

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08 - 06 - 2015

CORAM

THE HONOURABLE SMT. JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL NO. 719 OF 2013

AND

M.P. NOS. 1 OF 2013 AND 1 OF 2015

1. Murugan @ Balasubramanian  
2. Ramu ..... Appellants/ Defendants  
Vs  
Gopu ..... Respondent / Plaintiff

Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 07.02.2012 made in A.S. No. 45 of 2011 on the file of the learned II Additional Subordinate Judge, Villupuram, confirming the judgment and decree dated 10.01.2011 made in O.S. No. 326 of 2008 on the file of the Principal District Munsif, Ulundurpet.

For Appellants .. Mr. Antony Robson  
for Mr. C.P. Sivamohan

For Respondent .. Mr. T. Gandhi

J U D G M E N T

The defendants in a suit for declaration of title and for recovery of possession and mandatory injunction to remove the encroachment, are the appellants herein.

2. The short point involved in this appeal is about the correctness of the Survey Number.

3. The plaintiff has made his claim based on the documents Exs. A.1 to A.4 deeds of his predecessors - in - title. Ex. A.5 is the settlement deed dated 04.12.2007 executed by the plaintiff's mother in his favour. The case of the plaintiff is that his mother became the owner of the suit property by a virtue of the sale deed in her favour under Ex. A.4 dated 05.4.1976. Now, the dispute is whether the suit property lies in S.No.111/29 or 111/1. The suit schedule as described in the plaint is S.No.111/29 to an extent of 1 Acre and 2 cents. But the documents under which the plaintiff

traces his title described the Survey Number as 111/1 which, according to him, is a mistake unnoticed. However, the defendants claim title to S.No.111/29. The first defendant claims to have purchased the same from the second defendant under Ex. B.3 sale deed dated 12.12.2007. Based on the strength of the said sale deed, the defendants trespassed into the suit property in February 2008 and put up a small thatched shed. According to the plaintiff, the second defendant has no saleable right in the property and therefore, the sale by the second defendant in favour of the first defendant is not valid. Hence, the suit for declaration of title and for recovery of possession.

4. Before the trial Court, on the side of the plaintiff, P.Ws.1 to 3 had been examined and Exs. P.1 to P.12 had been marked and on the side of the defendants, D.Ws.1 to 3 had been examined and Exs. D.1 to D.12 had been marked. Exs. X.1 to X.3 were marked as third party documents.

5. Both the Courts below had concurrently held that the plaintiff who has come up with the specific case for declaration of title has established the same by filing necessary documents and through oral evidence and accordingly, decreed the suit. Aggrieved by the same, the above appeal has been filed by the defendants.

6. At the time of admission, only notice was issued and no question of law was formulated.

7. The only question that has to be considered before this Court is whether the plaintiff has established his title over the suit property based on which he is claiming the consequential reliefs.

8. Admittedly, the extent of the suit property is 1 Acre 2 Cents in S.No.111/29. The suit property was purchased by the plaintiff's mother from one Arunachala Mudhaliar on 05.04.1976 under Ex. A.4, but in the sale deed, it was mentioned as S.No.111/1 instead of 111/29. The defendants denied the title of the plaintiff contending that the suit lands were originally grama natham and the second defendant's vendor was in possession. After the second defendant got possession of the property, he had sold it to the first defendant. The first defendant also claimed that patta and service connection were in his name. It was also contended by the defendants that when the plaintiff is the only legal heir of his mother, there was no necessity for her to execute the settlement deed as the property might devolve on the plaintiff by natural inheritance.

9. The Courts below have found that Exs.A.1 to A.4 are true and genuine documents whereunder a specific extent with specific boundaries has been dealt with. In this case, the boundaries and the extent of the property are not disputed. What is disputed is

only the survey number. If there is a dispute regarding the extent, the boundaries may prevail. But when the survey number is in dispute, necessarily, the Courts have to examine the documents and come to a conclusion as regards the correctness of the sale deeds only with the available evidence on record.

10. It is the contention of the plaintiff that the second defendant had sold the property to the first defendant deliberately having full knowledge about the settlement deed executed by his mother in his favour.

11. The plaintiff also had cross-examined D.W.1 on the issue that Vadivel Padayachi under whom the defendants claim title had attested Ex.A.1. No doubt, the attester cannot always be imputed with the knowledge of the contents of the document. However, the Courts below have placed reliance on the evidence for the purpose of proving that the defendants are disputing the title of the plaintiff only with an intention to cheat him. The lower Appellate Court also had taken the exercise of comparing the boundary description of Exs. A.1 to A.4 and found that what had been conveyed in those documents are the same property wherein only survey number has been entered as 111/1 by mistake.

12. The learned Appellate Judge also had placed reliance on Subramania Bathar vs. Srinivasa Bathar and others [2002 (1) LW 120], wherein the principle that was laid down for identifying the suit property was that the title deeds relating to the adjacent properties may be referred to. In the case on hand, the defendants have not refuted the truth and validity of Exs.A.1 to A.4 under which the plaintiff is claiming his right and as stated supra, the lower Appellate Court has compared the boundary descriptions of each of the schedule property mentioned in the above sale deeds and come to the definite conclusion that the plaintiff has established his title entitling him for a declaration of title to the suit property in S.No.111/29. It is also found by the lower Appellate Court that the defendant himself has admitted that the western side of the Survey Numbers 111/31 and 111/30 belong to Mani Padayachi who is the father of the plaintiff.

13. The plaintiff had also produced Exs.A.12 field map to show the location of the suit property. It is usual that the subdivisions to survey number would lie in a sequence and adjacent to each other. Similarly, it is found by the lower Appellate Court that S.No.111/29 is situate in between 111/28 and 111/31, 111/30. Therefore, the plaintiff having clearly established the fact that the property sold under Exs.A.1 to A.4 is the property lying in S.No.111/29 only and not 111/1 as mentioned in the documents and the defendants also having admitted that the boundary descriptions in all the documents are correct, there is no necessity to interfere with the concurrent finding of the Courts below.

14. In view of the above discussions, and the concurrent findings arrived at by the Courts below, this Second Appeal deserves dismissal.

In the result, this Second Appeal is dismissed, confirming the judgment and decree dated 10.01.2011 made in O.S.No.326 of 2008 on the file of the Principal District Munsif, Ulundurpet, as affirmed by the judgment and decree dated 07.02.2012 made in A.S.No.45 of 2011 on the file of the learned II Additional Subordinate Judge, Villupuram. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-  
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

mvs / gri

To

1. II Additional Subordinate Judge  
Villupuram
2. Principal District Munsif  
Ulundurpet
3. The Section Officer  
V.R. Section  
High Court  
Madras

1 cc to Mr.T. Gandhi, Advocate, sr. 27630

1 cc to Mr.C. Sivamohan, Advocate, Sr. 27510

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RJ (CO)  
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