

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.09.2018

DELIVERED ON: 25.09.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA
S.A.No.1431 of 2002

1. Vasudeva Reddiar (deceased) .. Defendant/ Respondent
2. Sangunthala
3. V.Thirumaran
4. V.Manimaran
5. Shanthi

(Appellants 2 to 5 are brought on record as Legal heirs of the

deceased sole appellant vide order dated 12.12.2017 in CMP No.17674 and 17675 of 2016 in S.A.No.1431 of 2002)

.. Appellants

Vs.

Malarvizh Respondent/ Plaintiff/ Appellant

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 28.01.2002 passed by the Principal District Judge, Thiruvannamalai in A.S.No.66 of 2001 reversing the decree and judgment dated 18.04.2001 passed by the Principal District Munsif, Thiruvannamalai in O.S.No.81 of 1990.

For Appellants : Mr.S.Udayakumar
Respondents : Mrs.V.Srimathi
for Mr. V.Raghavachari

JUDGMENT

The defendant Mr.Vasudeva Reddiar in O.S.81 of 1990 on the file of the Principal District Munsif, Thiruvannamalai is the respondent in A.S.No.66 of 2001 on the file of the Principal District Judge, Thiruvannamalai. He has filed this present second appeal. Since he died during the pendency of this second appeal, his legal heirs have been impleaded as appellants 2 to 5.

2. The respondent/3rd plaintiff along with Govindasamy Reddiyar (since deceased), the first plaintiff and Gnanambal (since deceased), the 2nd defendant filed the suit in O.S.No.81 of 1990 before the Principal District Munsif, Thiruvannamalai for a declaration of their title to

the suit lane measuring 2 feet North-South and 69 feet East-West situates on the western side of the plaintiffs' house and for a permanent injunction restraining the appellant/defendant from interfering with their peaceful possession and enjoyment over the suit lane. It is further prayed by the plaintiffs that the defendant should be restrained from letting out water from his building into the suit lane.

3. For the sake of convenience and better understanding, the parties are called as per their ranking in the trial court.

4. The case of the plaintiffs in O.S.No.81 of 1990 before the Principal District Munsif, Thiruvannamalai is briefly as follows. The plaintiffs' father Subba Reddiar purchased the house along with the suit lane from one Rajaram Reddiar through a registered sale deed dated 15.01.1955 (Ex.A1) and ever since the date of purchase, he was in possession and enjoyment of this property without any interruption. The total East-West measurement is 28 feet. Subba Reddiar constructed a house measuring 24 1/2 feet East-West and 69 feet North-South leaving 3/12 feet as vacant site cum lane on the western side of his house for convenient enjoyment. The defendant, who is the adjacent land owner on the western side of the suit lane, constructed a building by encroaching 1 1/2 feet lane, which belongs to the plaintiffs. He also had constructed his building in such a way that the rain water and water from the overhead tank would fall on the plaintiffs' lane and despite repeated requests made by the plaintiffs, the defendant did not remove the encroachment made by him over the property of the plaintiffs.

5. The suit was resisted by the defendant on the ground that the western portion of suit land was originally a vacant land measuring East-West 27 feet and North-South 72 feet, which belonged to one Padmanabhan and Rajaram, who sold the same to Ramu Reddy, Govinda Reddy and Narayanasamy Reddy through a registered sale deed dated 19.05.1937 (Ex.B2). Out of 27 feet, 3 feet on the western side was left out for common usage. According to the defendant, there was another 4 1/2 feet wide lane adjoining 3 feet lane and thus the total width of vacant lane is 7 1/2 feet, out of which 4 1/2 feet belongs to him. It is further contended that the plaintiffs' father Subba Reddiar had attested the sale deed dated 19.05.1937 (Ex.B2) executed by Padmanaba Reddy and others. It is also contended by him that since Ramu Reddy's daughter Suseela claimed some right over the properties of the defendant, she subsequently executed a sale deed dated 22.11.1974 (Ex.B3) for an area measuring 21 feet East-West leaving 3 feet common lane on the west of the defendant's property. It is the contention of the defendant that Padmanaba Reddy was entitled to 24 feet East-West with a common lane of 3 feet on the west of his property and that the plaintiff's father had encroached upon 3 feet on the

eastern side of his property. According to the defendant, neither the plaintiff nor his predecessors have title to the suit property.

6. The trial court dismissed the suit filed by the respondent/ plaintiff. However, in the first appeal, the decree and judgment of the trial court was reversed and the suit filed by the plaintiff was decreed.

7. Now, the present second appeal is filed on the following substantial question of law.

Whether the observation of the lower appellate court that the measurement given in Ex.B1 is not correct in view of Ex.C1 and Ex.C2, without adverting to the earlier documents of title dated 19.05.1937 (Ex.B2) and dated 16.03.1942 (Ex.B1), is correct.

8. A perusal of the sale deed Ex.A1 dated 15.01.1955 shows that the respondent/plaintiff has purchased a vacant site measuring East-West 28 feet and North-South 69 feet. There is a mention about the pathway in the partition deed dated 04.10.1968 (Ex.A3) executed between Subba Reddiar and his two sons. The defendant (since deceased) who examined himself as Dw1 during the course of cross examination admitted that the plaintiffs have constructed their house within the area indicated in the sale deed Ex.A1 and the advocate commissioner's report (Ex.C1) is also clear on this aspect. It is also relevant to point out that though in the written statement, the defendant has contended that the plaintiff's father had encroached upon his land to the extent of 3 feet on the eastern side of his house, he did not take any action against the plaintiffs till date. The Dw1 also admitted that his construction was nearing completion during the visit of the learned Advocate Commissioner. The measurements indicated by the learned Advocate Commissioner in his report and plan Ex.C1 and Ex.C2 do not tally with the measurements found in Ex.B1 sale deed. The case of the defendant is that he purchased the property from Vasudeva Reddiyar, Govind Reddiar and Narayasamy Reddiar, who are brothers. They had jointly purchased this property from one Rukmani Ammal under Ex.B1. Each of them therefore, had only 1/3rd share in the entire extent.

9. In any event, even as per the admissions made by the Dw1, the plaintiffs' construction on the East-West direction is 24.5 feet. The trial court observed that as per Ex.C2, the plaintiffs have constructed their house measuring East-West 24.5 feet and on the eastern side, there is a vacant space measuring 9.1 feet East-West. He has further observed that the plaintiffs, who had constructed a staircase on the eastern side of their house are now claiming right over the land found on the western side of their house. The trial court had observed that both the plaintiffs and the defendant did not adduce any evidence with regard to the

title to the lane on the western side of plaintiffs' property (eastern side of the defendant's property).

10. The first appellate court had scrutinised the sale deeds of both the parties and also the Advocate Commissioner's report (Ex.C1 and Ex.C2) and had found that the first plaintiff's father constructed his house leaving space on the western side. It is also pertinent to point out that the defendant has not given the measurements of the lane on the eastern side of his house. The Dw1 in his deposition has also admitted that the plaintiffs have laid a pipe line in the disputed lane after obtaining permission from the Municipality. The first appellate court has observed that

" on the other hand, the measurement given in Exhibit B1 is not correct in view of Exhibit C1 and Ex.C2 documents. The original measurement of the seller Suseela, the wife of Venkatakrishna Reddy is 24 x 67 feet. A common 1/3 lane sold. But, as per the document of Ex.B1, instead of mentioning 7 1/2 feet x 21 feet, it is stated in metre measurement. This is possible, because from Ex.B1, the deceased first plaintiff's house is on the east. It is to be noted that the defendant's vendor namely Vasudeva Reddy, Govinda Reddy and Narayanasamy Reddiar, who are brothers jointly purchased the property from one Rukmani ammal, thereby, each of them got only 1/3 rd share alone. That is to say 9 x 72 feet. Further a common lane of one yard i.e. 3 feet is mentioned separately in document dated 14.03.1942. Therefore, it is clear that the first plaintiff's father constructed his house leaving space on the western side i.e east to the defendant's house. These facts are clearly established by the plan given by the learned Advocate Commissioner in Ex.C2."

I do not find any infirmity in the above observations made by the first appellate court.

11. Mr.S.Udayakumar, learned counsel appearing for the appellant would contend that the appellant's/defendant's sale deed is earlier in point of time and that his predecessors in title had delivered possession of property measuring 27 feet East-West. In Ex.B1, the measurements are given in metres and this aspect has been discussed by the first appellate court, which is extracted above. Even the trial court has found that the appellant did not adduce any evidence to show that the suit lane absolutely belongs to him. This is a concurrent finding based on facts and evidence and therefore, this court finds no reason to interfere with this finding, especially when they are well founded. In fact, in Ex.B1, there is no mention about the selling of lane along with the house and on the contrary, the plaintiffs' father has purchased the property measuring 28

feet on the East-West direction. The plaintiff has not only proved his title to the suit property but also his possession over the same. All the observations made by the first appellate court are well founded and therefore, the second appeal fails.

12. In the result, the second appeal is dismissed.
No costs.

Sd/-

Assistant Registrar(CS v)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Principal District Judge, Thiruvannamalai

2.The Principal District Munsif, Thiruvannamalai

copy to

The section officer,

VR Section,

High court

Madras

+1cc to Mr.V.Raghavachari , Advocate SR.No.66075

+1cc to Mr.S.Udayakumar , Advocate SR.No. 66524

S.A.No.1431 of 2002

ASK(13/11/2018)

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