

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.01.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1094 of 2002

V.Easwaramurthy

.. Appellant/Defendant

-Vs-

1. N.Gopalan

2. Vasanthakumari

.. Respondents/Plaintiffs

Prayer:

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 10.09.2001 made in A.S.No.6 of 2001 on the file of Sub Court, Bhavani, Erode District reversing the judgment and decree dated 29.11.2000 made in O.S.No.326/1997 on the file of II Additional District Munsif, Bhavani, Erode District.

For Appellant : Mr.V.S.Kesavan
For Respondents: M/s. Zeenath Begam

J U D G M E N T

The appellant/defendant, who lost the case before the lower appellate court filed the second appeal before this court as against the order reversing the judgment passed by the lower appellate court in A.S.No. 6 of 2001.

2. The sum and substance of the averments made in the plaint are as follows:

(i) The plaintiffs are the absolute owner of the property to the entire extent of 0.34 acre in old Survey No.313/A1 belonged to one Duraisamy Reddi. An extent of 0.50 acre in old Survey No.311/2, which is situated immediately to the North of the aforesaid Survey No.313/A1 in Ammapettai village belonged to one Marappagounder. The Marappagounder purchased the aforesaid 0.34 acre in Survey No.313/A1 from Duraisamy Reddi on 08.10.1957. On 20.04.1962, the said Marappagounder sold the entire extent of 0.34 acre in Survey No.313/A1 and 0.50 acre in Survey No.311/2 to one Thangayammal under a registered sale deed. Thereafter, the said Thangayammal sold the aforesaid properties to one Podarappagounder under a registered sale deed.

(ii) Thereafter, on 25.03.1991 the plaintiffs have purchased the aforesaid 0.84 acre from the son and grandson of the aforesaid Podarappagounder. The said properties have been described in the schedule mentioned in the plaint. Eversince, the purchase of the property the plaintiffs have been in peaceful possession and enjoyment of the suit properties as absolute owners.

(iii) During the resurvey proceedings, the old Survey No.313/A1 measuring 0.34 acre is sub-divided as R.S.No.292/6 measuring 0.10.0 hec.(0.25 acres) and R.S.No.292/8 measuring 0.03.4 hec. (0.09 acre) totally measuring 0.13.5 hectares(0.34 acre). R.S.No.292/6 is situated to the North of R.S.No.292/8. Old Survey No.311/2 is resurveyed as R.S.No.292/5 and the remaining 50 cents is situated in the northern portion of R.S.No.292/5. In total, the entire extent of 0.34 acre purchased by the plaintiffs are situated in R.S.No.292/5, R.S.No. 292/6 and in R.S.No.292/8. Immediately to the south of R.S.No.292/8, the Government acquired "Kannivaikkal" of Mettur canal in R.S.No.292/7 is situated. The said Kannivaikkal in R.S.No.292/7 is being maintained by the Government.

(iv) From the date of purchase of the suit schedule properties, the plaintiffs have been in peaceful possession and enjoyment of the suit schedule properties. However by mistake, the Survey No.292/8 was omitted to be mentioned in the sale deed dated 25.03.1991, which was executed in favour of the plaintiffs. In the sale deed, the entire extent of 0.84 acre which was owned by the vendors of the plaintiffs have been put. The boundaries are also correctly put by encircling the entire extent of 0.84 acres owned by them. The only mistake that has crept in is the omission of R.S.No.292/8, regarding the sale deed. Whereas, the sale price was fixed and paid for the entire suit properties and the possession is also with the plaintiffs.

(v) Whiles on 17.09.1992, the servants of the Public Works Department attempted to annex the suit properties along with the Kannivaikkal in R.S.No.292/7 and hence, the plaintiffs filed a suit in O.S.No.783/92 on the file of the II Additional District Munsif Court, Bhavani, for declaration of their title to the suit properties and for permanent injunction against the State Government and against the vendors of the plaintiffs. The vendors of the plaintiffs remained exparte recognizing the title of the plaintiffs. The Government also filed a written statement recognizing the title of the plaintiffs.

(vi) On 25.06.1997 the defendant attempted to trespass into the suit schedule properties by encroaching that he has purchased R.S.No.292/8 from the heirs of the Duraisamy Reddi, which was prevented by the plaintiffs with great hardships. However, in order to secure the properties and having no other

option except to file a suit, the plaintiffs filed the suit before the II Additional District Munsif Court Bhavani, for declaration of title to the suit properties and for permanent injunction, restraining the defendants from trespassing into the suit schedule mentioned property.

3. The defendant filed the written statement. The sum and substance of the averments made in the written statement are as follows:

(i) Originally all the properties belongs to one Duraisamy Reddi, the plaintiffs purchased the properties from the vendors, where as the defendant purchased the properties from the legal heirs of the Duraisamy Reddi dated 02.04.1997 and 03.04.1997. The Survey numbers are clearly mentioned in the above said sale deeds, particularly Survey No.292/8 was purchased by the defendant after proper sale consideration. Hence, interfering with the peaceful possession of the plaintiffs' property does not arise.

(ii) The learned counsel appearing for the appellant/defendant would submit that even on perusal of Ex.A.4, will disclose the case of the plaintiffs. The Survey numbers are clearly mentioned, where the respondents/plaintiffs have purchased the properties only in Survey No.292/5, 1.84.0 acres and 292/6, 0.10.0 acres. The lower court after perusing the entire records and the evidence, decreed the suit in respect of Survey Nos.292/5 and 292/6. However, rejected the suit for declaration in respect of Survey No.292/8 after perusal of the Ex.A.4 marked by the respondent/plaintiff.

4. The lower appellate court without perusing the exhibits, documents and discussing about the boundaries, which was not relevant to this case, reversed the well consider order passed by the lower court against which, the present second appeal is filed.

5. The learned counsel appearing for the respondents/plaintiffs would submit that it is true and admitted that the entire properties belong to one Duraisamy Reddi and the plaintiffs purchased the properties from the vendees of the Duraisamy Reddi. Whereas, the defendant purchased the properties from the legal heirs of the Duraisamy Reddi and both were marked in the respective documents. Learned counsel appearing for the respondents/plaintiffs fairly concede that the Survey number is not mentioned in the sale deed, which was marked as Ex.A4. However, at the time of registration, the said Survey number is mistakenly omitted and he is enjoying the property from the date of purchase of Ex.A4.

6. At the time of admission of the second appeal, this court has framed the following substantial questions of law:-

"1. Whether the lower appellate court erred in accepting Ex.A.4.

2. Whether the lower appellate court erred in
relying upon the Ex.A.5."

7. The substantial questions of law raised by the appellant is that whether the lower appellate court erred in relying upon Ex.A.5. On perusal of Ex.A.5, it relates to the suit filed by the plaintiffs as against the Government and the vendors of the plaintiffs in O.S.No.783 of 1992 for declaration and permanent injunction. However, the vendors were set exparte and the Government filed the written statement and thereafter, the Government was also set exparte. Accordingly, he obtained exparte order in respect of different Survey Numbers including the disputed Survey No.292/8.

8. The issue arises before this court is whether the exparte order is binding on the defendant or not. Admittedly, the defendant is not a party in the suit filed by the plaintiffs and the exparte order was obtained as against the vendors of the plaintiffs and the Government. Interestingly, the defendant and vendor is also not a party. Applying the exparte order, the lower appellate court granted reliefs in favour of the plaintiffs, wherein the same was rejected by the lower court.

9. Admittedly, the defendant is not a party in the above said suit. The exparte order passed by the concerned court will not be binding on the defendant. Even on perusal of Ex.A.4, the lower court had arrived a conclusion and granted decree in respect of Survey Nos.292/5, 292/6 and rejecting the Survey No.292/8. Wherein, the Survey No.292/8 property was purchased by the defendant from the legal heirs of the Duraisamy Reddi, who owned the entire extent of the property.

10. In view of the above, the substantial questions of law are answered in favour of the appellant/defendant. Accordingly, the second appeal is allowed by setting aside the order of the lower appellate court. The order of the lower court was restored and accordingly, the decree passed by the lower court is confirmed. No Costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

msvm

To

1.The Subordinate Judge,
Bhavani Erode District

2.The II Additional District Munsif, Bhavani.
Erode District

3.The Section Officer
VR section
High Court, Madras(+2 copies)

+1 cc to Mr.V.S.Kesavan Advocate sr 6151

+1 cc to Ms.Zeenath Begam Advocate sr 6385

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