

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.12.2018

Coram

The Honourable Ms.Justice P.T.ASHA

S.A.No.444 of 2018

and

C.M.P.Nos.12134 & 12135 of 2018

Veerasamy

...Appellant/Plaintiff

Versus

Baskar

...Respondent/Defendant

This Second Appeal is filed under Section 100 of C.P.C praying to set aside the judgment and decree of the learned Subordinate Judge, Cuddalore dated 04.03.2017 rendered in A.S.No.70 of 2016 in confirming the judgment and decree of the learned Principal District Munsif, Cuddalore dated 01.06.2016 rendered in O.S.No.274 of 2011, by allowing this Second Appeal and to grant such further or other reliefs as may deem fit and proper in the circumstances of the case.

For Appellant : Ms.G.Sumitra

J U D G M E N T

The above Second Appeal is filed challenging the judgment and decree passed by the learned Subordinate Judge, Cuddalore in A.S.No.70 of 2016 dated 04.03.2017, in and by which the learned Judge had confirmed the judgment and decree passed by the learned Principal District Munsif, Cuddalore in O.S.No.274 of 2011 dated 01.06.2016.

2. The unsuccessful plaintiff in both the Courts below is the appellant before this Court. The parties are referred to in the same array as in the suit. The suit O.S.No.274 of 2011 is filed by the plaintiff for a declaration of his title to the suit property and for a consequential injunction. The suit property has been described as an extent of 4 cents comprised in Old Survey No.597/14 presently in S.No.206/11B in Kullanchavvadi Sub Reg. in Kundiamallur Village, Kurinjipadi Taluk, Cuddalore Registration District. It is his case that his vendor Jayaraman Naidu had purchased the suit property under a Sale Deed dated 10.11.1995 and had been in possession and enjoyment of the same

since his purchase. After the death of Jayaraman Naidu, his legal representatives were enjoying the property and by registered sale deed dated 12.04.2011, they had sold the same to the plaintiff, who has been in possession and enjoyment of the same since then. The defendant who is the owner of the property situated to the west of the suit property attempted to take a water pipeline through the suit property which was thwarted by the plaintiff. The defendant however gave out that he would lay the pipeline in the plaintiff's property. Therefore, left with no other alternative, the suit was instituted by the appellant.

3. The defense to the above suit was that the plaintiff was only in enjoyment of an extent of 3 cents. The defendant had purchased the properties under 3 sale deeds dated 27.11.2006, 04.04.2001, and 19.08.2009 and these properties were situated in the West and South adjacent to the plaintiff's property. It is the defendant's case that the common pathway runs East-West measures 8 feet. This pathway has been used as a common pathway to reach the respective pathway and the respective property as there is no other pathway to reach the respective properties. The defendant would therefore contend that there cannot be a declaration with reference to the property as described to the suit schedule since vide sale deed dated 12.04.2011.

4. On a consideration of the oral and documentary evidence, the learned Principal District Munsif, Cuddalore came to the conclusion that the plaintiff was only entitled to 3 cents and the sale deed under which the plaintiff had purchased the property was shown as vacant site which however no longer a vacant site as the superstructure has been put up in the suit property. The trial Court had held that the plaintiff was not able to establish his right and title to the excess 1 cent of land and being the plaintiff he had to prove his case. The unsuccessful plaintiff had challenged the said judgment and decree before the Principal Sub Judge, Cuddalore in A.S.No.70 of 2016 and the learned Sub Judge had also confirmed the judgment and decree of the trial Court. Aggrieved by this concurrent judgment and decree, the plaintiff is before this Court.

5. Ms.G.Sumithra, learned counsel appearing for the appellant would argue that the defendant has come forward with a case that the pathway is an easement of necessity since he had no other access to the property. However, if the sale deed of the defendant is perused it would show a direct access to the North-South road and therefore, the Courts below ought to have decreed the suit of the plaintiff as prayed for. She would further contend that the Appellate Court had proceeded to entertain doubts with reference to Ex.A2, Registered sale deed under which the plaintiffs had purchased the property and this would create great prejudice to him.

6. A perusal of the judgment and decree of the Courts below would clearly show that the plaintiff has come forward with a specific case that he is in enjoyment of the property which is the subject matter of the sale deed dated 12.04.2011 and the same has been marked as Ex.A.2 before the trial Court. The reading of the judgments of the Courts below would indicate that under Ex.A.2 only an extent of 3 cents was allotted to the plaintiff and there is no other independent evidence to show that the plaintiff was in enjoyment of a extra one cent. Further, the argument of the appellant's counsel that the defendant has not proved his case will not in any manner come to his rescue since the plaintiff has to succeed on the strength of his case and not on the weakness of the defense. The plaintiff had not made out any substantial question of law warranting the interference of this Court.

7. In the result, this Second Appeal is dismissed and the judgment and decree of the Courts below is confirmed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

To

1.The Subordinate Judge,
Cuddalore.

2.The Principal District Munsif,
Cuddalore.

+1 CC to M/s.G.Sumitra, Advocate sr 88773.

S.A.No.444 of 2018

RSI (CO)
SP(21/03/2019)

WEB COPY