

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.09.2018

PRONOUNCED ON : 26.09.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.266 of 2015

Vasu ... Appellant

Vs.

1.William Paul

2.K.N.Madeswaran ... Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 17.04.2014 passed in A.S.No.30 of 2011 on the file of the Sub-Court, Gobichettipalayam, confirming the Judgment and Decree dated 19.08.2011 passed in O.S.No.103 of 2008 on the file of the District Munsif Court, Gobichettipalayam.

For Appellant : Mr.M.Naraayanaswamy

For Respondents : Mr.V.P.K.Gowtham

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 17.04.2014 passed in A.S.No.30 of 2011 on the file of the Sub-Court, Gobichettipalayam, confirming the Judgment and Decree dated 19.08.2011 passed in O.S.No.103 of 2008 on the file of the District Munsif Court, Gobichettipalayam.

2.The suit has been laid by the plaintiff seeking the reliefs of declaration in respect of ABCD portion shown in the plaint plan and for permanent injunction restraining the defendants from interfering with his possession and enjoyment of the portion shown as ABCD in the plaint plan and for the recovery of possession of the portion shown as ABCD in the plaint plan.

3.Materials placed on record go to show that the plaintiff seeks his claim for the abovesaid reliefs based on the sale deeds dated 17.02.1999 and 11.03.2002 marked as Exs.A2 and A3.

4.The defendants had resisted the plaintiff's case on various contentions and contended that the plaintiff is not entitled to any portion of the property shown as ABCD in the plaint plan and according to the defendants, the abovesaid ABCD portion is in the possession and enjoyment of the defendants and it is found that pending suit, the third defendant had purchased the property by way of a sale deed dated 19.03.2018 from the second defendant and the third defendant has also made a counter claim in the written statement seeking for the demarcation of the boundary line between northern side of the plaintiff's property and the southern side of the property purchased by the third

defendant and also for the relief of permanent injunction restraining the plaintiff from interfering with his possession and enjoyment of the property purchased and belonging to him.

5. Based on the materials placed on record by the respective parties, the Courts below had dismissed the plaintiff's suit and decreed the counter claim of the third defendant. Aggrieved over the same, the present second appeal has been laid by the plaintiff.

6. As abovenoted, the plaintiff claims title to the property in dispute based on the sale deeds marked as Exs.A2 & A3 and in particular based on Ex.A3. As rightly determined by the Courts below, while conveying the property by way of Ex.A3, the vendor had retained the 3 feet vacant portion lying to the south of RCC building owned by him and in such view of the matter, when the vendor of the plaintiff had retained an extent of 3 feet width of land with him for his exclusive usage, the case of the plaintiff that the vendor or as the case may, the third defendant is not owning the ABCD portion as such cannot be accepted. It is found that the plaintiff has also admitted that the defendants are running the shop in their portion and they had also put up building north south 27 = feet including the vacant portion of 2 feet and the said 2 feet portion has been shown as ABCD in the plaint plan and further, according to the plaintiff, at the time of his purchase by way of Exs.A2 & A3, he had not measured the property and also not endeavoured to measure the property by way of a surveyor after the purchase. When according to the plaintiff, he has clearly admitted that he has based the suit only upon the sale deeds marked as Exs.A2 & A3, in particular Ex.A3 and when in Ex.A3, as abovenoted, his vendor had retained the 3 feet land on the southern side of the RCC construction and in such view of the matter, the contention of the plaintiff that despite the above position, he still retains the title, possession and enjoyment of the ABCD portion shown in the plaint plan as such cannot be countenanced. However, later, during the course of his evidence, the plaintiff would also depose that the boundary recitals found in Ex.A3 are not correctly depicted and also admitted that he had not made any attempt to rectify the boundary recitals contained in the sale deed marked as Ex.A3. Accordingly, as determined by the Courts below, when the plaintiff bases his claim upon Ex.A3 sale deed, in particular, when under Ex.A3 sale deed, the vendor had sold the property retaining the 3 feet vacant land on the northern side, the case of the plaintiff that he has acquired the ABCD portion also under Ex.A3 cannot be accepted in any manner.

7. Furthermore, the plaintiff has also admitted during the course of his evidence that the defendants had not interfered with his possession and enjoyment of the property purchased by him under Exs.A2 and A3. Thus, it is found that the only grievance of the plaintiff is, as regards the alleged 2 feet vacant land lying on the northern side. However, when the plaintiff himself had purchased the property showing the 2 feet vacant land or as the case may be, the 3 feet vacant land as lying to the north of the property acquired by him under Ex.A3 sale deed, the grievance of the plaintiff that the defendants, in particular, the third defendant had, after the suit, encroached into the abovesaid portion as such cannot be accepted. Accordingly, it is seen that the Courts below had rightly did not accept the plaintiff's case and dismissed the suit. Furthermore, when the property had been purchased by the third defendant pending the suit and the third defendant has also put forth the counter claim for demarcating the boundary between the plaintiff's property and his property acquired by way of the respective sale deeds of the parties and also prayed for the relief of permanent injunction in respect of the portion enjoyed by him and as per the materials projected by the parties, the plaintiff is not shown to have title to the disputed ABCD portion and only excluding the same, he had acquired the properties by way of Exs.A2 & A3, in my considered opinion, there is no reason at all warranting interference with the judgment and decree of the Courts below.

8. The counsel for the respondents/defendants placed reliance upon the decision of this Court (Madurai Bench) dated 14.07.2016 in S.A.(MD).No.375 of 2011 (Paramasivan Vs. Pandian). The principles of law outlined in the above said decision are taken into consideration and followed as

applicable to the case at hand.

In the light of the above discussions, I do not find any substantial question of law to be involved in the second appeal. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

26.09.2018

Index : Yes / No

Internet : Yes / No

sms

To

- 1.The Sub-Court, Gobichettipalayam.
- 2.The District Munsif Court, Gobichettipalayam.

T.RAVINDRAN, J.

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Pre-Delivery Judgment made
in S.A.No.266 of 2015

26.09.2018