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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.08.2018
PRONOUNCED ON: 11.10.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.256 of 2015
and
M.P.Nos. 1 & 2 of 2015

1.O.Anthonamma

2.O.Abraham

... Appellants

Vs.

1.B.Mariyamma

2.O.Subash chandra Bose (Deceased)

[The appellants filed a memo stating
that they are giving up the second
respondent who died without leaving
any LR's vide order of the Court dated
11.11.2016 made in memo dated
11.11.2016 in S.A.No.256 of 2015]

... Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 04.07.2014 made in A.S.No.81 of 2003, on the file of the VII Additional (I/C VI Additional) City Civil Court, Chennai, reversing the decree and judgment dated 23.10.2002 made in O.S.No.2718 of 1992, on the file of V Assistant City Civil Court, Chennai (the 1st Respondent had already preferred an appeal against the decree and judgment dated 20.07.2004 made in A.S.No.81 of 2003 in S.A.No.84 of 2006 before this Court, which was remanded back to the VI Additional City Civil Court, Chennai as per order dated 08.02.2013 and reversed the Ist Appellate decree and judgment and against which the present appeal).



For Appellants : Mr.S.Silambanan, SC
for M/s.R.Thanjan

For Respondents : Mr.R.Vasudevan

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J U D G M E N T

In this Second Appeal, challenge is made to the judgment and decree dated 04.07.2014 passed in A.S.No.81 of 2003 on the file of the VI Additional Judge, City Civil Court, Chennai, reversing the judgment and decree dated 23.10.2002 passed in O.S.No.2718 of 1992 on the file of the V Assistant Judge, City Civil Court, Chennai.

The Second Appeal has been admitted on the following substantial questions of law.

a. Whether Kamalamma's children have any right to claim any extent beyond the scope of Ex.A1?

b. Whether the Commissioner's report will be a substitute for the difference between Ex.A1 and A5, especially, when both the documents are different, parties are different but the total flows only from Ex.A1?

c. Whether the Lower Court has jurisdiction to go beyond the scope of the pleadings and the evidence on record?

2. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

3. The suit has been laid by the plaintiff for the reliefs of declaration, recovery of possession and permanent injunction.

4. The case of the plaintiff in brief is that the suit property originally belong to O.Paul allotted by the Corporation of Chennai. After his death, his wife Ragamma had become the owner of the suit property and she had settled same in favour of her daughter Kamalamma, by way of a settlement deed dated 05.02.1975 and after the demise of Kamalamma, thereafter the sons of Kamalamma had sold the suit property in favour of the plaintiff on 28.03.1985 and according to the plaintiff, the defendants without any authority, encroached into the 'B' schedule property described in the plaint forming part of the plaint schedule property, accordingly, it is stated that seeking appropriate reliefs against the defendants, the suit has come to be laid by the plaintiff.



5. The defence taken by the defendants 1 and 2 is that there is no cause of action for the suit and that the plaintiff has no title to the suit property and according to the defendants, after denying the plaint allegations stated that O.Paul married Muthialamma and O.A.Paul was born to them and the first defendant is the legally wedded wife of O.A.Paul and the second defendant is born to O.A.Paul and the first defendant and accordingly, it is stated that the defendants 1 and 2 are in the possession of the property belonging to them and not in the plaint schedule property as put forth by the plaintiff and therefore the case of the plaintiff that the defendants 1 and 2 have trespassed into the plaint schedule property is false. The defendants on their own had put up the superstructure in the property belonging to them and residing therein in their own right and the plaintiff is not entitled to claim any right in the property owned and possessed by the defendants and hence according to the defendants, the suit laid by the plaintiff is devoid of merits and liable to be dismissed.

6. The plaint schedule property is stated to be the superstructures with lease hold rights bearing old door No.109, New door No.12, Old Slaughter House Road also known as Kapila Gananathar Koil street, Royapuram, Chennai 13 consisting of 3 huts, with specific measurements, in all, the three huts measuring 495 sq.ft and lying in a total area of land measuring 1101 sq.ft comprised in R.S.No.10 of Tondiarpet village bounded on the north by Andrew's house, east by lane and hut of Palayan, south by compound wall of Corporation park, West by the house of Guddiopathi Thiruppaly within the registration district of north Chennai. The abovesaid plaint schedule property is claimed to have been purchased by the plaintiff by way of the sale deed dated 28.03.1985 marked as Ex.A5 from the legal heirs of Kamalamma. Now, according to the plaintiff's case, Kamalamma had acquired the suit property by way of a settlement deed dated 05.02.1975 said to have been executed by her mother Rengamma and the abovesaid settlement deed has been marked as Ex.A1. It is stated that the property comprised in Ex.A1 had been originally allotted to one Paul, the husband of Rengamma. On a perusal of the settlement deed by Ex.A1, it is found that by way of the abovesaid document, the property consisting the superstructure bearing door No.109 in R.S.No.10 of Tondiarpet village, Royapuram, Anjanaya Nagar, Kapila Gananathar Koil street, bounded on the north by Andaal's House, south by Palayan's hut, east by Ramiah's hut and west by Singapazha Ponnamma's hut and within the said boundaries, the extent measuring 40 ft and 20 ft in all totally measuring 800 sq.ft had been settled. Therefore, as rightly determined by the trial court, when under the original title deed, Ex.A1 put forth by the plaintiff, his vendors' mother had been settled only an extent of 800 sq.ft,



within the specific boundaries consisting of superstructure bearing door No.109 in R.S.No.10 of Tondiarpet village, it does not stand to reason as to how thereafter the legal heirs of Kamalamma would be entitled to convey the suit property in favour of the plaintiff, by way of Ex.A5 sale deed of an extent of 1101 sq.ft in the abovesaid survey number within the specific boundaries. Merely because, the door number is found to be common in both Exs.A1 and A5, it cannot be construed that the property comprised in Exs.A1 and A5 are one and the same. It is not the case of the plaintiff that their vendors had acquired more property in R.S.No.10 of Thandaiyarpur village apart from the property acquired under Ex.A1 settlement deed and in such view of the matter, when under Ex.A1, the parent title deed, the property is found to be measuring only 800 sq.ft, it does not stand to reason as to how the property of an extent of 1101 sq.ft could have been conveyed by way of Ex.A5 sale deed.

7. The case of the defendants is specific that the property in their possession and enjoyment does not pertain to the property of the plaintiff and that they are in possession and enjoyment of their property in their own right. No doubt, the defendants have failed to establish their claim of entitlement to their property by placing acceptable and reliable documents. Be that as it may, when the plaintiff has come forward with the suit seeking specific reliefs, particularly, claiming title to the suit property as described in the plaint and when the plaintiff's original/parent title deed Ex.A1 goes to show that only an extent of 800 sq.ft in R.S.No.10 had been acquired or settled, the case of the plaintiff that an extent of 1101 sq.ft had been conveyed to him by way of Ex.A5, based on Ex.A1, as such, cannot be accepted readily.

8. The first appellate court seems to have accepted the plaintiff's case mainly based upon the Commissioner's report and plan marked as Exs.C1 and C2. On a perusal of the Commissioner's report and plan, it is found that the Commissioner had inspected the property with the help of an Engineer and it is seen that the endeavor of the Commissioner is to measure the property based on Ex.A5 sale deed. Thus, it is found and made clear that the Commissioner had not endeavored to measure the property with the help of the Engineer, who had assisted him with reference to the property based on the original title deed marked as Ex.A1. When under Ex.A1, the property comprised therein is found to be measuring only 800 sq.ft bounded within the specific boundaries and when as per Ex.A5, the property comprised therein is found to be of an extent of 1101 sq.ft bounded within the specific boundaries and the boundaries described in Exs.A1 and A5 do not tally as well as the extent in both the documents totally differs and when there is no material placed by the plaintiff that his vendors



had acquired more extent of property in R.S.No.10 other than the property comprised in Ex.A1 settlement deed, merely because, at the time of the inspection of the property by the Advocate Commissioner and the measurement of the same within the boundaries noted by the Advocate Commissioner, the old door No.109 and New door No.12 is also located, that by itself would not lead to the conclusion that the plaintiff's vendors had a valid title to the suit property and entitled to convey the same under Ex.A5 to the plaintiff. No doubt, within the property measured by the Advocate Commissioner, the property in the occupation of the defendants is also found to be located. But, as abovestated, it is the specific case of the defendants that the property in their possession and enjoyment, does not pertain to the property covered under Ex.A1 settlement deed. When under Ex.A1 settlement deed, only 800 sq.ft alone is conveyed or settled and on the other hand, when the sale deed Ex.A5 is found to be comprised of a larger extent and when there is no material placed by the plaintiff to evidence that as to how the vendors had acquired the larger extent of the property in the suit survey number i.e., R.S.No.10 and when it is seen that the Advocate Commissioner had not endeavored to measure the property with reference to the boundaries described in Ex.A1 and on the other hand, endeavored to measure the property only as per the boundaries described in Ex.A5, in such view of the difference in the extent of land in the abovesaid documents namely Ex.A1 and A5, as rightly put forth by the defendants' counsel, the concept that the boundaries would prevail when there is dispute regarding the extent, as such cannot be applied and in such view of the matter, it is found that the first appellate court is found to have totally erred in upholding the plaintiff's case based on the Commissioner's report and plan.

9. The defendants have put forth their objections to the Commissioner's report and it is found that the first appellate court has not taken into consideration, the objections preferred by the defendants to the Commissioner's report. That apart, on a reading of the judgment and decree of the first appellate court, it is found that the first appellate court has blindly accepted the Commissioner's report and plan on the footing that inasmuch as the old door No.109 and new door No.12, Old Slaughter House/ Kapila Gananathar Koil street, is located within the property measured by him and the defendants' house is also located within the said property, accordingly, it is found, had chosen to determine that the property in the possession and enjoyment of the defendants would only be forming part and parcel of the property belonging to the plaintiff purchased under Ex.A5. When the entitlement of the plaintiff to the plaint schedule property as described in the plaint is in dispute and when with reference to the same, there is no material forthcoming on the part of the plaintiff as to how his



vendors had acquired title to the same, in my considered opinion, the plaintiff cannot be allowed to fill up the lacunae, with reference to the same on the strength of the Commissioner's report and plan. The Commissioner's report and plan would not be a substitute for enabling the plaintiff to claim title to a more extent of land than what he would be entitled to under the original deed Ex.A1.

10. In the light of the above discussions, when it is found that not only the extent, but also the boundaries comprised in Exs.A1 and A5 totally differ and the difference in the extent is not a meager extent, but to a wide margin of 301 sq.ft and when the plaintiff has failed to establish his vendors' title to the disputed extent of 301 sq.ft in R.S.No.10, as rightly put forth, the Commissioner's report and plan cannot be considered as the title deed for deriving title to the disputed extent of 301 sq.ft and further when it is noted that the Commissioner's report had not endeavored to measure the property in dispute with reference to the description of the property comprised in Ex.A1 title deed and on the other hand, endeavor to measure the property only on the strength of Ex.A5 sale deed, which document is in dispute and when the validity of Ex.A5 sale deed has not been established by the plaintiff and in particular, that his vendors had title to the extent of 1101 sq.ft as described in the plaint within the specific boundaries and when according to the defendants, the property in their possession and enjoyment, does not pertain to the property comprised in Ex.A1, in such view of the matter, it is seen that the first appellate court has totally erred in upholding the plaintiff's suit and granting the reliefs prayed for by the plaintiff.

11.As rightly argued by the defendants' counsel, the proposition that normally the boundaries will prevail over extent could not be blindly applied in all the cases and the same would depend on the facts and circumstances of each case and in such view of the matter, when the plaintiff has failed to establish that his vendors had the entitlement to alienate an extent of 1101 sq.ft in favour of the plaintiff by way of Ex.A5 and when as per the settlement deed Ex.A1, the vendors' mother had acquired to only on an extent of 800 sq.ft, it is seen that the vendors would be incompetent and not entitled to sell a larger extent than what they would be legally entitled to and in such view of the matter, the plaintiff cannot be allowed to seek title to the suit property by applying the proposition that boundaries will prevail over the extent and in this connection, it is found that the principles of law outlined in the decisions reported in 2011 (1) CTC 663 [A.Chandran and A.Palani Vs. Periyammal] would apply to the case at hand.



12.The plaintiff having failed to establish his vendors' right to claim any extent beyond the property in R.S.No.10 measuring an extent of 800 sq.ft as described in Ex.A1 and when the Commissioner's report and plan would not be a substitute or a document of title for filling the difference/gap between the extent found in Exs.A1 and A5, particularly, when the properties comprised in Exs.A1 and A5 seem to be totally different, both extentwise as well as boundarywise as well as the superstructure comprised therein, in such view of the matter, the first appellate court is not justified to grant the reliefs in favour of the plaintiff beyond their entitlement under the original title deed marked as Ex.A1, particularly, when the plaintiff has failed to establish that his vendors had a pucca title to alienate the plaint schedule property by way of Ex.A5 in his favour. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

13. In conclusion, the judgment and decree dated 04.07.2014 passed in A.S.No.81 of 2003 on the file of the VI Additional Judge, City Civil Court, Chennai, are set aside and the judgment and decree dated 23.10.2002 passed in O.S.No.2718 of 1992 on the file of the V Assistant Judge, City Civil Court, Chennai are restored. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The VI Additional Judge, City Civil Court, Chennai.

2.The V Assistant Judge, City Civil Court, Chennai.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.R.Thanjan, Advocate, S.R.No.70681

S.A.No.256 of 2015

RJI (CO)
GSP(26/11/2018)