

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.221 of 2015
and
M.P.No.1 of 2015

1.Vanaja

2.Parthasarathy Iyer

... Appellants/Respondents/Defendants

vs.

Rathinavathi

... Respondent/Appellant/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed by the learned Subordinate Judge, Tiruvallur dated 03.06.2014 in A.S.No.31 of 2012 reversing the judgment and decree passed by the learned District Munsif, Tiruvallur in O.S.No.122 of 2006 dated 05.04.2011.

For Appellants : Mr.R.Selvakumar

For Respondents : Mr.S.Vasudevan

J U D G M E N T

The appellants are the defendants. The respondent as the plaintiff filed a suit for specifying and demarcating the suit property with specific boundaries and to declare her title over the suit property and for permanent injunction restraining the defendants in any manner interfering with her peaceful possession and enjoyment of the same.

2.The case of the plaintiff is as follows:

She purchased the suit property from one Poongavanam under a registered sale deed dated 14.08.1981. The defendants who are husband and wife purchased the adjacent plot. When the plaintiff made an attempt to construct in the suit property, the defendants prevented her from doing so. Therefore, the present suit is filed with the relief stated supra.

3.The defendants contested the suit by specifically contending that the suit property does not exist on the lie of the land and that the plaintiff has given a wrong impression as though it belongs to her. They also contended that the defendants did not cause any damage to the plaintiff's construction.

4.The trial court on appreciation of the respective pleadings of the parties and the evidence let in by them, found that there is a discrepancy in the description of the property as described by the plaintiff in the suit with that of her parent document. It is also found by the trial court that the report filed by the Advocate Commissioner also reveals the discrepancy of the description of the suit property in the sale deed of the plaintiff marked as Ex.A7 and the parent document of the plaintiff marked as Ex.A8. Therefore, the trial court based on such finding, dismissed the suit by holding that in the absence of concrete and satisfactory evidence, the plaintiff is not entitled to the relief as prayed for.

5.The Appellate Court found that there are differences in the description of the properties between Exs.A8 and A7 and further found that as per the report of the Commissioner, there is no encroachment committed by the plaintiff as alleged by the defendants. The Appellate Court has also pointed out that the second defendant during his examination as DW1, admitted that he is in possession of his property and that there is no connection between his property and the suit property. Therefore, the Appellate Court found that even though there is discrepancy in the title deed of the plaintiff and that of her vendor and that the relief of declaration cannot be granted based on such deeds having discrepancy in describing the property, however, the plaintiff is entitled to the relief of injunction. Accordingly, the Appellate Court allowed the appeal in part and granted the permanent injunction in favour of the plaintiff and dismissed the appeal in so far as the relief of declaration is concerned. The Appellate Court has also observed that it is for the plaintiff to amend and rectify her sale deed so as to incorporate the correct boundaries in order to get her title to the suit property.

6.As against the judgment and decree passed by the lower Appellate Court, the present appeal is filed by the defendants. The plaintiff, who lost before both the Courts below in so far as the declaratory relief is concerned, has not chosen to file any appeal before this court. Therefore, the dismissal of the suit in so far as the relief of declaration is concerned, has become final and conclusive.

7.This Court while admitting the second appeal has framed the following substantial questions of law:

"i)Whether the lower Appellate Court is right in granting a decree for permanent injunction, when admittedly the reliefs over demarcation of the suit property and consequential declaratory relief, as sought for by the plaintiff, has been denied, on specific ground that the documentary evidence adduced by the plaintiff, does not project her own case?

ii) Whether the lower appellate court is right in granting a decree for permanent injunction when extent of land of the plaintiff could not be ascertained, from within the documentary evidence adduced by the plaintiff herself?"

8.Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent and perused the materials placed before this court.

9.From the concurrent findings rendered by the courts below in so far as the relief of declaration is concerned, there is no dispute to the fact that there are some discrepancies in describing the property conveyed to the plaintiff under Ex.A7 with that of her parent document marked as Ex.A8. Therefore, unless and until the plaintiff rectifies her sale deed in a manner known to law, the relief of declaration cannot be granted which both the courts below have rightly rejected.

10.Now, the question is as to whether the relief of injunction granted in favour of the plaintiff, has to be interfered with at the instance of the defendants.

11.As I have already pointed out supra, the finding of the Appellate Court is that the defendants have admitted that they are in possession of their property and there is no connection between the suit property and their property. When that being the admission, I do not think that the defendants can have any grievance by the grant of such injunction, when they also stated in their statement that they did not cause any damage to the plaintiff's construction. Therefore, I find that the lower Appellate Court is justified in granting the decree of injunction in favour of the plaintiff as against the defendants. Accordingly, both the substantial questions of law raised in this appeal are answered against the appellants. Consequently, the second appeal fails and the same is dismissed.

12. Needless to say that the grant of injunction in favour of the plaintiff itself is not sufficient in respect of her claim for title to the suit property, unless and until she rectifies her sale deed in a manner known to law. Learned counsel appearing for the appellants submitted further that because of the grant of injunction, the respondent cannot go ahead with her construction, unless and until the construction is established by title by rectifying her sale deed. Learned counsel for the respondent submitted that as both the courts below have dismissed the suit for declaration, certainly the respondent will take immediate steps to rectify the sale deed in a manner known to law. When such being the submission made by the respective parties, in order to avoid multiplicity of further proceedings, both the parties are directed to maintain status quo as on today for a period of three months. In the meantime, it is open to the respondent to take appropriate steps to get the sale deed rectified and establish her right and title before the court of law by filing a fresh suit based on such rectified sale deed, if circumstances so warrant of filing such suit. If any such suit is filed, the same shall be decided on its own merits and in accordance with law.

No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vri
To

1.The Subordinate Judge, सत्यमेव जयते
Tiruvallur.

2.The District Munsif,
Tiruvallur.

+1cc to Mr.R.Selvakumar, Advocate Sr.63814
+1cc to Mr.K.V.Babu, Advocate Sr.63823

S.A.NO.221 OF 2015

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