



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2017

CORAM

WEB COPY

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.(MD) Nos.381 and 382 of 2016

and

C.M.P.(MD) Nos.4117 and 4118 of 2016

Ramasubbaramaniyan .. Appellant in both S.A.s

vs.

Gomathi Aanandhi .. Respondent in both S.As

Prayer in S.A.No.381 of 2016: Second Appeal filed under Section 100 of the Civil Procedure Code praying to allow this second appeal by setting aside the judgment and decree passed in A.S.No.111/2014 dated 19.12.2014 by the Principal Sub Court, Tirunelveli confirming the judgment and decree passed in O.S.No.329/2010 dated 28.02.2014 by the Principal District Munsif Court, Tirunelveli.

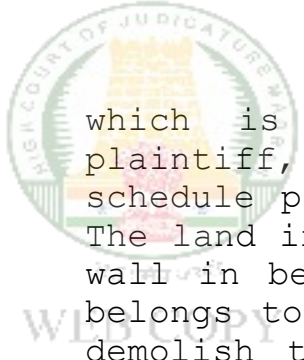
Prayer in S.A.No.382 of 2016: Second Appeal filed under Section 100 of the Civil Procedure Code praying to allow this Second Appeal by setting aside the judgment and decree passed in A.S.No.115/2014 dated 19.12.2014 by the Principal Sub Court, Tirunelveli reversing the judgment and decree passed in O.S.No.329/2010 dated 28.02.2014 by the Principal District Munsif Court, Tirunelveli.

For Appellant in both S.As : Mr.P.Senthur Pandian
For Respondent in both S.As. : Mr.G.Ramanathan for
Mr.A.Rajaram

COMMON JUDGMENT

The defendant is the appellant in both the appeals. The plaintiff has filed the suit for declaration declaring that the second schedule property belongs to him and for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the second schedule by laying pipe line or draining the drain water in the said property and for mandatory injunction to remove the construction and water pipe line put up in the third schedule property.

2. The case of the plaintiff is that the property was purchased by him on 03.06.1999 under Ex.A1. The first schedule property is a house bearing door No.103/2. While constructing the said house, the plaintiff had left space on the Eastern side,



which is the second schedule property. According to the plaintiff, the second schedule property is a part of the first schedule property. The suit property is situated in T.S.No.1217. The land in T.S.No.1218 is the adjacent property. There is also a wall in between T.S.Nos.1217 and 1218. The said wall exclusively belongs to the plaintiff. While so, the defendant was trying to demolish the said wall and try to lay pipelines disturbing the peaceful possession of the plaintiff. Hence, the suit had been filed.

3. Denying the facts supporting the cause of action for suit, the defendant had filed his written statement contending that there is no lane between T.S.Nos.1217 and 1218. The defendant had purchased the property in T.S.Nos.1218 and 1219. According to him, the wall exclusively belongs to the defendant and the plaintiff had no right over the same. Hence, he sought for dismissal of the suit.

4. Based on the above pleadings, the trial court has framed appropriate issues. In order to prove the case, on the side of the plaintiff, 3 witnesses were examined, namely P.W.1 to P.W.3 and only 11 documents were exhibited as Ex.A1 to Ex.A.11. On the side of the defendant, one witness was examined as D.W.1 and as many as one document was exhibited as Ex.B.1. Exs.C1 to C4 were marked as Court documents. Two documents were marked as witness documents.

5. After consideration of the oral and documentary evidence, the trial Court dismissed the suit so far as the relief of declaration is concerned holding that it is not the exclusive property of the plaintiff. As regards the relief of permanent injunction, the plaintiff was granted the relief of the same. But, the trial Court had dismissed the relief of mandatory injunction. Aggrieved by the same, the defendant had filed A.S.No.111 of 2014 and so far as the disallowed portion is concerned, the plaintiff had filed A.S.No.115 of 2014. The first appellate Court, by a common judgment, dismissed the appeal filed by the defendant and allowed the appeal filed by the plaintiff for disallowed portion and thereby granted the entire relief sought for by the plaintiff.

6. By consent, both the Second Appeals were taken up for final hearing at the stage of admission itself. After hearing both sides, now they are disposed of by way of this common judgment.

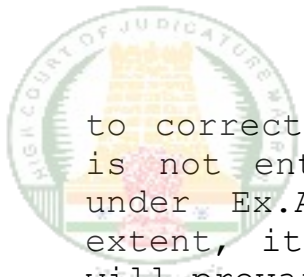
7. The question that arises for determination is as to whether the second schedule property is the exclusive property of the plaintiff and that the defendant should be restrained from laying pipelines or draining water in the same and also to remove the



8. In addition to the documents that were filed by the parties, a Commissioner was also appointed who filed his report and plan. A rough sketch was also filed as Ex.A8. The plaintiff has purchased the property under Ex.A1-Sale deed dated 03.06.1999. As per the said document, on the Northern side, it is 18-1/2 feet East-West. It is stated that the plaintiff has constructed a building only in 17.25 feet and left the balance lane vacant, which is said to be the second schedule property. Whereas the defendant had purchased the property on 30.12.2009 as per Ex.A5. As per the said document, T.S.Nos.1218 and 1219 are on the Northern side, 34.38" East-West. According to the defendant, even in his written statement, in para 5, it is stated that there is no lane in between T.S.Nos.1217 and 1218. Since the plaintiff has challenged the judgment declining the relief of declaration, the burden is on him to establish that he is entitled for declaration.

9. It is contended by the learned counsel appearing for the respondent / plaintiff that as per Ex.A.1, she has purchased the first schedule property, including second schedule property. Prior to the said sale deed, there was a settlement as per Ex.A.11 dated 12.12.1970. The building permission obtained by the plaintiff was marked as Ex.A2 and the other documents filed by the plaintiff were also not disputed by the defendant. A perusal of Ex.A.1 goes to show that the Eastern boundary is mentioned as T.S.No.1218. The building plan marked as Ex.A.3 goes to show that the building has been constructed only within the boundaries. Even according to the plaintiff, he had only left 1.8 feet which is the 2nd schedule property. A Commissioner was appointed twice in the suit and the properties have been inspected. In the report of the Commissioner marked as Ex.C3, it is specifically mentioned that the Surveyor, who measured the property in T.S.Nos.1218 and 1219, has mentioned that on the Southern side, there is 28-1/2 feet. Even as per Ex.A5, the defendant has got only 28-1/2 feet on the South. The report of the Surveyor also shows that 28-1/2 feet ends with 1.10 feet to the West of plaintiff's wall. From the above, it is very clear that on the West of the plaintiff's property, there is a lane, which is also confirmed by the Commissioner. Therefore, the contention of the appellant/defendant that there is no such lane at all, is unacceptable. The report of the Commissioner as measured by the Surveyor also confirms that the property of the defendant ends 1.10 feet before the Western wall of the defendant, which means the defendant has extended his construction by 1.10 feet.

10. The case of the appellant/defendant cannot be accepted for two reasons, viz., firstly, the defendant has denied the existence of 2nd schedule property and secondly, the defendant is trying to claim more than what he is entitled to. The lower appellate Court, which is a fact finding Court, has held that D.W.1 has admitted that the measurement on the Southern side is wrongly mentioned as 28.88 feet. However, no steps had been taken by him



to correct the same. Considering the above facts, the defendant is not entitled to claim anything beyond what he has purchased under Ex.A5. Having purchased a property within the specific extent, it is not open to the defendant to claim that boundaries will prevail over the extent.

WEB COPY

11. So far as Ex.A1 is concerned, the plaintiff seems to have purchased 18-1/2 feet and based on the same, the declaration is sought for. Admittedly, there is no dispute with respect to Ex.A1, under which, the plaintiff has purchased the property. Even as per the report of the Commissioner, there was a lane adjacent to the plaintiff's property measuring 1-1/2 feet by 36-1/4 feet. Therefore, by any stretch of imagination, it cannot be held that the defendant is also entitled to a right over the said pathway. In fact, the defendant has not filed any document in support of his claim. Only the plaintiff has marked Ex.A-5, which is the copy of the sale deed of the defendant. The said deed is also not challenged by the defendant. As discussed earlier, the defendant has got his 28-1/2 feet which ends with 1.10 feet ahead of defendant's Western wall.

12. In the light of the above discussion, it is established that there is a second schedule property, which is a lane (Muduku) and it belongs only to the plaintiff as per Ex.A1. The first appellate court, which is the final fact finding Court, has, accordingly, decreed the relief of declaration also in the absence of any contra evidence.

13. The case of the plaintiff / respondent was that pending suit, the defendant had encroached and put up certain structures over the suit property. But, the consideration of the report of the Commissioner goes to show that there are pipelines and also ladder fixed beyond 28-1/2" extent, which shows that the defendant has extended his facility into the portion which he is not entitled to. It is also not the case of the defendant that he was entitled for more extent. When the plaintiff has established his entitlement to the plaint 2nd schedule property and in the absence of any other evidence to rebut the same, the decree granted by the Appellate Court in favour of the plaintiff is correct.

14. There is no question of law arising out of the Second Appeal for consideration, as even the factual findings are in favour of the plaintiff. There is no infirmity or illegality in the decree granted by the first appellate Court in favour of the plaintiff. Hence, both the appeals are dismissed, confirming the judgment and decree passed by the first appellate Court. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CSI)



To தலைவர்

WEB COPY

1.The Principal Subordinate Judge,
Tirunelveli

2. The Principal District Munsif ,
Tirunelveli.

3. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.P.Senthurpandian, Advocate, SR.No.70824

+2ccs to M/s.A.Rajaram, Advocate, SR.Nos.69957 and 69958

srn/gcg
RL/7C/5P/JC/SAR1/22/8/2017

S.A. (MD) Nos.381 and 382 of 2016

03.08.2017