



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2017

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THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.(MD) No.611 of 2014

B.Yasoda

.. Appellant/Respondent/
Cross Objector/Plaintiff

vs

Baby Amma

.. Respondent/Respondent
Appellant/Defendant

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 08.11.2013 of the learned Subordinate Judge, Padmanabhapuram and made in A.S.No.18 of 2013 and Cross objections on his file, reversing the judgment and decree dated 05.03.2013 of the learned Principal District Munsif, Padmanabhapuram made in O.S.No.135 of 2011 on his file and dismissing the Cross-Objections.

For Appellant : Mr.K.N.Thampi
For Respondent : Mr.K.C.Peter Kanish Kumar

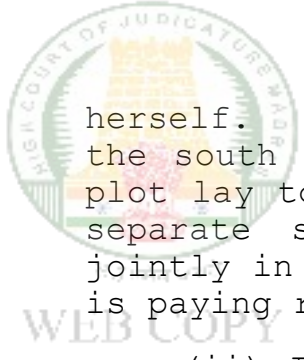
JUDGMENT

This Second Appeal has been filed against the Judgment and Decree dated 08.11.2013, made in A.S.No18 of 2013 and Cross-Objection, on the file of learned Subordinate Judge, Padmanabhapuram, reversing the Judgment and Decree of the learned Principal District Munsif, Padmanabhapuram, dated 05.03.2013, made in O.S.No.135 of 2011 and dismissing the Cross-objection, filed by the appellant.

2. The Appellant herein filed a suit in O.S.No.135 of 2011, on the file of Principal District Munsif, Padmanabhapuram seeking for a relief of demarcation and permanent injunction.

3. The Brief averments made in the Plaint are as follows:

(i) The property situate in Resurvey No.64/14 of Thirparappu Village, having an extent of one acre, originally belonged to the defendant. While so, the Defendant executed Settlement deeds in children including the Plaintiff covering an extent of 85 cents on 18.12.2003 and put them in possession. The defendant kept the remaining area of 15 cents with the family house, for



herself. It is further contended that the Plaintiff's plot lies on the south of the Defendant's plot. The Plaintiff's and Defendant's plot lay together as a single plot and the revenue authorities gave separate sub-division and Resurvey No.64/14B. The patta issued jointly in the name of the Plaintiff and Defendant and the Plaintiff is paying revenue tax to the Government till date.

(ii) It was further averred that the Defendant executed a Sale Deed of 20 cents to her daughter-in-law Jagadamma on 22.08.1988. Then on 18.12.2003, she executed three settlement deeds in favour of her daughters, viz., Jalajakumari, Usha and Yasoda, conveying 65 (25+25+15) cents. Thus, the Sale Deed and the Settlement Deeds cover 85 cents and the Defendant kept the balance 15 cents with the family house. On 08.07.2004, Jagadamma and Jalajakumari sold their 45 (25+20) cents to one Madhusudhanan Nair and Usha sold her 25 cents to the Plaintiff on 13.03.2006. Thus, Madhusudhanan Nair and the Plaintiff got the entire 85 cents and they, together sold 67 (45+22) cents to one Ramakrishnan on 04.08.2006. The Plaintiff is keeping the balance 18 cents with her. The said Ramakrishnan obtained Patta for his property of 67 cents, after subdivision as R.S.No.64/14A and the Plaintiff and defendant got joint Patta for the 33 cents as R.S.No.64/14B and the Plaintiff is paying tax for her property till date.

(iii) It was further stated that the Settlement Deed executed in favour of the Plaintiff, the northern boundary is wrongly stated as a plot of Jalaja Kumari instead of Baby Amma, the Defendant. The Defendant is in possession and enjoyment of the northern plot in which the family house is located and the defendant is living and the Plaintiff is in possession and enjoyment of southern plot by making valuable improvements from the date of Settlement Deed.

(iv) It was further contended that taking advantage of the wrong boundary description, the Defendant created some problems and by mediation, the property was measured and a plan prepared showing the Plaintiff's southern property separately from the defendant's property. But, the Defendant disputed the plan and making hasty arrangements to dispose the property to strangers and she has no right to alienate the plaintiff's property. Hence, it is necessary to demarcate the plaintiff's property through Court from that of the defendant.

(v) It was further contended that the Plaintiff tried to settle the matter on various occasions and finally, on 22.03.2011, since the defendant was not amenable, the Plaintiff had filed a suit seeking a decree of demarcation of the Plaintiff's southern property of 18 cents from the defendant's property 15 cents with the family house in Resurvey No.64/14B and for a decree of permanent injunction against the defendant, restraining the Defendant from alienating any portion of the suit property affecting the rights of the plaintiff



and for costs.

4. Denying the averments made in the Plaint, the defendant had filed a written statement.

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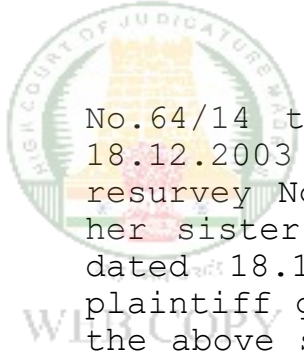
5. The Brief averments made in the written statement, filed by the defendant are as follows:

(i) The defendant denies the avements made by the Plaintiff stating that the execution of settlement deed by the defendant in favour of her children including the Plaintiff covering an extent of 85 cents on 18.12.2003 is not disputed. But the other averments that, the Plaintiff's plot lies on the south of the defendant's plot, and the Plaintiff's and defendant's plots lay together as a single plot and patta issued jointly in the name of Plaintiff and defendant by the revenue authorities are false. She denies the averment that in the settlement deed in favour of the plaintiff, the northern boundary is wrongly stated as the plot of Jalageja Kumari instead of Baby Amma are false.

(ii) It was further contended that as the plaintiff was in possession and enjoyment of the plot mentioned in the settlement deed dated 18.12.2003, she has no right, possession or enjoyment over any portion of land belonging to this defendant in resurvey No.641/14B of Thirparappu Village at any point of time. It is contended that the defendant is in possession and enjoyment of the northern plot and the plaintiff is in possession and enjoyment of the southern plot by making valuable improvements from the date of settlement deed. Taking advantage of the wrong boundary description, the defendant created some problems and by mediation, the property was measured and a plan was prepared showing the plaintiff's southern property separately from the defendant's property are false and frivolous. It is further contended that since the properties of the Plaintiff and the Defendant were already demarcated and both the properties lie as two separate distinct plot with well defined boundaries on its four sides, the plaintiff has filed this suit only with a malafide intention to swindle the property of the defendant.

6. The Brief averments made in the Additional Written Statement filed by the defendant are as follows:

(i) The defendant denies the averments made in paragraph 1 (a) of the amended plaint. The defendant admits that Mr. Madhusoodhanan Nair, has purchased 25 cents of land in resurvey No.64/14 from Jalajakumari and another, 20 cents of land in resurvey No.64/11 from Jagadamma on 09.07.2004 vide deed No.142 of 2004 of Thiruvattar Sub Division and so the above said Madhusoodhanan Nair totally got 40 cents extent of land in resurvey No.65/14 of Thirpattu Village. The plaintiff got 15 cents extent of property in resurvey

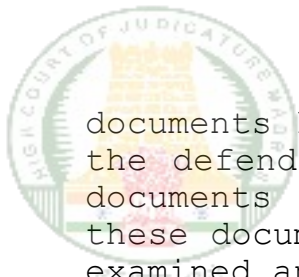


No.64/14 through a Settlement Deed executed by the defendant on 18.12.2003 and she got another 25 cents extent of property in resurvey No.64/14 through a sale deed dated 13.03.2006 executed by her sister Mrs. Usha who got the same as per the settlement deed dated 18.12.2003 executed by this defendant. Thus totally the plaintiff got 40 cents (15+25) of land in resurvey in this case and the above said Madhusoodhanan Nair have jointly got 85 cents extent of property in resurvey No.64/14 of Thirparappu Village, Whiles, out of the above said 85 cents on 04.08.2006, they were jointly sold 78.500 cents extent of property to one Ramakrishnan son of Nagamony Nadar through a Sale deed No.1789 of 2006 at Thiruvattar Sub Registrar Office, and the balance area on 500 cents extent of land (85000-78500-6500) in resurvey No.64/14 of Thirparappu Village alone is in the joint possession and enjoyment of the plaintiff and the above said Madhusoodhanan Nair. She denies the averment made in the Plaint, with regard to keeping the balance of 18 cents within resurvey No.64/14 B.

(ii). It was further averred that with a sinister motive and calculative idea to swindle and swallow the property of this defendant available in resurvey No.16/14 they were jointly committed a fraud activities at the time of execution of the sale deed by them to Mr.Ramakrishnan on 04.08.2006, and included the 11.500 cents extent of property from resurvey No.64/14 and mentioned it as resurvey No.64/13 instead of 64/14. In fact neither the Plaintiff nor Mr.Madhussodhanan Nair have no manner of title or whatsoever right over any inch of land comprised in resurvey No.64/13 of Thirparappu Village. But, they purposely and fraudulently included the resurvey No.64/13 in the schedule of property description column in the sale deed dated 4.8.2006 in respect of 11.500 cents of land it originally available in resurvey No.64/14 of Thirparappu Village. It was further averred that taking advantage of their above said fraudulent act, the Plaintiff made an attempt to swallow the property of this defendant available in resurvey No.64/14 of Thirparappu Village and the dwelling house of the defendant situates thereon.

(iii) It was averred further that the plaintiff is not entitled to get a decree of demarcation of 18 cents extent of property as prayed in the Plaint relief column, since the Plaintiff and Mr.Madhussodhanan Nair are jointly having only 6.500 cents extent of property in resurvey No.64/14 of Thirparappu Village, and so the Plaintiff is only entitled to get a relief of demarcation in respect of the above said 6.500 cents extent of property in resurvey No.64/14 from the defendant's property as well as entitled to get a relief of permanent injunction in respect of above said 6.500 cents of land alone and hence prays for dismissal of the suit.

7. Based on the above pleadings, the trial court has framed appropriate issues. In order to prove the case, on the side of the plaintiff, one witness was examined as P.W.1 and as many as 7



documents have been exhibited as Exs.A1 to Ex.A.7. On the side of the defendant, one witness was examined as D.W.1 and as many as 13 documents have been exhibited as Exs.B.1 to Ex.B13. Apart from these documents, on the side of the Court, Advocate/Commissioner was examined and Exs.C-1 to C-3 were marked as Court documents.

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8. Upon the oral and documentary evidence adduced on either side, the trial Court decreed the suit.

9. Challenging the same, an appeal was preferred by the defendant, in A.S.No.18 of 2013, before the Subordinate Court, Padmanabhapuram and the plaintiff has also preferred cross objection. The appeal filed by the defendant was allowed and cross objection filed by the plaintiff was dismissed, by an order dated 08.11.2013.

10. Aggrieved by the same, the above Second Appeal has been filed by the plaintiff.

11. The admitted facts in the case are as follows:-

(i) The suit property is situated in Survey No.64/14 in Thiruparappu Village.

(ii) The suit property belonged to the defendant as per Ex.B-13 and the extent is one acre.

(iii) The plaintiff and the defendant are daughter and mother.

(iv) The defendant had sold 20 cents on 18.08.1988 in favour of Jagathammal as per Ex.B.1.

(v) The defendant had also executed settlement deeds on 18.12.2003 settling an extent of 25 cents in favour of her daughter Usha and another 25 cents in favour of Jalaja Kumari and 15 cents in favour of Yasodha-the plaintiff herein under Exs.B2, B3 and B4 respectively.

(vi) Similarly, plaintiff's sister Usha sold her share of 25 cents in favour of the plaintiff under Ex.B-6.

viii) As per the above transactions, Madhusudhanan Nair owned 45 cents and the plaintiff owned 40 cents.

The above facts are all admitted by both the parties.

12. While so, the said Madhusudhanan Nair and the plaintiff together sold 67 cents out of the 85 cents belonging to them on 04.08.2006 as per Ex.B-7 in favour of one Ramakrishnan. The said Ramakrishnan had also obtained patta for 67 cents in Survey No.67/14A. The balance 33 cents is subdivided as 67/14B and a patta was issued in favour of the plaintiff and defendant. As stated earlier, out of one acre belonged to the defendant in Survey No.64/14, she had given away 85 cents and is in possession of 15 cents, in which, the defendant's house is situate. Thus, it is stated that in Survey No.64/14, the plaintiff owned 18 cents and



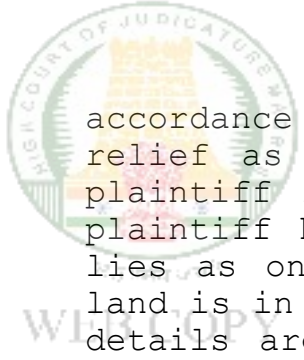
defendant retained 15 cents. The plaintiff now claims that the said 18 cents in her possession is in south of the defendant's property adjacent to 15 cents belonging to the defendant and the entire extent lies as one plot. Therefore, the suit is now filed for demarcation of 18 cents of land in Survey No.64/14,

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13. Now, the question that arise for consideration is as to whether the plaintiff has proved that she owns 18 cents within definite boundary for her to get a decree for demarcation?

14. As narrated above, the admitted facts need not be discussed. The document that has to be seen is Ex.B-7, which is executed by the plaintiff and Madhusudhanan Nair in favour of Ramakrishnan. A perusal of Ex.B7 would go to show that the plaintiff and Madhusudhanan Nair had sold an extent of 78.5 cents whereas in the plaint it has been stated that only 67 cents have been sold. As per Ex.B-7, an extent of 11.5 cents in Survey No.64/13 and an extent of 67 cents in Survey No.64/14 have been sold in favour of Ramakrishnan. The plaintiff and Madhusudhanan Nair had sold the property in Survey No.64/14 as they are entitled to only for the lands in Survey No.64/14 as per the documents Exs.B4, B5 and B6. It is not shown as how the plaintiff and the Madhusudhanan Nair sold an extent of 11.05 cents in Survey No.64/13 when they have no right over the same. Therefore, the first appellate Court has found that out of the 0.40 cents that belonged to the plaintiff in Survey No.67/14, 33.5 cents have been sold as per Ex.B-7. Hence, 6.5 cents alone is with the plaintiff. In fact, in Ex-B-7, there is nothing stated with respect of Survey No.64/13 as to how the vendors therein had derived the title in Survey No.64/13. In such circumstances, the plaintiff could atmost have the right only over 6.5 cents in Survey No.64/14. Merely because, a joint patta was issued in favour of the plaintiff and the defendant, the same cannot be taken advantage by the plaintiff. Even presuming for a moment that the plaintiff is entitled to 18 cents in Survey No.64/14, there is no evidence adduced by the plaintiff to substantiate the same. The lower Appellate Court has also considered the report of the Advocate Commissioner, who found that the property of the plaintiff as per her previous title deeds lie only on the north of the defendant's property and there is nothing belonged to the plaintiff on the south of the defendant's property. Even the previous documents of title of the plaintiff only go to show that the properties are on the North of the defendant's property. The Appellate Court being a final fact finding Court has found that the plaintiff has not established that there is a property belonging to the plaintiff on the South side of the defendant's property. Though, it is contended by the plaintiff that South of her 18 cents, the property of one Vilasini is there, the said Vilasini has not been examined.

15. As per the well settled principle, the plaintiff has to fall or succeed on his or her own case and cannot pick holes in the case of the defendant. The plaintiff having come to the Court claiming exclusive right over 18 cents of the land which is in the south of the defendant's property, ought to have proved the same in



accordance with law. Having failed to so, she is not entitled to any relief as claimed in the plaint. However, it is held that the plaintiff is entitled to 6.5 cents in Survey No.64/14. When the plaintiff has also specifically contended that the entire property lies as one plot, the trial Court had found that 15 cents of the land is in one plot and 0.3 cents is in another plot. When the said details are not established by the plaintiff, the lower Appellate Court had rightly set aside the finding of the trial Court and dismissed the same. In view of the above facts and evidence, there is no question of law arising for consideration and the second appeal is dismissed as devoid of merits. No costs.

In the result, this Second Appeal is dismissed, confirming the Judgment and decree of the First Appellate Court, in A.S.No.18 of 2013 dated 08.11.2013. No costs.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Padmanabhapuram.
2. The Principal District Munsif,
Padmanabhapuram.
3. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.K.N.THAMPI, ADVOCATE IN SR No. 75427
+ 1 CC TO Mr.M.DENNIS JOE, ADVOCATE IN SR No. 75533

SRM/ARR

TE/MR-KKR/SAR-I : 11/09/2017 : 7P/6C

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