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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.93 of 2013 and
M.P.No.1 of 2013

1.Uma
2.Selvi

... Appellants/Plaintiffs

Vs.

Govindaraj

... Respondent/Defendants

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 09.02.2012 made in A.S.No.34 of 2011 on the file of the learned Subordinate Judge, Vellore confirming the judgement and decree dated 29.01.2011 made in O.S.No.1717 of 2004 on the file of the learned District Munsif, Vellore.

For Appellants : Mr.M.Karthikeyan

For Respondent : Mr.P.Mani

JUDGEMENT

The plaintiffs in O.S.No.1717 of 2004 on the file of the learned District Munsif, Vellore are the appellants herein. The respondent is the sole defendant in the suit. The said suit was filed for declaration of title and for permanent injunction to restrain the defendant from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the suit property and also for mandatory injunction to direct the defendant to remove the construction, if any, put up by them on the suit property illegally. By decree and judgement dated 29.01.2011, the trial Court dismissed the suit. As against the same, the plaintiffs filed an appeal in A.S.No.34 of 2011 on the file of the learned Subordinate Judge, Vellore. The First Appellate Court by decree and judgement dated 09.02.2012 dismissed the appeal thereby confirming the decree and judgement of the trial Court. As against the same, the appellants/plaintiffs are before this Court with this second appeal.

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

3.The case of the plaintiffs is that, the suit property absolutely belongs to them. According to them, they are the daughters of one Mr.Natesa Gounder. Mr.Natesa Gounder had purchased the suit property by means of registered sale deed dated 30.12.1985 under



Ex.A.1. From the date of purchase, he was in possession and enjoyment of the suit property. After his demise, the plaintiffs have become absolute owners of the suit property and they are in possession and enjoyment of the same. The defendant has purchased a property in the very same suit survey number on the western side of the suit property. Now, it is stated that the defendant is trying to interfere with the possession of the plaintiffs and he has also creating doubt over the title of the plaintiffs. Therefore, the plaintiffs have filed the above suit.

4.In the written statement, it is stated by the defendant that the defendant had purchased 5 cents of land in the very same suit survey number under sale deed dated 21.11.1974 (Ex.B.1). Thus, the defendant has been in possession and enjoyment of the property which he has purchased. According to them, the plaintiffs are trying to disturb his possession by giving a wrong description of the suit property.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiffs, two witnesses were examined and four documents were exhibited. On the side of the defendant, three witnesses were examined and 11 documents were exhibited. During trial, an Advocate Commissioner was appointed to note down the physical features of the suit property and accordingly, he has filed his report and the same was marked as Ex.C.1. The rough sketch prepared by the Advocate Commissioner was marked as Ex.C.2.

6.Having considered all the above, the trial Court dismissed the suit which was confirmed by the First Appellate Court. That is how the appellants are before this Court with this second appeal.

7.In this second appeal, it is contended by the plaintiffs/appellants that the Courts below have failed to take note of the fact that the property purchased by the plaintiffs and the property purchased by the defendant though lying in the same survey number, are two different properties. It is further contended that the Courts below have failed to consider that the plaintiffs have proved their title as well as possession in respect of the suit property.

8.Having considered the above submissions and having considered the other materials placed on record, I find that the following substantial questions of law have arisen for consideration:-

"1.Whether the decree and judgement of the trial Court and confirmed by the First Appellate Court is perverse inasmuch as the Courts below have failed to consider that the extent of the property purchased by the plaintiffs' father is not under dispute?

2.Whether the Courts below were right in dismissing the suit when the defendant himself does not dispute the title of the plaintiffs?



3. Whether the suit property has been correlated to Ex.A.1 and the revenue records."

9. When this second appeal was earlier argued before this Court on 06.01.2015, the learned counsel on either side submitted that in order to resolve the dispute, an Advocate Commissioner may be appointed to measure the suit property with reference to the revenue records as well as the document so as to locate the suit property. On accepting the said statement made on either side, one Mr. Rajarajan, learned counsel was appointed as an Advocate Commissioner in this matter with a direction to him to measure the suit property and the adjoining properties with reference to the revenue records and the relevant title deeds to locate the suit property.

10. Now, the Commissioner has submitted his report dated 23.02.2015. In the said report, he has stated that the total extent of the property comprised in Suit Survey No. 189/1A1 is 16.87 acres. Though, the said property is owned by number of persons, the portions owned by individuals have not been sub-divided in the revenue records and therefore, with reference to the Field Measurement Book and other revenue records, the suit property could not be located. The Commissioner has further stated that though there is a panchayat road on the suit survey number, that is not mentioned in the revenue records. He has further stated that his attempt to locate the suit property and the property of the defendant with reference to the title deeds also could not succeed because, the four boundaries differ. By consent of the learned counsel for both parties, the said report of the Commissioner is marked as Ex.C.3 and the rough sketch submitted by him is marked as Ex.C.4.

11. The learned counsel for the appellants would submit that since, the title of the plaintiffs under Ex.A.1 is not in dispute and since, the suit is for declaration of title, an opportunity may be afforded to the plaintiffs to correlate Ex.A.1 with the property on ground, so as to have an effective decree.

12. The learned counsel for the respondent would vehemently oppose the said plea. According to him, when the present Advocate Commissioner himself could not locate the suit property even with the help of Surveyor, there will be no purpose served in remanding the matter back to the trial Court.

13. I have considered the above submissions.

14. As I have already pointed out, the purchase of the property by the father of the plaintiffs under Ex.A.1 is not at all in dispute. Similarly, the title of the vendor of the plaintiffs' father is also not in dispute. It is also not in dispute that the defendant had purchased a portion of the property in the very same survey number from the very same vendor and that property lies on the West of the property purchased by the plaintiffs' father. Two Courts below have dismissed the suit, because, Ex.A.1 has not been duly correlated to the state of ground. It is only to resolve the said simple



dispute, this Court, thought it fit to appoint an Advocate Commissioner, since, the earlier Commissioner had no occasion to measure the suit property with reference to the revenue records. Even the present Advocate Commissioner's report also is not helpful for this Court, because, the Commissioner has tacitly stated the reasons as to why the property could not be located with reference to the revenue records. There can be no difficulty in accepting the statement of the Advocate Commissioner that the suit property could not be located and the property of the defendant also could not be located since, the extent of the property comprised in Suit Survey No is 16.87 acres and the said survey number remains without any subdivision. Therefore, the only course now available for this Court is to provide opportunity to the parties to locate the suit property and that of the property of the defendant by means of other evidence. In other words, Ex.A.1 and Ex.B.1 are to be correlated to its respective properties. Since, there is change in the four boundaries, the Commissioner found it difficult to correlate the documents with the state on ground. But, it does not mean that the document cannot be correlated to the property concerned at all. It only require some more evidence. Though, it is true that it is for the plaintiffs to prove their case, in the instant case, for any reason, if decree of the Courts below is confirmed, this will operate as res judicata against the plaintiffs and it may appear as though the plaintiffs have got no property at all in the suit survey number. That will only result in miscarriage of justice.

15. Therefore, in my considered opinion, the proper course to be adopted by this Court would be to remand the matter back to the trial Court to afford opportunity to both parties to correlate on the respective documents with the state on ground and then dispose of the suit in accordance with law. To that extent, I have to answer all the substantial questions of law in favour of the appellants.

16. In the result, the second appeal is allowed and the decree and judgement of the trial Court as confirmed by the First Appellate Court is hereby set aside and the suit in O.S.No.1717 of 2004 is remanded back to the trial Court and the trial Court shall afford sufficient opportunity to both parties to lead both oral as well as documentary evidences as indicated above and then, dispose of the suit in accordance with law, within a period of six months from the date of receipt of a copy of this judgment. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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To

1.The District Munsif,
Vellore.

2.The Subordinate Judge,
Vellore.

1 cc to Mr.P.Mani ,Advocate, SR.No.18107/15

Second Appeal No.93 of 2013

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