

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2017

PRONOUNCED ON : 09.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.375 of 2011

and

M.P.Nos.1 of 2011 & 1 of 2014

Kandasamy ... Appellant

Vs.

1.Rangasamy Pillai (deceased)

2.Nagammal

3.Chezhiyan

4.Valarmathi @ Panchalai

5.Vijayan

6.Vimala

...

Respondents

(RR2 & 3 are recorded and 4 to 6 brought on record as LR's of the deceased R1 & vide order of this Court dated 20.12.2016 made in M.P.2/11)

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned Subordinate Judge, Kallakurichi made in a.S.No.84 of 2004 dated 30.10.2010 confirming the judgment and decree of the learned Second Additional District Munsif, Kallakurichi, made in O.S.No.963 of 1997 dated 20.04.2004.

For Appellant : Mr.R.Murali

For Respondents : Mr.N.Manokaran

JUDGMENT

Challenge in this second appeal is made by the plaintiff against the judgment and decree dated 30.10.2010 made in A.S.No.84 of 2004 on the file of the Sub Court, Kallakurichi, confirming the judgment and decree dated 20.04.2004 made in O.S.No.963 of 1997 on the file of the Second Additional District Munsif Court, Kallakurichi.

2. The second appeal has been admitted and the following substantial question of law is formulated for consideration in this second appeal.

" Whether the judgment and decree of the Courts below in dismissing the suit laid by the plaintiff are based upon the perverse findings and misdirected against the evidence on record?"

3. The suit has been laid by the plaintiff for declaration and permanent injunction.

4. The plaintiff claims title to the suit property under the sale deed dated 11.03.1955 marked as Ex.A2. It is the case of the plaintiff that the suit property had been conveyed by Vaithyalingam Pillai &

others under Ex.A2. Along with the plaint, the plaintiff has filed the plaint plan. Now, according to the plaintiff and also as per the description of the suit property, it is stated that the suit property is shown as "ABCD" in the plaint plan. Thus, according to the plaintiff, the suit property measures 6.4 metres north-south and 24.4 metres east-west and it is also stated that the suit property is situated to the south of the property of the defendants. Further, according to the plaintiff, an extent of one metre north-south and 24.4 metres east-west in the suit property on the northern side is used as a common lane by the plaintiff as well as the defendants. However, according to the plaintiff, inclusive of the said common lane shown as "ABCD" in the plaint plan is the suit property in question. Thus it is the case of the plaintiff that under Ex.A2, she had been conveyed the above described suit property by Vaithyalingam Pillai & others. The plaint plan has been marked as Ex.A1.

5. Per contra, according to the defendants, the family of the plaintiff and the defendants owned properties in the suit survey number and the other various survey numbers and all the survey numbers were clubbed together and they were divided orally between the parties concerned and it is stated that north western portion had

been allotted to the first defendant and thus, according to the defendants, considering their possession, Natham patta had been granted in patta No.173 for Natham survey No.340/6 and therefore, it is stated that the defendants are entitled to and also in possession of the north-south 6.6 metres on the western side and 14.2 metres on the eastern side and on the south of the above said property in natham survey No.340/6, the common lane of one metre breadth is situated and further, south of the said lane, the property of the plaintiff is situated. Therefore, as seen from the above defence put forth by the defendants, they have not admitted that the common lane of 1 metre width is situated in the property purchased by the plaintiff under Ex.A2.

6. A perusal of Ex.A2 would go to show that the measurements of the property as described in the plaint are not given thereunder. It has been admitted by PW1 also that no measurement had been given in Ex.A2 and that apart, PW1 has also admitted that he cannot give the measurement on the four sides of 0.09 ½ cents purchased by the plaintiff under Ex.A2. It is therefore obvious that when the east-west and north-south measurements of the property are not given in Ex.A2 and when the plaintiff claims her right to the suit property giving

particular measurements, it has not been explained as to on what basis the plaintiff has given the measurements in the plaint. At least, the plaintiff should be able to co-relate the property purchased by her under Ex.A2 with that of the property as described in the plaint, with reference to the measurements. When the same has not been established by the plaintiff and when PW1 is also unable to throw a light with reference to the same, it could be seen that the plaintiff cannot be held to be owning the suit property as described in the plaint based upon Ex.A2.

7. The plaintiff has filed a certified copy of the field map and equally, the defendants have also filed a certified copy of the field map, which are marked as Exs.A3 & B4 respectively. The UDR patta granted to the defendants has been marked as Ex.B5. As rightly contended by the defendants, even as regards the extent, there are material variations found in Exs.A2, 3 and B4. It is therefore clear that as determined by the first appellate court, the plaintiff is unable to locate the lie of the suit property on ground and when such is the position and particularly, when the plaintiff has not co-related the property purchased by her under Ex.A2, with that of the suit property, it could be seen that the plaintiff cannot be granted the reliefs sought

for in the plaint. Further, as rightly found by the first appellate court, there is a difference in the extent of the property as seen from Exs.A2 and 3 and B4 and that apart, it is found that the extent of the property available on ground in Survey No.38/17 as found by the first appellate court would only be less than 0.02 cents. Further, the common lane stated to be situated within the suit property is not depicted in Ex.B4. Therefore, it could be seen that the mere fact that the defendants have admitted that a common lane is situated to the south of their property, it cannot be construed that such common lane lie within the property purchased by the plaintiff under Ex.A2. Therefore, no exception could be taken to the findings of the Courts below that the plaintiff has miserably failed to establish that the property purchased by her under Ex.A2 and the suit property are one and the same.

8. The defendants' counsel also put forth the argument that the plaintiff's document viz., Ex.A2 has been declared to be a false document in the appeal in A.S.No.388 of 1996 and the certified copy of the judgment and decree passed in the above said first appeal are marked as Exs.B2 & 3. The trial court has also disbelieved the plaintiff's case, even on the basis of Exs.B2 & 3. It is found that the property at issue in A.S.No.388 of 1996 is not the suit property as

such. Further, as rightly found by the first appellate court, there is no specific observation or determination as regards the authenticity of Ex.A2 in Exs.B2 & 3 and therefore, Exs.B2 & B3 by themselves would not undermine the plaintiff's case.

9. The plaintiff has failed to establish that her vendor Vaithyalingam Pillai and others had title to the suit property as described in the plaint. Moreover, when material with reference to the same is not forthcoming, merely on the footing that the defendants have not established their case of claiming title to the extent mentioned in the written statement by relevant title deeds, would not enable the plaintiff to obtain the reliefs sought for in the plaint without proof. The plaintiff cannot be allowed to pick holes in the defendants' case and thereby, succeed in her case. In such view of the matter, nothing is found in the negative so as to warrant any interference in the findings and conclusions of the courts below for disbelieving the plaintiff's case.

10. During the course of this appeal, the plaintiff/appellant has taken out an application for reception of additional evidence under Order 41 Rule 27 CPC. The same is seriously contested by the

defendants. According to the plaintiff, the additional evidence would throw more light for determining the controversy between the parties and thus the documents, projected as additional evidence, should be taken into consideration and therefore, the same should be entertained. However, according to the defendants, the application does not satisfy the ingredients of Order 41 Rule 27 CPC in any manner and therefore, does not deserve acceptance.

11. A perusal of the reasons given in the petition for the reception of additional evidence are found to be not satisfying the parameters of Order 41 Rule 27 CPC for entertaining the same. It has not been established by the plaintiff properly as to what prevented her/him from marking the said documents before the trial court. It is also not the case of the plaintiff that the documents projected as additional evidence are not within their knowledge during the course of the trial. No doubt, document No.7, the judgment and decree of the High Court in second appeal No.1096 of 1998 had come into existence subsequently. However, when the impugned judgment and decree marked as Exs.B2 & B3, challenged in the above said second appeal proceedings are not accepted by the first appellate court as such, it is found that the document No.7 is also not germane and essential for

deciding the issue in between the parties concerned at this point of time.

12. In the light of the above said reasons, the petition for the reception of additional evidence cannot be entertained. Accordingly, the petition is rejected.

13. In view of the above reasons, it is found that the courts below, on the appreciation of the evidence on record in the correct perspective and also by giving proper reasonings and conclusions, have rightly dismissed the plaintiff's suit. No infirmity is found in the judgment and decree of the courts below in rejecting the plaintiff's case. Accordingly, the substantial question of law formulated for consideration in this second appeal is answered against the plaintiff and in favour of the defendants.

14. In support of the plaintiff's case, the counsel for the plaintiff relied on the decisions reported in **2011 (5) CTC 241 (C.Sebesan Chettiar (Deceased) and four others), 2011 (5) CTC 94 (Vishwas Footwear Company Ltd., A-2 Third Phase, Guindy Industrial Estate, Chennai - 600 032, rep.by Director, V.Ravi**

Vs. The District Collector, Kancheepuram and four others), and CDJ 2017 MHC 019 (Ponnusamy Nadar Vs. Rajammal). In support of the defendants' case, the counsel for the defendants relied on the decisions reported in ***AIR 1999 Supreme Court 1441 (1) (Vidhyadhar Vs. Mankikrao and another), (2014) 2 Supreme Court Cases 269 (Union of India and others Vs. Vasavi Cooperative Housing Society Limited and others), (2012) 8 Supreme Court Cases 148 (Union of India Vs. Ibrahim Uddin and another), (2014) 1 Supreme Court Cases 669 (Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and another)***. The Principles of Law enunciated in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

In conclusions, the second appeal fails and accordingly the same is dismissed and M.P.No.1 of 2014 is also dismissed. No costs. Consequently, connected miscellaneous petition in M.P.No.1 of 2011 is closed.

09.02.2017

Index : Yes/No
Internet: Yes/No
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To

1. The Sub Court, Kallakurichi.
2. The Second Additional District Munsif,
Kallakurichi.

T.RAVINDRAN,J.

sms

Pre-delivery Judgment in
S. A.No.375 of 2011
and
M.P.Nos.1 of 2011 & 1 of 2014

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