

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.03.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.329 of 1999

Balamani

`... Appellant/Plaintiff

Vs.

1.Govindammal
2.Rathinaswami
3.Balasubramaniam
4.Vasanthamani
5.Sarojini
6.Manonmani

.... Respondents/Defendants2 to7

Prayer:

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree of the learned Subordinate Judge, Tiruppur dated 20.08.1997 in A.S.No.18 of 1994 reversing the judgment and decree of the learned District Munsif, Tiruppur dated 28.02.1994 in O.S.No.293/1985.

For Appellant : Mr.V.Raghavachari
For Respondents: No Appearance

J U D G M E N T

The plaintiff filed a suit in O.S.No.293 of 1985 seeking declaration declaring that the plaintiff is exclusively entitled to the wall ABCDE, namely, Eastern boundary wall of Door No.32, Third Street, NGR Nagar, Tirupur, for permanent injunction more particularly from meddling with or encroaching upon demolishing portion of AB and DE and for mandatory injunction to restore the portion of the BC wall to its original condition and to remove the superstructure including the wall window and sun shade erected in the portion CD. Since the first defendant died during the pendency of the suit, defendants 3 to 7 being his legal heirs were impleaded in the suit.

2.The suit was decreed by the lower Court. Aggrieved by the same, the defendants 2 to 7 filed appeal before the lower Appellate Court. The lower Appellate Court set aside the judgment and decree of the lower Court and allowed the appeal. Hence, the plaintiff who lost the case before the lower Appellate Court has filed this second appeal.

3.The appellant herein is the plaintiff and the respondents herein are the defendants 2 to 7 in the suit. For the sake of convenience, the parties will be hereinafter referred to as per their rank in the suit.

4.The sum and substance of the plaint averments are as follows: The suit relates to Eastern boundary wall of Door No.32, Third Street, NGR Nagar, Tirupur Town. The house property belonged to one Subbaraya Gounder. The suit property is the ancestral property and the said Subbaraya Gounder and his predecessors were enjoying the vacant site measuring 130 feet North South 30 feet East West namely 3900 sq.ft. Thereafter, Subbaraya Gounder constructed a residential house East West length of 30 feet. In other words, the Eastern and Western walls of the house are wall within the extent of the property owned by Subbaraya Gounder. The said Subbaraya Gounder was in possession and enjoyment of both the walls. The suit wall is referred as ABCDE. The plaintiff is in long, continuous and uninterrupted possession of the wall. Accordingly, he perfected his title thereto by adverse possession over the statutory period.

5.The plaintiff further aver that the said Subbaraya Gounder registered a settlement deed dated 20.08.1981 in favour of the plaintiff and the plaintiff by virtue of the settlement deed, became the owner of the property and enjoyed the property. In other words, the plaintiff and his predecessors in title by their exclusive possession of the Eastern side of the wall for over 50 years have become exclusively entitled to the suit wall. The defendants/ successors in interests of Door No.42 East of Door No.32 and more particularly ABCDE have no claim in the Eastern wall portion ABCDE or any portion thereon.

6.The plaintiff further aver that due to illness, the plaintiff shifted the residence to Bommanaickenpalayam and after returning home, they found that the defendants had demolished the portion of BC to the length of 15 feet North South and has erected superstructure close to the portion of B but to the East of BC and they had raised the wall CD by putting up construction of their own by installing a window and covering the same with sunshade. The said construction CD portion approximately is about 35 feet North South. Similarly they are also trying to demolish or meddle with the portion of the wall DE. When the said action was questioned by the plaintiff, the defendants threatened the plaintiff and hence, the plaintiff filed the suit for declaration declaring the suit wall ABCDE belongs to the plaintiff with consequential prayer.

7.The sum and substance of the written statement filed by the defendant are as follows: The defendants denied the averments contained in the plaint. According to the defendants,

the wall does not measure 130 feet North South and 2-1/2 feet East West as stated in the plaint and further denied that the entire house bearing Door No.32 and vacant site thereon measuring 130 feet North South and 30 feet East West namely 3,900 sq.ft. belongs to the plaintiff. The plaintiff has now chosen to claim the first defendant's Western boundary wall measuring 100 feet North South and 2 feet West East forming part of his buildings and sites thereon in Door No.42. The said Western boundary wall was there for more than 45 years. The same was constructed and enjoyed by the first defendant and his predecessors in title. The plaintiff has no right, title adverse or otherwise possession and enjoyment of the said Western boundary wall as alleged in the plaint.

8.The defendants further aver that the alleged settlement deed dated 20.08.1981 executed by Subbaraya Gounder in favour of the plaintiff is false and fabricated because there is no site or building measuring 130 feet North South inbetween two road 30 feet East West. The wall referred in the plaint schedule is within the Western boundary limit house and site of Door No.42 purchased by the first defendant measuring 100 feet North South and between the road and 48 feet East West and further the defendant deny that the plaintiff has been repairing and white washing the wall ABCDE and has been in exclusive possession.

9.During trial, on the side of the plaintiff, the plaintiff examined herself as P.W.1 and two other persons who are the plaintiff's neighbours were examined as witnesses and exhibits Ex.A1 to Ex.A13 were marked. On the side of the defendants, the second defendant examined herself as D.W.1 and exhibits Ex.B1 to Ex.B13 were marked.

10.After elaborate discussions and after framing issues, the lower Court decreed the suit in favour of the plaintiff. Aggrieved by the same, the defendants 2 to 7 filed appeal before the lower Appellate Court and the lower Appellate Court allowed the appeal and set aside the decree passed by the lower Court. As against the findings of the lower Appellate Court, the present second appeal has been filed.

11.At the time of admission of the second appeal, this Court framed the following substantial questions of law:

"(i) Whether the appellant is not entitled to the property within the four boundaries described in Ex.A1 including the disputed eastern wall and whether the boundary recitals would not prevail over the measurements in the instant case?

(ii) Whether on the specific findings of the Appellate Court that a Commission ought to be issued in the instant case to resolve the dispute between the parties, the Appellate Court is right in dismissing the Appeal without issuing a Commission or remanding the matter to the Trial Court for the said purpose?"

12.The learned counsel appearing for the appellant would submit that the plaintiff's father namely, Subbaraya Gounder purchased the property by way of two sale deeds. The said sale deeds were marked as Ex.A5 and Ex.A6. After purchasing the property, he prescribed title over the property. Thereafter, the plaintiff's father executed a settlement deed in favour of the plaintiff. The said settlement deed is marked as Ex.A1. Ex.A1 clearly describes the boundaries as well as the measurement of the suit property which is 130 feet North South and 30 feet East West. Both the sale deeds and the settlement deed were marked before the lower Court and on perusal of the entire records, the lower Court decreed the suit. However, the lower Appellate Court had erroneously dismissed the suit and allowed the appeal filed by the defendants. The plaintiff and the other witnesses in their deposition have clearly deposed that the suit wall belong to the plaintiff and without appreciating the evidence and documents, the lower Appellate Court had erroneously reversed the findings of the lower Court which is un-sustainable one. Accordingly, he prayed for allowing the second appeal.

13.Though notice was sent to the respondents and their names were printed in the cause list, no one appeared on behalf of the respondents. Heard the arguments advanced by the learned counsel appearing for the appellant and perused the materials placed on record.

14.Perusal of entire records discloses that the plaintiff's father purchased the suit property under two sale deeds dated 19.12.1932 and 16.05.1932 and the same are marked as Ex.A5 and Ex.A6. Perusal of Ex.A5 discloses that the said Subbaraya Gounder/ plaintiff's father purchased the property from one Mariappa Gounder to the extent of 50 X 12 Muzhams (Hand Measurement) and purchased another property along with Mariappa Gounder from Lakshmiammal on 16.05.1932 and the same is marked as Ex.A6 to an extent of 50 X 12 Muzham. 1 Muzham is equal to 1-1/2 feet. Accordingly, the plaintiff's father purchased the property to an extent of 50 X 24 Muzham. The said calculation is 75 feet X 36 feet. However, the second property was purchased by the plaintiff's father along with Mariappa Gounder who is none other than the husband of the second defendant. By

deducting 1/3, the plaintiff is entitled to 2/3 i.e., 50 feet X 27 feet. However, the plaintiff's father executed settlement deed in favour of the plaintiff as 130 feet X 30 feet which is contrary to Ex.A5 and Ex.A6. Hence, the said settlement deed/ Ex.A1 is contrary to the measurement of Ex.A5 and Ex.A6. On the sole ground, the lower Appellate Court reversed the findings of the lower Court and dismissed the suit. The plaintiff's father has settled in favour of the plaintiff what is not available in the original sale deed.

15.In view of the above, even the documents filed by the plaintiff is not able to establish as to how the plaintiff has owned 130 feet X 30 feet when actually the available extent of land is only 2,650 sq.ft. As against the available extent of 2,650 sq.ft, 3900 sq.ft., has been settled in favour of the plaintiff and it is erroneous one. In view of the above, I do not find any error in the findings of the lower Appellate Court. Accordingly, the substantial questions of law are answered against the appellant and the second appeal is dismissed.

16.In the result, the second appeal is dismissed. The judgment and decree of the learned Subordinate Judge, Tiruppur, dated 20.08.1997 in A.S.No.18 of 1994, is confirmed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Tiruppur.

2.The District Munsif, Tiruppur.

copy to

The Section Officer

VR Section

High Court Madras

+1 cc to Mr.V.Raghavachari Advocate sr 22617

S.A.No.329 of 1999

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aa12/04/2018