

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 24.10.2016**

**PRONOUNCED ON : 07.11.2016**

**CORAM**

**THE HONOURABLE MR. JUSTICE T.RAVINDRAN**

**S. A.No. 12 of 2011**

**and**

**M.P.No.1 of 2011**

1. Jayalakshmiyammal

2. Dayalan

3. Kulasekaran

4. Balasubramaniam @ Sakthikumar

5. Prema

6. Backiyalakshmi

7. Rajalakshmi

...

Vs.

Appellants

Veerasamy (died)

1. Gandhi Ammal

2. Gnanvel

3. Deiveegan

4. Tamizharasan

5. Magalakshmi

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against order and decretal order in A.S.No.187 of 2003, on the file of Sub-Court, Villupuram and dated 30.09.2010 in confirming the judgment and decree in O.S.No.891 of 1990, on the file of I Additional District Munsif Court, Tirukoilyur and dated 24.02.2003.

For Appellants : Mr.V.Raghavachari

For Respondents : Mr.N.Suresh

**JUDGMENT**

The defendants have preferred this second appeal, challenging the Judgement and decree dated 30.09.2010 made in A.S.No.187 of 2003 on the file of the Sub-Court, Villupuram, confirming the judgement and decree dated 24.02.2003 made in O.S.No.891 of 1990 on the file of the First Additional District Munsif, Court, Thirukoilyur.

2. The suit has been laid for Declaration, Permanent Injunction and for Recovery of Money.

3. The case of the plaintiffs is stated as follows:

The suit property was purchased by the plaintiff from one Ramalinga Mudaliar for a valid consideration under the registered sale deed dated 29.11.1990 and pursuant to the said sale, the plaintiff and prior to him, his vendor have been in possession of the suit property as full owner thereof. The defendants are having land adjacent to the suit property. While so, the defendants are attempting to trespass into the suit property and also put up compound walls, to which they have no right to do so. Pending the suit, the first defendant died and his Legal representatives have been brought on record as defendants 2 to 8. At the time of inspection of the Commissioner, the defendants and

their relatives suggested for compromise and accordingly, a compromise petition was also drafted and in the same, some of the defendants had put their signatures, giving the assurance, they had agreed the ownership of the plaintiff in the suit property and as per the compromise effected, the defendants are to cut certain trees. Making the plaintiff to believe that the compromise effected is a bonafide and genuine one, the defendants had cut and removed certain trees worth Rs.21,500/-, which belong to the plaintiff. Hence, the defendants are liable to pay Rs.21,500/-to the plaintiff. Hence, the suit.

4. The avernments contained in the written statement in brief are as follows:

The suit is not maintainable either in law or on facts. The first defendant's father Narayanasamy reddiar on 22.09.1969 had purchased 0.20 cents with specific boundaries in 1.33 acres situated in 2.87 cents of Punja survey No.75/2 and the first defendant's father settled the property in favour of the first defendant under the settlement deed dated 06.01.1972 and based upon the settlement deed, the first defendant has become the owner of the property covered under the settlement deed and the first defendant also obtained loan from the House Building Society on the basis of his title deed. The property owned by the first defendant has been specifically

sub-divided and in re-survey No.75/15, Hectare 0.08.0, is found to be situated in the property of the defendants, by the Revenue authorities. Thus, the first defendant is in enjoyment of the Hectare 0.08.0, in re-survey No.75/15. The property situated to the west of the defendants property has been carved out into various plots and purchased by various persons and they had earmarked pathway on the eastern side of the said house plots and accordingly, the plaintiff attempted to create the pathway in the property belonging to the defendants situated in re-survey No.75/15 Hectare 0.08.0 and has falsely instituted the present suit. The plaintiff is not entitled to claim any portion in the property belonging to the defendant. Even in the notice sent by the plaintiff's vendor to the defendant and others, the plaintiff's vendor claimed that the defendant has encroached his property and to the same, the defendant has sent a suitable reply. Inasmuch as the suit property is not in possession and enjoyment of the plaintiff and as the plaintiff is not entitled to claim any portion of the property belonging to the defendant and as the defendant had perfected his title to the property owned by him, even by his continuous and long enjoyment and prescribed his title by adverse possession, the suit laid by the plaintiff is to be dismissed.

5. In support of the plaintiff case, PWs 1 to 6 were examined and Exs.A1 to 31 were marked. On the side of the defendant, DWs1 and 2 have been examined and Exs.B1 to 10 were marked. Further, Exs.C1 to 16 were also marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to decree the suit as prayed for granting the reliefs of declaration and permanent injunction and also held that the plaintiff is entitled to recover Rs.2,000/- from the defendant with interest. The defendant, aggrieved over the judgement and decree of the trial Court, preferred the first appeal and the first appellate Court was pleased to dismiss the first appeal. Challenging the same, the second appeal has been preferred by the defendants.

7. The suit property is stated to be situated in R.S.75/2, 0.06 cents out of 1.33 cents and out of 2.87 cents. The plaintiff claims title to the above said property and also seeks permanent injunction against the defendants on the footing that the defendants are attempting to encroach into his property unlawfully and put up compound walls.

8. It is the admitted case of the parties that R.S.No.75/2 totally consists of 2.87 cents. The plaintiff claims his title to the suit property under Exs.A1 to 3. As far as the plaintiff's specific title is concerned, it is his case that he has purchased the suit property from Ramalinga Mudhaliyar on 29.11.1990 and the same has been marked as Ex.A3.

9. Per contra, it is the case of the defendants that the first defendant's father had purchased 20 cents out of 1.33 cents situated in R.S.No.75/2 consisting of a total extent of 2.87 cents. Therefore, it could be seen that both the plaintiff and the defendants are fighting for certain extent of properties situated in 1.33 cents, which is stated to be situated centrally in R.S.No.75/2 within the whole extent of 2.87 cents. The defendants claim title to their property under Exs.B1 and 2. According to the defendants, the extent covered in R.S.No.75/2 has been carved out into various plots and purchased by different persons for putting up house construction and inasmuch as no specific pathway has been earmarked in the plots by the different plot owners, the plaintiff being under the wrong impression that his property would fall within the extent of the property purchased by the defendants, according to the defendants, the plaintiff has laid the suit without any cause of action and hence, the suit is liable to be dismissed. The further case of the defendants is that their property had been

resurveyed by the concerned authorities and in the resurvey, their properties are found to be situated in resurvey No.75/15 Hectare 0.08.0.

10. It is admitted by both the plaintiff and the defendants that the property, to which, they claim title are surrounded by specific boundaries.

11. The Courts below have found that in the re-survey of the extent found in the suit survey number, the property of the defendants was found to be situated in R.S.No.75/15, 0.08.0 Hectare and the same has been done without issuing notice to all concerned and that had created the issue between the parties viz., the various purchasers of the plots in the suit survey number. The Courts below also found that it has not been established by the defendants that the extent to which they claim title has been specifically measured and they were found to be entitled to Hectare 0.08.0, in R.S.No.75/15, after giving notice to one and all concerned.

12. The Courts below have discussed, not only the title deeds of the plaintiff and the defendants but also the various title deeds of the adjacent plots owners and found that in none of the sale deeds the boundary has been shown as pathway. However, in particular, it has

found that with reference to the title deeds of the plaintiff and the defendants, one Subramaniam's property is situated on the western side, and therefore, it could be seen that when the different extents in the suit survey number were carved out into various plots and alienated by the erstwhile owners to third parties without earmarking a separate space for pathway, so as to enjoy the house plots by different purchasers, they had sold the different plots giving specific boundaries and when the purchasers have admitted that they have put up pathway in their respective plots, the problem started arising between the parties concerned. However, it has not been found by the Courts below that the plot owners in the suit survey number had earmarked the pathway in their own portion for enjoyment, as no common pathway was specified by their vendors and accordingly, put up construction in the remaining area, which could be seen from the discussions of the Courts below and accordingly, it could be seen that after considering various sale deeds of the parties, particularly, the sale deeds of the rival parties in the present case, it has been found by the Courts below that in the plots carved out in 1.33 cents, the respective plot owners had earmarked the pathway on the western side of their properties and enjoying their property. This aspect has also been taken note of by the Courts below, based upon the reports and plan submitted by the Advocate Commissioner.



13. As found earlier, the defendants have proceeded to contest the suit on the footing that the plaintiff had attempted to create a pathway in their property. From the evidence adduced by the respective parties, it could be seen that even the plaintiff's vendor had before institution of the present suit, issued notice to the first defendant, which has been marked as Ex.B4 and the first defendant has sent a reply to the same, which has been marked as Ex.B5 and in the said reply notice, the first defendant has admitted that he is no way concerned with the property covered under Ex.B4. Therefore, it could be seen that the first defendant, at the earliest point of time, has also not controverted the title of the property, to which, the plaintiff's vendor is entitled to. It is only after the property has been purchased by the plaintiff from his vendor under Ex.A3, it could be seen that the parties have approached the Court with a wrong impression that each of them are trying to lay claim over the other properties, forgetting for the moment that the parties had purchased various extents in the suit property with specific boundaries and only when the pathway is attempted to be put up by the respective parties, the problem has arisen between them.

14. The Courts below have found that before issuing the proceedings regarding the resurvey under Ex.B3, no notice seem to have been issued to the concerned neighbouring plot owners. This could be seen from the findings of the trial Court that the objection given by the plaintiff to the subdivision has also not been taken into consideration by the authorities concerned. Further, to establish that the authorities concerned had issued the proceedings which has been marked as Ex.B3, only after taking into consideration the ownership of the neighbouring plot owners and their title deeds, the defendants have not taken steps to produce the patta and the field sketch issued to them, after the issuance of the proceedings marked as Ex.B3. If that had been produced, it would have disclosed as to whether the sub division has been done only in respect of the property, to which the defendants lay claim under Exs.B1 and 2 and whether the sub division had been made in a legal manner and whether the properties of the neighbouring land owners including the plaintiff had been clubbed with the defendants property. Therefore, it could be seen that considering the above fact, the Courts below have in the right perspective considered the rival claims of the parties with reference to their title deeds and the extent purchased by them in the suit survey with specific boundaries and finally held that both the plaintiff and the defendant have title, possession and enjoyment of the respective properties purchased by them under their respective title deeds.

15. In the light of the above position, the contention of the appellants' counsel that the Courts below have not appreciated the controversy between the parties in detail and also not considered the evidence in the manner known to law, cannot be countenanced in any manner. The findings of the Courts below with reference to the title of the rival claims does not call for any interference by this Court particularly, when no substantial question of law is involved with reference to the same.

16. Considering the compromise that had been effected between rival parties at the time of the Commissioner's inspection and also the admission of the defendants, the Courts below have found that the plaintiff is entitled to receive Rs.2,000/- from the defendants for the trees cut down from the suit property. Even with reference to the same, no interference is called for.

17. The only ground that has been urged by the Counsel for the appellants is that in the absence of the pleadings by the plaintiff with reference to the pathway, the Courts below have erred in disposing of the lis without appreciating the actual controversy between the parties and also not following the authoritative pronouncements of the Apex Court and the High Court with regard to the said proposition of law and therefore, on that sole ground, the Judgement and decree of the Courts below have to be set aside.

18. However, on a consideration of the pleadings set forth by the respective parties, it could be seen that the Courts below have rightly found that the parties knew the issue between them and accordingly, has held that the parties, considering the issues prevailing between them, had adduced evidence in the suit and therefore, it could be seen that the Courts below have found that the parties are attempting to thrash out their controversy in the suit only with reference to the pathway to be laid in their respective properties. In such view of the matter, the contention of the appellants' counsel that the approach of the Courts below with reference to the issue in the absence of pleadings would be sufficient to reverse the findings of the Courts below, cannot be countenanced in any manner.

In the light of the above discussion, I do not find any substantial question of law involved in this second appeal. Accordingly, the second appeal is found to be devoid of merits and hence the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

.11.2016

Index : Yes/No  
Internet: Yes/No  
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To

- 1.The Sub-Court, Villupuram.
2. The I Additional District Munsif Court,  
Tirukoilyur.

**T.RAVINDRAN,J.**

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**Pre-delivery order in**  
**S. A.No. 12 of 2011**  
**and M.P.No.1 of 2011**

**.11.2016**