IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.186 of 2015
and
MP Nos.1 and 2 of 2015

1.Sarojammal
2.A.Sundaravadivelu Mudaliar
3.S.Rajasekaran
4.S.Annadurai
5.R.Balaji ... Appellants

vs.

K.Velayudha Mudaliar ...Respondent

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed by the learned Subordinate Judge, Tiruttani dated 10.10.2014 in A.S.No.2 of 2014 allowing the appeal and reversing the judgment and decree passed by the learned District Munsif, Tiruttani in O.S.No.359 of 2008 dated 27.04.2012.

For Appellants : Mr.G.Karthikeyan
For Respondent : Mr.D.S.Ramesh

J U D G M E N T

The appellants are the defendants in a suit for declaration and for permanent injunction. The respondent herein filed the suit by claiming that he purchased the suit property from one Saradammal in the year 2003 under Ex.A1 sale deed.

2.According to the plaintiff, the defendants have no right or title over the suit property. On the other hand, the suit was contested by the defendants. Their specific case is that the vendor of the plaintiff viz., Saradammal, who said to have got the title to the suit property by way of a settlement deed, has conveyed the property in favour of the plaintiff under Ex.A1 specifically giving the boundaries to the property conveyed, when the settlement deed under which she got title did not specify any boundaries. In other words, it is the contention of the defendants that the vendor of the plaintiff is not entitled to convey a property with specific boundaries, when she herself did not get such right under the said settlement deed.

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3.The plaintiff while filing the present suit has described the suit property in the plaint schedule without stating any specific boundaries, however only by stating the survey number and the extent.

4.The trial court after considering the rival pleadings of the parties and the evidence let in by them, dismissed the suit by specifically holding that the plaintiff has not chosen to give boundaries in respect of the suit property which affects his case. However, on appeal, the lower Appellate Court reversed the finding of the trial court and decreed the suit. Challenging the reversing finding, the present second appeal is filed before this court.

5.At the time of admission of the second appeal, the following substantial questions were framed:

> "i)Whether the lower appellate Court is right in passing a judgment and decree without even mentioning about any of the documents filed by the defendant?
> ii)Whether the lower appellate Court is right in holding that the plaintiff has proved his case without even discussing about the nature of the documents marked as Exhibits by the plaintiff?"

6.Today when the matter is taken up for final disposal, the learned counsel for the appellants also raised an objection with regard to the maintainability of the suit by contending that suit having not been filed with specific boundaries of the suit properties, decreeing the same has resulted in an erroneous and unworkable decree. Learned counsel appearing for the appellants further invited this Court's attention to the judgment rendered by the lower appellate court by specifically pointed out that it has not discussed all the issues framed by the trial court in detail while rendering its cryptic finding.

7.Per contra, learned counsel appearing for the respondent supported the judgment of the appellate court and submitted that when the sale deed with specific boundaries is marked as Ex.A1, the mere omission to refer the boundaries in the suit schedule will not affect the case of the plaintiff.

8.I have given careful consideration to the respective submissions made by the learned counsel for the parties and also considered the findings rendered by both the courts below.

9.It is seen that the present suit is filed for declaration of title and for permanent injunction. It is not in dispute that the plaintiff, who claimed to have purchased the property from one Saradammal under Ex.A1, while describing the schedule of the property in the plaint, has omitted to mention the

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boundaries. No doubt, the survey number and the extent is given. Needless to say that mere furnishing the survey number and extent of a property is not sufficient to identify the same in the absence of specific boundaries especially in a suit for declaration of title and injunction. This aspect has been considered by the trial court for rejecting the suit. However, the lower appellate court erroneously granted the decree by setting aside the judgment and decree of the trial court without considering this aspect.

10.No doubt, the learned counsel for the respondent sought to rely upon the documents filed by the plaintiff in support of his claim. At this juncture, I would like to point out that any evidence let in without there being any proper pleadings cannot be looked into, unless such material details of such evidence let in is already spoken to by the parties by way of their pleadings. I have already pointed out, the plaintiff failed to refer to the boundaries in the suit schedule. Therefore, in the absence of such specific boundaries referred to in the suit schedule, granting of the decree in favour of the plaintiff by considering the evidence let in by him is not proper, which the lower appellate court has erroneously done. Accordingly, I find that the matter needs to be remitted back to the lower appellate court for fresh consideration of the matter on merits. It is also open to the plaintiff/respondent herein to amend the plaint before the lower appellate court in respect of the boundaries in the suit schedule. Accordingly, the substantial questions of law are answered in terms of the above findings and the second appeal is allowed and the judgment and decree of the lower appellate court is set aside and the matter is remitted back to the lower appellate court for fresh consideration of the appeal on merits and in accordance with law. The plaintiff is also given liberty to amend the plaint before the lower appellate court. Since this appeal is allowed only on the limited ground as discussed supra, it is open to both parties to canvas before the appellate court on all aspects on merits of their respective claim. The lower appellate court shall dispose of the appeal within a period of two months from the date of receipt of a copy of this judgment.

No costs. The connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Tiruttani.
2.The District Munsif, Tiruttani.

Copy to: The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to Mr.G. Karthikeyan, Advocate SR.59998
+ 1 cc to Mr.D.S. Ramesh, Advocate Sr.59945

Second Appeal No.186 of 2015

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