

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2017

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Second Appeal No.686 of 2017
and
C.M.P.No.17655 of 2017

Nazar Mohammed ...Appellant/Plaintiff
Versus
1. Deivanai@Anandhi
2. Thangavel ...Respondents/Defendants

Appeal filed under Section 100 C.P.C. against the Judgment and Decree in A.S.No.6 of 2014, pending on the file of Subordinate Court, Sankari dated 09.07.2015 confirming the Judgment and Decree in O.S.No.15 of 2011, on the file of District Munsif Court, Sankari dated 18.03.2014.

For Appellant : Mr.D.Shivakumaran
For Respondents: Mr.N.Manokaran

J U D G M E N T

This Second Appeal is filed by the appellant against the Judgment and Decree dated 09.07.2015 made in A.S.No.6 of 2014, pending on the file of Subordinate Court, Sankari confirming the Judgment and Decree in O.S.No.15 of 2011, on the file of District Munsif Court, Sankari dated 18.03.2014.

2. The unsuccessful plaintiff is the appellant. The suit was filed for bare injunction.

3. The case of the plaintiff is that the suit property belongs to him having been settled in his favour vide the settlement deed dated 23.04.2008. Originally the suit property was purchased by the mother of the plaintiff on 11.03.1976 and she has been in possession of the same from the date of purchase. The mother of the plaintiff had purchased a vacant land, in which, the plaintiff had put up a superstructure jointly. After the death of the plaintiff's mother on 15.06.2001 there was a family arrangement on 23.04.2008, in which the suit property was allotted to the plaintiff. The balance of the property was allotted in favour of the plaintiff's brother. From the date of settlement deed, the plaintiff has been in possession and he has also obtained patta in his name. While so, the defendants who are adjacent land owners, have made a claim over the western lane, for which they are not entitled to. The plaintiff has exclusive right over the suit lane. As the defendants attempted to disturb the possession, the suit has been filed.

4. The defendants have filed a written statement contending that the 2 feet lane on the western side of the suit property belongs to them and the plaintiff had no rights over the same. The defendants have purchased the suit property from one Mr. Anthony Raj on 23.12.2009. The said Anthony Raj had purchased the property on 19.08.1990. It is the specific case of the defendants that except the compound wall of the plaintiff on the western side, the plaintiff has no right in the western lane. However, he has claimed the right over the same. Hence, prayed for dismissal of the suit.

5. Before the Trial Court, on the side of the Plaintiff, the Plaintiff himself as P.W.1 and one Mohammed John was examined as P.W.2. Exhibits A1 to A8 were marked. On the side of the defendants, the first defendant himself was examined as D.W.2 and the second defendant was examined as D.W.1 and one more witness was examined. Exs.B1 to B5 were marked on their side. After considering the facts and evidence available, the trial Court had dismissed the suit. On appeal by the Plaintiff, the Lower Appellate Court also confirmed the same. Aggrieved by the said concurrent findings of the Court below, the above Second Appeal is filed.

6. The only question that has to be decided in the second appeal is whether the plaintiff is entitled for the relief for permanent injunction based on his possession?

7. The learned counsel appearing for the appellant contended that the comparison of the measurement of suit properties as given in the title deeds with the measurement in the commissioners report and plan clearly establishes the entitlement and possession of the suit property by the plaintiff. As per Ex.A1, the property was purchased by the plaintiff's mother on 11.03.1976. As per Ex.A4 a portion of the property was settled in favour of the plaintiff on 23.04.2008 and Ex.A5 is another settlement deed in favour of the plaintiff's brother. Ex.B1-Sale deed is the title deed purchased by the defendants. It is contended that in Ex.A4, there is a specific mention about the suit lane which was not considered by the Court below. Even according to the plaintiff, the suit lane is situated on the western side of the compound wall of the plaintiff's property.

8. A perusal of the evidence of P.W.1 would go to show that he has categorically admitted in his Cross Examination that the suit property measuring 18.2 metres east to west, which would be approximately 60 feet, whereas the defendants had accepted that it would be 60.6 feet. When PW1 has specifically admitted that as per Ex.A1, the plaintiff is entitled to only 60 feet anything in excess of above measurement cannot be claimed by the plaintiff.

9. The commissioner appointed in the Trial Court also has reported that the property of the plaintiff measures about 18.2 metres east to west on both sides. The report of the commissioner makes it very clear that the measurement of the

property of the plaintiff is within the compound i.e., 18.2 metres. Whereas the plaintiff has stated that the said 18.2 metres includes the suit lane also. The survey map, which has been marked as Ex.C3, also makes it very clear that in the East to West of the suit property, there is only 18.2 metres belonging to plaintiff's mother. The dispute is only with respect to the lane beyond the compound wall. No doubt, in the documents viz., Ex.A1, A4 and A5, the four boundries were given and the measurement of the property is given as 1560 sq.ft. Now the question is whether the property comprised within the 4 boundries or the property measuring 461 and 1/2 sq.ft was settled under Ex.A4. The suit property is a lane. From the documentary evidence it is clear that what was purchased by the plaintiff's mother was only 1560 sq.ft which was divided and settled between the brothers as 461 and 1/2 sq.ft + 1098 and 1/2 totalling 1560 sq.ft. In the face of this evidence, it would not be difficult to hold that what was settled to the plaintiff was only the land comprised within the four boundries and not the extent of 461 and 1/2 sq.ft. The reason being, in case of doubt with respect to varying extents in the documents of title relating to the property, it is well settled that boundry alone will prevail over the extent. When the actual extent purchased under Ex.A1 is clear and also settled on the plaintiff and his brother by sale deed, boundries need not prevail over extent. In the absence of any evidence that the plaintiff is entitled for the suit lane which is beyond the compound of the plaintiff's property on the western side belonging to him, the plaintiff cannot claim more than what he is entitled to. If the recitals in the documents and the circumstances of the case are taken into account, it could be concluded that lesser extent only was conveyed to the plaintiff than the area covered by boundries. It is also clear that the mother of the plaintiff intended to convey a specific extent, then the extent should prevail over the boundries. In this case, even as per the report of the commissioner and also the survey plan what was purchased by the plaintiff's mother under Ex.A1 was divided between the plaintiff and his brother and the same is available for enjoyment with the plaintiff. Therefore, the plaintiff cannot have any right over the suit lane much less the relief of enjoyment or to restrain the defendants from interfering with his peaceful possession and enjoyment of the suit property. In view of the same, this Court finds that there is no infirmity in the Judgment and Decree passed by the Courts below warranting any interference, in the absence of any question of law.

10. In the result, this appeal is dismissed, confirming the Judgment and Decree of the Courts below. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

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To

1. The Subordinate Court,
Sankari.

2. The District Munsif Court,
Sankari.

+ 1 cc to MR.D. Shivakumaran, Advocate Sr.85721

+ 1 cc to Mr.N. Manokaran, Advocate Sr.75771

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