

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.02.2018
PRONOUNCED ON : 22.02.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1653 of 2003

G.Balasundaram ... Appellant/Appellant/Defendant

Vs.

V.Govindarajan ... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Principal District Judge of Coimbatore dated 18.04.2002 in A.S.No.16 of 2002 confirming the judgment and decree of the Second Additional District Munsif of Coimbatore dated 15.06.2001 in O.S.No.1529 of 1995.

For Appellant : Mr.V.Nicholas

For Respondent : Mr.S.Kadarkarai

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 18.04.2002, passed in A.S.No.16 of 2002, on the file of the Principal District Court, Coimbatore, confirming the judgment and decree dated 15.06.2001, passed in O.S.No. 1529 of 1995, on the file of the Second Additional District Munsif Court, Coimbatore.

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

3. Suit for mandatory injunction.

4. The case of the plaintiff, in brief, is that the plaintiff has purchased site number 23 measuring 2400 square feet comprised in S.F. No.461 of the suit village by a registered sale deed dated 04.11.1991, from Arumuga Gounder and the same was handed over to him and the defendant has purchased site number 24 situated on the east of the site number 23 purchased by the plaintiff and the defendant while putting up construction in his property, taking advantage of the absence of the plaintiff, put up a temporary structure in the site

belonging to the plaintiff with asbestos roofing and the encroachment made by the defendant in the site belonging to the plaintiff is illegal and improper and therefore, the plaintiff issued a legal notice dated 20.06.1995, calling upon the defendant to remove the unauthorised construction put up by him in the site belonging to the plaintiff and despite receiving the same, the defendant has not chosen to send any reply. However, gave assurance that he would remove the construction put up by him. However, inasmuch as the defendant has failed to carry out his assurance, the plaintiff left with no other alternative, has been constrained to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is true that the plaintiff has purchased site number 23 in the suit village as claimed in the plaint. The defendant had purchased the site number 24 by way of a sale deed dated 05.2.92 and the vendor of the plaintiff as well as the defendant is the same person and he owned various extent of sites in the area and accordingly, the site number 24 alienated by the vendor was purchased by the defendant and hence, the defendant has not encroached into the plaintiff's site number 23 as alleged in the plaint and on the other hand, the defendant has put up a temporary shed only in the site purchased by him as above stated and inasmuch as the notice sent by the plaintiff is based on unfounded facts, the defendant had not chosen to respond to the same and ignored it and the construction put up by the defendant in his site was done long back and the plaintiff had never objected to the same at any point of time and hence, the plaintiff is not entitled to the reliefs sought for.

6. In support of the plaintiff's claim PWs 1 and 2 were examined, Exs.A1 to A4 were marked. On the side of the defendant, DWs 1 to 3 were examined, Exs.B1 to B9 were marked. Exs.C1 to C3 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff's case and accordingly, granted the relief sought for by the plaintiff. Aggrieved over the same, the defendant has preferred this second appeal.

8. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration:

"Without a prayer for declaration of title, is a suit for a mere mandatory injunction maintainable?"

9. It is not in dispute that the plaintiff has purchased the site number 23 and similarly, it is also not in dispute that the defendant has purchased the site number 24 and it is found that

both the plaintiff and the defendant had purchased their respective sites from the same vendor Arumuga Gounder and it is further noted that Arumuga Gounder had owned various sites in the area and accordingly, forming the lay out plan of the area as sites, he had sold the site to various persons including the plaintiff as well as the defendant. It is not in dispute that the site number 24 is situated on the eastern side of the site number 23.

10. As rightly pointed out by the Courts below, the plaintiff has purchased the site number 23 even prior to the purchase of the site number 24 by the defendant. Accordingly, it is found that as per the lay out consisting of the various sites owned by Arumuga Gounder marked as Ex.A2, the site number 24 measures 183.4ft on the northern side and 165 feet on the southern side, 41 feet on the western side and 44 ½ slightly slanting on the eastern side and to the east of the said site ie., site number 24, permanent road runs north to south and with reference to the above features, there is no dispute between the parties. In this matter, the Commissioner had inspected the properties of the parties concerned and as seen from the sketch found in Ex.C3 plan, Arumuga Gounder had sold an extent of 243 ½ feet east west on the south side and 213.4 feet east west, on the western side, with the available measurement of east and west towards south and north. When as per Ex.A2 layout plan, the owner after the sale of site of 23 to the plaintiff had retained only the extent of site as far as site number 24 is concerned, it is found that the owner had while alienating the site number 24 to the defendant had executed a sale conveyance for more extent of land than to which he is entitled to convey and in such view of the matter, it is seen that as per the Commissioner's report and plan, the defendant is found to be in enjoyment of more extent of land than the original extent of site number 24 as found depicted in Ex.A2 lay out plan. In such view of the matter, the defendant accordingly cannot be allowed to encroach into the site belonging to the plaintiff and put up a temporary structure taking advantage of the absence of the plaintiff. When the defendant has not disputed the purchase of site number 23 by the plaintiff and accordingly, when the owner of the site is entitled to convey site number 24 only as per measurement available on ground and as depicted in Ex.A2 lay out plan, It is found that the defendant on the footing that he had purchased more extent of property from his owner as site number 24 cannot be permitted to put up a structure on the site purchased by the plaintiff and accordingly, it is seen that the plaintiff, aggrieved over the same, has come forward with the suit for appropriate reliefs.

11. As rightly determined by the Courts below, when it is noted, on the materials placed, that the original owner of the various sites, for the reasons best known to him, to suit his convenience, had alienated the site to others showing more extent of lands including the defendant than what is available

on ground, on that footing, the defendant or anyone is not entitled to encroach into the site area of other persons and when the defendant has failed to establish that the owner at the time of sale of the site number 24 had the entitlement to convey the same as per the measurement found in his sale deed and when it is found that the owner of the various sites had already conveyed the site number 23 in favour of the plaintiff and when on ground as per the features noted by the Commissioner in his report and plan go to show that the defendant is in the possession of more extent of land than what his vendor would be entitled to convey, accordingly, it is determined by the Courts below that the defendant had encroached into the property belonging to the plaintiff and put up a structure and thus, it is found that the Courts below had rightly determined that the defendant had encroached into the property belonging to the plaintiff and put up the unauthorised construction and the same is liable to be removed as prayed for by the plaintiff.

12. In the light of the above discussions, it is found that the Courts below had accordingly properly appreciated materials placed on record in the correct perspective and found that the defendant had encroached into the site number 23, admittedly, belonging to the plaintiff and put up an unauthorised construction and in such view of the matter, no interference is called for in the determination of the Courts below in decreeing the suit as prayed for.

13. It is contended that the suit laid by the plaintiff without the prayer for declaration is not maintainable. However, as rightly put forth by the plaintiff's counsel, when the plaintiff's title to the site number 23 is not disputed by the defendant as such and when it is found that the original owner had conveyed the correct extent of land to the plaintiff, in such view of the matter, there is no need for the plaintiff to seek the relief of declaration as such in respect of the site owned by him and accordingly, the substantial question of law formulated in this second appeal is answered in favour of the plaintiff and against the defendant.

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

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Court, Coimbatore.
2. The Second Additional District Munsif Court,
Coimbatore.

+lcc to Mr.V.Nicholas, Advocate Sr.No.13434
+lcc to Mr.S.Kadarkarai, Advocate Sr.No.13795

S. A.No.1653 of 2003

GJII(CO)
sm:14.3.2018



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