac{1}{2}$ sq.ft, by way of registered sale deed dated 21.03.2007(Ex-A2). According to the plaintiff, from the date of purchase, he has been in exclusive possession and enjoyment of the entire extent of 4019 $\frac{1}{2}$ sq.ft of land. The suit property has also been described by means of four boundaries and the same is comprised in S.No. 669/6 (New Survey No. 1641/22). According to the plaintiff, the defendant, who has got her house, to the north-south of the suit property, made an attempt to trespass into a portion of the suit property, which necessitated him to file the suit.

6. The defendant, in her written statement, conceded that the plaintiff has got title and that he is also in possession of the suit property barring an extent of 375 sq.ft of land, situated to the immediate south of her house. The measurement of the said property is 12 $\frac{1}{2}$ ft North-South and 30ft East-West. According to the defendant, this property, measuring 375 sq.ft., belongs to her absolutely, which she purchased by means of a registered sale deed dated 03.12.2008 (Ex-B4). Thus, according to the defendant, an extent of 375 sq.ft of land, situated to the immediate south of her house, is in her possession and enjoyment and therefore, the plaintiff is not entitled to the relief prayed for.

7. Based on the above pleadings, the Trial Court framed appropriate issues.

8. Inorder to prove his case, the plaintiff examined himself as P.W.1 and one Ramalingam as P.W.2. As many as four documents were marked on his side. Ex-A1 is the sale deed in the name of his vendor; Ex-A2 is the sale deed by which he purchased the suit property; Ex-A3 is the kist receipt and Ex-A4 is the bill for payment of electricity tariff.

9. On the side of the defendant, the defendant examined herself as D.W.1 and as many as three documents were marked as exhibits. Exs-B1 to B3 are the title deeds in the name of the vendors of the defendant and Ex-B4 is the document by which she purchased the property from her vendor.

10. Having considered all the above, the Trial Court decreed the suit only in part and declined to grant a decree in respect of 375 sq.ft of land. The said finding was confirmed by the Lower Appellate Court. That is how the appellant is before this Court in this second appeal.

11. The learned counsel for the appellant would submit that the plaintiff/appellant has proved, by means of oral as well as documentary evidence, that he has got clear title for the total extent of 4019 ½ sq.ft. of land, namely, the suit property and that he has also been in possession of the same. But, by erroneous appreciation of the evidence adduced, both oral and documentary, according to the learned counsel, the Trial Court has decreed the suit only in part. Thus, according to the learned counsel for the appellant, the judgment and decree of the Trial Court, as confirmed by the Lower Appellate Court, deserves to be interfered with.

12. I have considered the above submissions.

13. At the outset, it has to be stated that I do not find any question of law, much less, any substantial question of law involved in this second appeal. The finding of the Trial Court, as confirmed by the Lower Appellate Court that the plaintiff/appellant has not proved that he is in possession and enjoyment of 375 sq.ft of land, is only a finding of fact and there is no question of law involved in the same. In the said factual finding, I do not find any perversity warranting interference. Both the Courts below have found that in the earliest sale deed dated 12.12.1975, the disputed property measuring 375 sq.ft. has been described properly with four boundaries. In the sale deed executed by the vendor of the defendant also, it has been clearly mentioned. However, in the document produced by the plaintiff, the northern boundary of the property, said to have been purchased by him, has been shown as Sivagiri Road. But, admittedly, the property purchased by the plaintiff does not extend upto Sivagiri Road. As a matter of fact, it is an admitted case that the northern boundary, said to have been purchased by the plaintiff, is that of the property of the defendant and a third party. On appreciating these facts, and also considering the oral and documentary evidence, the Courts below have come to the factual conclusion that the plaintiff failed to prove that he is in possession and enjoyment

of 375 sq.ft of land, which is situated to the immediate south of the house of the defendant. Thus, I do not find any perversity in the finding rendered by the Courts below warranting interference.

14. In that view of the matter, I do not find any merit in the second appeal. The second appeal fails and the same is dismissed. The judgment and decree of the Trial Court, as confirmed by the Lower Appellate Court, is hereby confirmed. No costs. Connected M.P. is closed.

sd/-

Assistant Registrar(CO)

/TRUE COPY/

Sub-Assistant Registrar

nv

To

1. The I Additional Subordinate Judge,
Erode.
2. The District Munsif cum
Judicial Magistrate,
Kodumudi.

+1 CC to MR.V.S. Kesavan Advocate. SR.NO. 64274

S.A. No. 532 of 2015

CO-MG

JD 28/01/2016

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