

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1110 of 1999

and

CMP.No.10781/1999

1. Santhanasamy (Deceased)

2. Motcha Mary

3. Thomasraj

4. Margrett

5. Peterraj

6. Thiraviyaraj

7. Juliat Rani

... Appellants/Plaintiffs/
LRs of 1st Plaintiff

*Appellants 3 to 7 brought on record as
LRs of the deceased 1st appellant vide
order of this Court, dated 11/6/14
made in CMP.No.1934 of 2008 in
SA.No.1110/99

Vs.

1. Ramakrishnan

2. Bhaskaran

3. Sridharan (Deceased)

4. Ranjitham

... Respondents/Respondents/
Defendants

(R4 brought on record as LR of deceased
R3 vide order of this Court, dt.11/6/14
made in CMP.18495 of 1999 in SA.No.1110/99)

PRAYER: The Second Appeal has been filed under Section 100 of C.P.C. to set aside the Judgment and Decree made in A.S.No. 137/1997 dated 25.06.1998 on the file of the Court of Principal Subordinate Judge, Myladuthurai in confirming the Judgment and Decree made in O.S.No.271/1989 on the file of the Court of Principal District Munsif, Mayiladuthurai dated 27.06.1997.

For Appellants : Mr.A.Muthukumar

For RR1, 2, & 4: Mr.S.Sounthar

J U D G M E N T

The appellants/plaintiffs, who lost the case before the courts below filed the second appeal before this court.

2. The sum and substance of the plaint averments are as follows:

Appellants/plaintiffs purchased the 'A' schedule property on 23.02.1986 from one Ramalingam. After the purchase of the said property, the plaintiffs are in absolute possession of the property. The 'B' schedule property is a part and parcel of the 'A' schedule property. In fact, the 'B' schedule property was used as a lane to reach the backyard of the 'A' schedule property. The property was purchased in the name of the second plaintiff, who is the wife of the first plaintiff. After his purchase, he is in possession and enjoyment of the 'B' schedule property situated on the eastern side of 'A' schedule property and the 'B' schedule property is used as a lane in order to reach the backyard of the 'A' schedule property. As per the sale deed, the plaintiffs' house measures about 10 feet in the East-West direction and 45 feet in the North-South direction. Similarly, the breadth of the defendants' property is 40 feet in East-West direction. The 'B' schedule property is situated between the plaintiffs' and the defendants' properties. Both are enjoying the 'B' schedule property. However, the 'B' schedule property extends to the length of 2 -1/2 feet and reaches 40 feet breadth of 'B' schedule property. The breadth of the lane measures about 4 feet on the northern side and 3 feet on the southern side and the total length of 'B' schedule property is 45 feet. Before filing the suit, the first defendant has developed enmity feelings towards the plaintiffs and he went to the extent of causing damages to the ventilators and sun shade. Thereafter, the first plaintiff cast legal notice on 23.05.1989 and on receipt of the legal notice, the defendants sent a reply with false and frivolous allegations. Thereafter, the plaintiffs had filed a suit in O.S.No.271/1989 on the file of Principal District Munsif, Mayiladuthurai for a declaration declaring that the first plaintiff is having the right to use the suit land which is situated on the eastern side of 'A' schedule property and described in the B schedule property and to have ingress and egress to his backyard and latrine through 'B' schedule property and consequently restrain the defendants, their men, agents and servants in any way from interfering with the peaceful possession and enjoyment of the property.

3.The sum and substance of the written statement is as follows:

The defendants denied the plaintiffs using the 'B' schedule property. In fact, the 'B' schedule property is situated in T.S.No.1641, on the eastern side of the plaintiffs' house. Infact, in the eastern side of the plaintiffs' house, there is no property available in favour of the plaintiffs. However, the one feet of plaintiffs' land is available in the eastern side to the extent of 8 feet. Except this property measurements of 1 feet breadth and 8 feet length, no other property is available in favour of the plaintiffs. The plaintiffs used that one feet land in order to drain his drainage water to the main channel

and the defendants denied the plaintiffs using the 'B' schedule property as a common property in a life time and they did not have any title to the 'B' schedule property.

4. After framing the issues, the lower court dismissed the suit, against which, the appellants filed the appeal before the lower appellate court. The lower appellate court has also dismissed the appeal confirming the dismissal order passed by the lower court. As against the concurrent findings, the plaintiffs filed the present second appeal before this court.

5. At the time of admission, this court has framed the following substantial questions of law as follows:

"When the surveyor-Commissioner found that the suit lane, B-schedule property situated only in S.No.1641 and admittedly the defendants are not owning any property in S.No.1641, whether the lower appellate court erred in holding that the plaintiffs are not entitled to use the suit lane for their ingress and egress to the backyard of their house?"

6. Learned counsel appearing for the appellants submitted that admittedly the suit schedule property is situated in T.S.No.1641 measuring about 10 feet in the East-West and 45 feet in the South West directions and adjacent to the 'A' schedule property, 'B' schedule property is situated in the eastern side of the house and the respondents have 40 feet in the east-west directions. The statement that the breadth of the lane measures about 4 feet on the northern side and 3 feet on the southern side is false. The plaintiffs used the 'B' schedule property as a common property in order to ingress and egress to the backyard of the 'A' schedule property. Before the lower court, the plaintiffs filed an application under Order XXVI Rule 1 seeking for appointment of an Advocate Commissioner. Accordingly, the lower court appointed the Commissioner and the Commissioner submitted the report in which also it is stated that 'A' schedule property is situated in SR.No.1641. Accordingly, plaintiffs are entitled for declaration with respect to 'B' schedule property which is used as the pathway in order to ingress and egress of the 'A' schedule property. However, the lower court as well as the lower appellate court had arrived at a conclusion that the plaintiffs did not establish the title over the 'B' schedule property. The decision of the lower court, in holding concurrently in favour of defendants and dismissing the suit, is not sustainable since the defendants owned the properties in SR.Nos.1640/1 and 1640/2 and the report filed by the Commissioner also stated that the 'B' schedule property is situated in S.R.No.1641 and the defendants have no title over the property. However, with regard to

S.R.No.1641, the plaintiffs are automatically entitled to a declaration declaring that the suit schedule property belongs to the plaintiffs and the plaintiffs are entitled to use the 'B' schedule property as a pathway in order to reach the backyard of the 'A' schedule property.

7. Learned counsel for the respondents/defendants would submit that in fact the defendants'/respondents' house is situated in the eastern side of the 'A' schedule property. The said house site is situated in SR.Nos.1640/1 and 1640/2. He further submitted that in fact, the defendants have produced the documents and the photo copy of the house is marked as Ex.B2. On perusal of Ex.B3--sale deed dated 26.02.1986, it is seen that the measurement and boundary has been clearly stated. Apart from the above, defendants marked the Field Measurement Book and the Engineer measures with regard to the suit schedule property and the prepared a blue print and the above said documents are marked as Exs.B4 to B6 and Town Surveyor measurement marked as Ex.B7. He further submitted that after perusal of the entire documents, the lower court concluded that the 'B' schedule property does not belong to the plaintiffs and it is a separate one. Accordingly, the lower court has arrived at a conclusion that the plaintiffs did not establish the title over 'B' schedule property and it is a part of the 'A' schedule property and it was not used as a pathway in order to reach the backyard of the 'A' schedule property. Accordingly, this court need not be interfered with the concurrent findings and he prays for dismissal of the second appeal.

8. The undisputed case of the plaintiffs as well as the defendants is that the first plaintiff purchased the 'A' schedule property in favour of the second plaintiff who is none but the wife of the first plaintiff. Though the sale deed purchased by the first plaintiff in favour of the second plaintiff is marked by the plaintiffs, some of the documents are marked by the defendants. On perusal of Ex.B3--sale deed dated 26.02.1986, it is seen that the first plaintiff purchased the property in the name of second plaintiff. The total extent purchased by the first plaintiff is 450 sq.ft and that 450 sq.ft falls under T.S.No.1641 and D.No.4. The extent of the said property is East-West = 10 feet and South-North = 45 feet and totally 450 sq.ft for the sale consideration. The boundaries are also clearly mentioned in the abovesaid schedule properties. Though in the plaintiffs evidence, the measurement of east-west is mentioned as 10 feet, it is stated in Ex.A3(sale deed dated 04.03.1980) that they have enjoyed the eastern side of 'B' schedule property. However, the plaintiffs claimed measurement in the 'B' schedule property as follows:

"The suit schedule property is situated in
T.S.No.1641 measuring about 10 feet to the East-West

and 45 feet to the South - West direction. Adjacent to the 'A' schedule property, 'B' schedule property is situated in the eastern side of the house. In breadth of the lane measures about 4 feet on the northern side and 3 feet on the southern side and the total length of 'B' schedule property is 45 feet.

9. Admittedly, the plaintiffs constructed the house in the suit schedule property wherein the Ex.B3 shows that the plaintiffs purchased only 450 sq.ft (to the extent of 10x45). Apart from these measurements, no other properties are available in Ex.B3. Though 'A' schedule property is situated in SR.No.1641, apart from the above measurements, no other measurements are shown in favour of the plaintiffs in order to prove that 'B' schedule property belongs to the plaintiffs.

10. In the absence of title with regard of 'B' schedule property, I do not find any error in the findings of the lower court as well as lower appellate court. Hence, the substantial questions of law are answered against the appellants.

In the result, the second appeal is dismissed and the Judgment and Decree made in A.S.No. 137/1997 dated 25.06.1998 on the file of the Court of Principal Subordinate Judge, Myladuthurai in confirming the Judgment and Decree made in O.S.No.271/1989 on the file of the Court of Principal District Munsif, Mayiladuthurai dated 27.06.1997, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.
gv

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Myladuthurai.

2. The Principal District Munsif,
Mayiladuthurai.

+1cc to Mr.A.Muthukumar, Advocate Sr.No.8929

+1cc to Mr.S.Sounthar, Advocate Sr.No.8900

S.A.No.1110 of 1999
and
CMP.No.10781/1999

GJ(CO)
sm:19.3.2018