

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2016

PRONOUNCED ON : 03.01.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.537 of 2011

&

M.P.No.1 of 2011

1.Arjuna Pillai
2.Narasimhan
3.A.Emarose
4.A.Sundararajan
5.A.Durairai

..Appellants/Appellants/
Plaintiffs

Vs.

1.Sasikumar
2.T.Selvaraj

..Respondents/Respondents/
Defendant

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 24.01.2011 made in A.S.No.56 of 2010 on the file of the Subordinate Court, Kancheepuram, confirming the Judgment and Decree dated 02.08.2010 made in O.S.No.84 of 2002 on the file of the Additional District Munsif Court, Kancheepuram.

For Appellants : Mr.A.Kandasamy for
M/s.M.Srividhya

For Respondents : Mr.Om Prakash for
M/s.Ramalingam & Associates

JUDGMENT

Challenge in this Second Appeal is made by the plaintiffs against the Judgment and decree dated 24.01.2011 made in A.S.No.56 of 2010 on the file of the Subordinate Court, Kancheepuram, confirming the Judgment and Decree dated 02.08.2010 made in O.S.No.84 of 2002 on the file of the Additional District Munsif Court, Kancheepuram.

2.Suit has been laid for permanent injunction.

3.The relief of permanent injunction is sought for by the plaintiffs in respect of suit 'B' schedule property. The suit 'B' schedule property is stated to be situated in Kancheepuram Taluk, Achukattu Village, Part-I, Punjai S.No.59/1A, 0.56 cents

of southern side, out of which, 0.11 cents in Eastern side, comprised as Plot Nos.9, 10, 11, 12 & 13(total) extent 4669 sq. feet situated to the west of Sirukaveripakkam poromboke land, East of Lala channel and the vacant land used as a road by the public left by the defendants, South of the land with huts, North of Ramachandra Mudaliar Vagayara's punja land.

4.Now, according to the plaintiffs, the suit 'B' schedule property had been purchased from the defendants under the Sale Deed dated 04.06.1990 and the copy of the same has been marked as Ex.A2. Further, according to the plaintiffs, another property described as Item No.2 of suit 'A' schedule property had been purchased from the defendants under the Sale Deed dated 20.09.1999 and the copy of the same has been marked as Ex.A4. According to the plaintiffs, the suit 'B' schedule property is in peaceful possession and enjoyment of the plaintiffs, ever since the date of purchase, till the date of filing of the suit and it is stated that inasmuch as the defendants without any authority attempted to interfere with the plaintiffs peaceful possession and enjoyment of the suit 'B' schedule property, the suit has been laid.

5.As rightly found by the Courts below, it could be seen that under Ex.A2, the defendants have not conveyed the plots described in the suit 'B' schedule to the plaintiffs, on the other hand, it could be seen that under Ex.A2, a vacant land of 11 cents situated within specific boundaries had been conveyed. There is no material for holding that on the date of Ex.A2, the vacant land had been divided as plots and as such the plaintiffs had been conveyed the plots comprised in Nos.9, 10, 11, 12 & 13 by the defendants under the said document. There is no approved plan produced to show that the property comprised under Ex.A2 had been allotted as plots even at that point of time. Therefore, it could be seen that the description of the property as Plot Nos.9, 10, 11, 12 & 13 and claimed to have been conveyed, as such, under Ex.A2 cannot be stragitaway accepted. However, under Ex.A4 dated 20.09.1999 it could be seen that in specific Plot No.1 had been conveyed by the defendants to the plaintiffs, it could therefore be seen that the defendants have conveyed their property showing as plots only under Ex.A4 and not under Ex.A2. It is admitted that the plaintiffs are having a Rice Mill and the other lands situated to the eastern side of the channel bund, and they are found to be situated on the eastern side of the suit 'B' schedule property.

6.The defendants in specific have raised a defence that the plaintiffs without any cause of action has laid the suit and the plaintiffs cannot seek any relief as such against the defendants. In such view of the matter, it could be seen that to claim the relief of permanent injunction, the plaintiffs have to establish that as pleaded, the suit 'B' schedule property is in their possession and enjoyment. However, as seen from Ex.B9, the Sale Deed dated 22.02.2001, the plaintiff have

alienated about 2 cents out of the 11 cents shown in the suit 'B' schedule property to one Doss. Ex.B9 transaction has been admitted by the plaintiffs, it could be therefore be seen that the plaintiffs even before the institution of the suit had sold 2 cents comprised in the suit property to one Doss. In such view of the matter, it has not been explained by the plaintiffs as to how they could maintain the suit claiming that the entire suit 'B' schedule property consisting of 11 cents within the specific boundaries are still in their possession and also claiming that they are in possession of 11 cents right from the date of purchase till the date of filing of the suit. It could therefore be seen that the plaintiffs have suppressed the material fact about the alienation of 2 cents of land to one Doss comprised in the suit 'B' schedule property under Ex.B9. No reason whatsoever has been made by the plaintiffs for not mentioning about the alienation made by them in respect of the suit 'B' schedule property, under Ex.A9. As seen by the Courts below, the said Doss has not been arrayed either as the plaintiff or as the defendant in the suit. To the same also, no positive explanation is forthcoming.

7.Further, it has also not been established by the plaintiffs as to where exactly the 2 cents of land sold to Doss is situated in the suit 'B' schedule property. The first Appellate Court has found that in between the properties of the plaintiffs, the 2 cents of land is found to be located.

8.Be that as it may, it could be seen that the plaintiffs have come forward with the suit seeking the relief of permanent injunction even in respect of the property belonging to another person, suppressing the same to the court and also not adding the said party in the present proceedings. As per the pleas made and the evidence adduced in the matter, it could be seen that the defendants are retaining some lands in the suit survey number even after alienating certain portions of the properties in the suit survey number under Ex.A2 & A4. It is also found that the survey measurements had been undertaken and accordingly the property purchased by the plaintiffs under Ex.A2 had been classified and shown to be lying in S.No.59/1A2. A perusal of the report of the Advocate commissioner would go to indicate that the 11 cents of property purchased by the plaintiffs under Ex.A2, shown in S.No.59/1A2, includes the road portion also but according to the plaintiffs excluding the road portion and showing the road portion as the western boundary, the defendants have sold the property under Ex.A2 and now they cannot take advantage of the survey measurements wrongly done and thereby interfere with their possession and enjoyment of the suit 'B' schedule property. The plaint pleadings would go to show that only at the instance of the plaintiffs, in the year 1997, the suit property has been measured and sub- divided. Further, it could be seen that as per the pleas made in the plaint, the survey measurement has not been properly made, it is also found that in the year 2002, another survey had been made

in respect of the defendants property at the instance of the defendants and according to the plaintiffs, on that pretext, the defendants had started to interfere with their possession and enjoyment of the suit 'B' schedule property.

9. Further, according to the plaintiffs case, inasmuch as the survey measurements had been wrongly carried out, they had also preferred objections to the authorities concerned to redo the sub division of the suit property and the other properties as per the respective sale deeds. It could therefore be seen that the main grievance of the plaintiffs seems to be only in the mode of survey measurements taken by the authorities concerned. Feeling aggrieved over the wrong survey measurement done by the authorities in particular including the road portion also in S.No.59/1A2 and thereby fixing the entire 11 cents to be situated in the above said survey number, according to the plaintiffs, taking advantage of the same, the defendants are interfering with their possession. But when it is found that only at the instance of the plaintiffs the first survey had been done in the year 1997 and if according to the plaintiffs, the survey had not been properly carried out, it is for the plaintiffs to work out their remedy by approaching the next higher authorities concerned and as also provided under law pertaining thereto.

10. In this case, the plaintiffs have not sought for any declaration that the survey measurements done by the authorities concerned are illegal or against the recitals found in the Sale Deed, Ex.A2, dated 04.06.1990 or the actual properties, to which, the plaintiffs and the defendants are presently entitled to. It could therefore be seen that the plaintiffs have knocked at the wrong door for seeking the remedy with reference to the same in respect of the suit 'B' schedule property and their remedy lies elsewhere.

11. Be that as it may, when it has not been established by the plaintiffs that the entire suit 'B' schedule property as such is in their possession and enjoyment as on the date of the filing of the suit and when even the Commissioner's report goes to show that the sub-division has been made showing S.No.59/1A2 is measuring 11 cents inclusive of the road portion and when no material is placed by the plaintiffs to show as such the defendants are responsible for the above said survey measurement and on that count, the defendants are interfering with their possession and enjoyment of the suit property, it could be seen that the Courts below have rightly rejected the plaintiffs case, and no interference is called for to the above findings of the Courts below in any manner.

12.The learned counsel for the plaintiffs relied upon the decision reported in 2014(4)CTC 618(Jayanthi & another Vs. Dr.K. Selvarai and Others). The principles of law enunciated in the above said decision are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

13.In conclusion, no substantial question of law is found to be involved in this Second Appeal. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Subordinate Court,
Kancheepuram
2. The Additional District Munsif Court,
Kancheepuram.

+1cc to M/s. M.Srividhya, Advocate, S.R.No.395

+1cc to M/s. Ramalingam Associates, Advocate, S.R.No.723

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