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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2018

PRONOUNCED ON : 10.10.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.24 of 2015

and

M.P.No.1 of 2015

1. Duraisamy

2. Nagesh

3. Gemini @ Ganeshan

...Appellants / Defendants

Vs.

S.Saravanakumar

...Respondant / Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 27.10.2014 passed in A.S.No.56 of 2013 on the file of Principal Subordinate Judge, Salem, reversing the judgment and decree dated 27.03.2013 passed in O.S. No.859 of 2011 before the Principal District Munsif Court, Salem.

For Appellants

: Mr.R.Nalliyayappan

For Respondent

: Mr.T.S.Vijayaraghavan

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 27.10.2014 passed in A.S.No.56 of 2013 on the file of Principal Subordinate Court, Salem, reversing the judgment and decree dated 27.03.2013 passed in O.S. No.859 of 2011 on the file of the Principal District Munsif Court, Salem.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for rectification and Permanent injunction.

4. The case of the plaintiff, in brief, is that his father and mother purchased the property from the defendants of an extent of 0.09 cents of land equivalent to 3924 sq. ft. within the specific boundaries, namely, east of Harur main road, south of



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Pappammal land, west and north of the land of the vendors by way of the registered sale deed dated 23.04.1986 registered as document No. 610/1986 on the file of the office of the Sub Registrar Office, Ayyothiyapattinam and has been enjoying the same as the absolute owners of the property and the said property has been described in the plaint A shedule. However, the survey number in the abovesaid sale deed has been wrongly noted as S.F.No.94/1 instead of S.F.No.95/1, however, the boundaries abovestated tally only with the property lying in S.F.No.95/1 and the mistake had crept in by inadvertence in the abovesaid sale deed. Later, the mistake was found by the plaintiff's father at the time of executing the settlement deed in favour of the plaintiff and accordingly, the plaintiff's parents executed a settlement deed dated 13.10.2009 in favour of the plaintiff in respect of the correct survey number 95/1 and after the settlement deed, the plaintiff applied for patta and the same was also changed in his name by the Tahsildhar concerned and since then, it is only the plaintiff, who has been in the possession and enjoyment of the suit property and accordingly as the original title deed bears the wrong survey number, the same requires to be rectified and accordingly, the plaintiff and his father had moved the defendants for the execution of the rectification deed and it is stated that the defendants do not own any property in survey number 94/1, but, with a view to extract money from the plaintiff and his father, the defendants refused to execute the rectification deed on one pretext or the other and on the other hand, they moved the police machinery as if the plaintiff and his father are attempting to grab the land belonging to them and the property to be described correctly in the sale deed dated 23.04.1986 has been detailed in the plaint B schedule and furthermore as the defendants had attempted to interfere with the plaintiff's possession and enjoyment, according to the plaintiff, he left with no other alternative, has been necessitated but to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that, the suit laid by the plaintiff is not maintainable either in law or on facts . It is true that the plaint schedule property is situated within the boundaries given in the plaint and in any event the sale deed dated 23.04.1986 had been executed 26 years ago and as the plaintiff has admitted that he and his parents have been in the possession and enjoyment of the suit property for several years, in such view of the matter, the plaintiff is not entitled to seek the relief of rectification of the sale deed and it is false to state that survey number has been wrongly mentioned as 94/1 instead of 95/1 and it is false to state that the boundaries tally only for the property in survey number 95/1 and it is false to state that the mistake has crept



in by inadvertence in the sale deed abovestated, it is false to state that the mistake had come to the knowledge of the plaintiff and his father only at the time of executing the settlement deed and when the plaintiff's parents had executed the settlement deed in favour of the plaintiff giving the correct survey number 95/1, the plaintiff has no locus standi to lay the suit for the reliefs sought for and furthermore, the plaintiff's parents are not entitled to change the survey number in the settlement deed without the competent authority changing the same and the plaintiff should have impleaded the competent person as a party to the suit for seeking the relief of rectification prayed for and on that score, the suit is bad in non joinder of necessary parties. The plaintiff's parents have no authority to change the survey number in the settlement deed dated 13.10.2009 and it is false to state that following the settlement deed dated 13.10.2009, the patta had been changed in the name of the plaintiff in respect of survey number 95/1 and the plaintiff has laid the suit on imaginary grounds without any cause of action and the plaintiff's remedy is only to approach the competent authority to seek the rectification of the settlement deed and hence the suit is liable to be dismissed.

6. In support of the Plaintiff's case, Pws.1 and 2 were examined and Exs.A1 to A4 were marked. On the side of the defendants Dws1 and 2 were examined and EXs.B1 to B3 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the plaintiff's suit and on appeal, the first appellate court, on an appreciation of the materials placed on record and the submissions made, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the plaintiff, decreed the suit in favour of the plaintiff. Impugning the same, the second appeal has been laid by the defendants.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

1)Whether the suit is barred by limitation?

2)Whether the first appellate court was right in dismissing the suit though, some of the legal representatives of the deceased Thayammal have not been arrayed as parties to the suit?



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3) When it is the case of the plaintiff that Thayammal had no property in S.No.94/1, whether the first appellate court was right in holding that what was sold under Ex.A1 is not the property comprised in S.No.94/1 but it is the property comprised in S.No.95/1?

4) Whether the first appellate court was right in holding that the four boundaries will prevail upon the survey number when there is some discrepancy in the survey number?".

9. The plaintiff has laid the suit seeking the rectification of the sale deed dated 23.04.1986 in so far as the survey number mentioned in the said document as 95/1 instead of 94/1. The materials placed on record go to show that the defendants and their mother had executed the sale deed dated 23.04.1986 in favour of the plaintiff's parents in respect of the property measuring an extent of 0.09 cents equivalent to 3924 sq. ft. in S.F.No.94/1 and the certified copy of the abovesaid sale deed has been marked as Ex.A1. The execution of EX.A1 sale deed in favour of the plaintiff's parents by the defendants and their mother is not disputed. Furthermore, as rightly determined by the first appellate court, the defendants have clearly admitted in their written statement that the plaintiff schedule property, namely, the property comprised in Ex.A1 sale deed is within the boundaries as described therein. On a perusal of Ex.A1 sale deed as well as the recitals contained in the plaintiff, particularly, the plaintiff A schedule property, it is seen that the property comprised in Ex.A1 sale deed measuring an extent of 0.09 cents equivalent to 3924 sq. ft. is located to the east of Harur main road, south of Pappammal land and west and north of the remaining land of the vendors. Thus, it is found that even as per the admission of the defendants in the written statement, the boundary recitals contained in Ex.A1 sale deed are correct and the extent of the property conveyed under Ex.A1 sale deed is also not disputed. It is thus seen that accordingly the plaintiff's parents had been in the possession and enjoyment of the abovesaid property pursuant to EX.A1 sale deed without any interference whatsoever. Later it is found that the plaintiff's parents had chosen to settle the abovesaid property acquired by them by way of EX.A1 sale deed in favour of the plaintiff by way of a settlement and accordingly the settlement deed dated 13.10.2009 had come to be executed by them in favour of the plaintiff and the said document has come to be marked as Ex.A2. Now according to the plaintiff, only at the time of the execution of Ex.A2 settlement deed, it had come to their knowledge that the original sale deed dated 23.04.1986 marked as Ex.A1 contain the wrong survey number as 94/1 instead of the



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correct survey number 95/1, and according to the plaintiff, as their vendors have no land in survey number 94/1 and they had intended to convey only the land covered in survey number 95/1 and accordingly putting forth the case that in as much as he and his parents had been all along in the possession of the property and as described in Ex.A1 sale deed, which is actually located in S.F.No.95/1 and not in S.F.94/1 and accordingly it is pleaded that following Ex.A2 settlement deed, they had moved the Tahsildhar for the issuance of patta in favour of the plaintiff in respect of the property comprised in S.F. No.95/1 and accordingly the Tahsildhar had passed the necessary orders in favour of the plaintiff and issued the patta, which documents have come to marked as Exs.A3 and A4. It is also found that in Ex.A2 settlement deed, the parties thereto, had also mentioned that the property dealt thereunder is only comprised in S.F.No.95/1 and not 94/1 bringing home the wrong description of the survey number in the sale deed dated 23.04.1986. Following the same, according to the plaintiff, in as much as the original settlement deed has to be rectified with the correct number, according to his case, though they had requested the defendants to rectify the instrument by necessary document and inasmuch as the defendants refused to accede to their request, according to the plaintiff he has been necessitated to lay the suit for appropriate reliefs.

10. As rightly found by the first appellate court and also as could be seen from the materials placed on record, it is found that the plaintiff and his parents had been in the possession and enjoyment of the property described in Ex.A1 sale deed right from the date of the execution of Ex.A1 sale deed. As above noted, even the defendants have not disputed the boundaries recitals contained in Ex.A1 sale deed. Furthermore, there is no material placed by the defendants to evidence that they own any land, particularly, the extent of 0.09 cents land in survey No.94/1 within the abovestated boundaries as described in Ex.A1 sale deed and in such view of the matter, as rightly determined by the first appellate court, furthermore, when the evidence had been adduced by the defendants that they do not own lands in S.F.No.94/1, accordingly, it is found that the parties had, by inadvertence and mutual mistake described the survey number wrongly as 94/1 instead of 95/1 and accordingly, it is found that the plaintiff and his parents on coming to know about the same at the time of Ex.A2 settlement deed, had chosen to incorporate the correct survey number in the settlement deed Ex.A2 and not stopping there, also moved the revenue authorities with reference to the issuance of necessary orders in their favour with reference to the correct survey number, accordingly, it is also noted that the revenue authorities had directed the rectification i.e., issuance of patta in favour of the plaintiff



with reference to the correct survey number 95/1 and those documents are exhibited as Exs.A3 and A4. When it has been clearly admitted by the defendants that the property conveyed by them along with their mother to the plaintiff's parents, had been only in the possession and enjoyment of the plaintiff's parents and thereafter in the possession and the enjoyment of the plaintiff following Ex.A2 settlement deed and when there is no material placed on record by the defendants evidencing that they had owned land in survey number 94/1 and the said land has been in their possession and enjoyment, accordingly, it is seen that the parties associated with Ex.A1 sale deed had only intended to convey the property comprised in S.F.No.95/1, however, had, erroneously given the survey number as S.F.94/1 in the said instrument. In such view of the matter, as rightly determined by the first appellate court, when as could be seen from the evidence adduced by the parties in detail, as discussed by the first appellate court, when the boundary recitals found in Ex.A1 sale deed are admittedly correct boundaries and within the said boundaries only the property comprised in survey number 95/1 is located, accordingly, it is seen that the plaintiff is entitled to seek the rectification of instrument Ex.A1 sale deed from the defendants as provided under law.

11. The only contention raised by the defendants is that the document Ex.A1 sale deed having been executed on 24.03.1986, the plaintiff is not entitled to seek the rectification of the said instrument nearly 26 years after the same and hence the suit laid by the plaintiff is barred by limitation. On the other hand, according to the plaintiff, the mistake, which had crept in Ex.A1 sale deed with reference to the survey number had come to their knowledge i.e., knowledge of his parents and the plaintiff only at the time of the execution of the settlement deed Ex.A2 on 13.10.2009, accordingly it is stated that within 3 years from the date of knowledge, the plaintiff having laid the suit, the suit is not barred by time. In this connection, when the plaintiff has also tendered evidence that only on coming to know of the mistake as regards the survey number in the sale deed at the time of Ex.A2 settlement deed, it is seen that the suit having been laid within the period of 3 years from the date of knowledge of the mistake on the part of the plaintiff and his parents and when the identity of the property and the lie of the property is not disputed as such, as above discussed, it is seen that the suit laid by the plaintiff cannot be held to be hit by the law of limitation, therefore, the first appellate court is justified in holding that the suit laid by the plaintiff is well within the time allowed by law.



12. The contention has been put forth by the defendants' counsel that the plaintiff without seeking the relief of declaration is not entitled to obtain the relief of rectification as regards Ex.A1 sale deed. In other words, according to the defendants' counsel, the plaintiff should have come forward with the suit that he is the owner of the property comprised in Ex.A1 sale deed as lying in S.F.No.95/1 and the plaintiff having not sought for the relief of declaration, according to him, the relief of rectification cannot be granted in favour of the plaintiff and accordingly prayed for the dismissal of the plaintiff's suit. However, as rightly determined by the first appellate court, considering the provisions contained in Section 26 of the Specific Relief Act, particularly, when the plaintiff would be entitled to seek the relief of rectification dehors claiming the relief of declaration and also in the light of the decision of this court reported in 1996 2 L.W 243 (S.Marimuthu v. G.Kumaraswamy and others), when it is found that when the identity or the lie of the property is not an issue between the parties as such and accordingly the plaintiff being entitled to seek the relief of rectification from the defendants as per law and when as per Section 26 of the Specific Relief Act coupled with Sections 95 to 97 of the Indian Evidence Act, when it is seen that the party could seek the relief of rectification even without seeking the relief of declaration or the party would also be entitled to seek the relief of declaration of the property in dispute without seeking the relief of rectification, in such view of the matter, it is seen that when the mistake had crept in the document concerned by inadvertence, accordingly, the defendants having also not raised any claim that they own the property in survey number 94/1 and also when they have admitted that the property in issue is only in the possession and enjoyment of the plaintiff and his parents right from Ex.A1 sale deed, in such view of the matter, as rightly determined by the first appellate court, it is found that the plaintiff is entitled to seek the relief of rectification even without the prayer of declaration and therefore the plaintiff's suit cannot be defeated on the failure of the plaintiff in seeking the relief of declaration with reference to the property in dispute. The abovesaid contention, therefore, raised by the defendants, is rejected.

13. The defendants have not raised any plea in the written statement in specific that the plaintiff's suit is bad for non joinder of the other legal heirs of their deceased mother. All that they would plead is that the plaintiff should have impleaded the competent authority as a party to the proceeding, who is empowered to rectify the instrument. However, when it is seen that the plaintiff is entitled to seek the rectification of Ex.A1 from the available executants, i.e., the defendants, in



such view of the matter, the contention raised that the competent authority should have been impleaded as a party to the proceeding, as such, cannot be accepted. Equally considering the nature of the property, being the ancestral property of the defendants, accordingly, it is seen that the failure of the plaintiff impleading the other legal heirs of the deceased mother Thayammal by itself, would not in any manner disentitle the plaintiff from getting the reliefs prayed for. Accordingly, it is seen that the specific defence has not been raised by the defendants that the suit is bad for the non joinder of the other legal heirs of their mother Thayammal.

14. In support of his contentions, the defendants' counsel placed reliance upon the decision reported in CDJ 2013 SC 189 (Joseph John Peter Sandy v. Veronica Thomas Rajkumar & another). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at the hand.

15. In the light of the above discussions, the plaintiff's suit is found to be not barred by limitation and the first appellate court is found to be justified in granting the reliefs prayed for by the plaintiff, even though the other legal representatives of the deceased Thayammal had not been arrayed as parties to the suit and when on the basis of the materials placed on record, the parties associated with Ex.A1 sale deed had intended to only convey the property comprised in survey number 95/1 and not in survey number 94/1 and the mistake had crept in the abovesaid instrument due to inadvertence and when the defendants have not put forward the claim that they own any property in survey number 94/1 and also not placed any material pointing to the same and accordingly it is seen that when the materials placed on record go to show that as per the boundaries recitals contained in Ex.A1 sale deed, the property conveyed thereunder only relate to the property lying in survey number 95/1 and not survey number 94/1, accordingly, it is seen that the first appellate court is justified in holding that the boundaries contained in Ex.A1 sale deed would prevail for determining the correct survey number of the property described thereunder. The substantial questions of law formulated in this second appeal are accordingly answered in favour of the plaintiff and against the defendants.

16. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.



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MEMORANDUM OF COSTS

Respondent () Costs

	Rs. P.
Stamp for Vakalatnama	10.00
Advocate's fee [F.C not received]	nil
Translation and Printing/Typing charges	nil

Total	=10.00

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

bga
To

1. Principal Subordinate Court, Salem
 2. Principal District Munsif Court, Salem
 3. The Section Officer,
V.R.Section, High Court, Madras.(2 copies)
- +1 cc to Mr.R.Nalliyappan, Advocate, S.R.No.70729
- +1 cc to Mr.T.S.Vijaya Raghavan, Advocate, S.R.No.69965

Judgment in
S.A.No.24 of 2015

CA(CO)
SSM(25/01/2019)