

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2018

PRONOUNCED ON : 17.07.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1868 of 2004
and
C.M.P.No.3044 of 2017

W. Chandrasekaran ... Appellant /Defendant

Vs.

Selvakodi ... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No. 36 of 2003 dated 15.07.2004 by the Court of Sub-Judge, Ranipet, Vellore District reversing the decree and judgment in O.S. No.468 of 1994 dated 25.01.2002 passed by Court of District Munsif Court, Ranipet, Vellore District.

For Appellant : Mrs.R.J.Sundari
for M/s. R.Margabandhu

For Respondent : Mr.V.Sabapathi manonmani
for M/s. V.Raghavachari

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 15.07.2004, passed in A.S.No. 36 of 2003, on the file of the Subordinate Court, Ranipet, reversing the judgment and decree dated 25.01.2002 passed in O.S. No.468 of 1994, on the file of the District Munsif Court, Ranipet.

2. The second appeal has been admitted on the following substantial questions of law:

"1. Whether the respondent is entitled to relief of Mandatory injunction without title to the "B" schedule property?

2. Whether the first appellate Court is right in holding that the "B" Schedule property is in S.No.799/4B, in spite of the

pleadings of the respondent that the "B" schedule property is of West of S.No.799/4B?"

3. The suit has been laid by the respondent/plaintiff seeking the reliefs of permanent injunction and mandatory injunction in respect of the B schedule property. Briefly stated, according to the plaintiff, the A schedule property belonged to her father in law by way of a purchase on 06.06.75 and thereby, the said property was inherited by her husband and after his demise, the plaintiff had derived title to the plaintiff A schedule property and according to the plaintiff, she had divided the property into various plots and alienated to others. While so, the defendant in the guise of purchase of land in S.No.799/4A lying to the west of the plaintiff A schedule property laid a suit in O.S.No.178/94 against the plaintiff and taking advantage of the interim injunction granted in the said suit, encroached into the B schedule property and unauthorisedly proceeded to put up the construction and hence, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

4. The defendant has raised the defence that the property in dispute, namely, the B schedule property forms part of the property purchased by him by way of a sale deed dated 30.1.80 and the plaintiff has no title to the said property and inasmuch as the plaintiff interfered with his possession and enjoyment, according to the defendant, he has been necessitated to lay the suit against the plaintiff in O.S.No.178/94 for the reliefs of declaration and permanent injunction and hence, it is contended that the suit laid by the plaintiff deserves dismissal.

5. It is found that both the suits, namely, O.S. No.178/94 laid by the defendant and O.S.No.468/94 laid by the plaintiff were jointly tried and common evidence has been recorded in both the suits as the property in dispute involved in both suits is one and the same. Accordingly, it is found that based on the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the suit laid by the defendant in O.S.No.178/94 and it is noted that the trial Court has also dismissed the suit laid by the plaintiff in O.S.No.468/1994, on the footing that the plaintiff has failed to establish his claim of title to the property in dispute. It is found that as against the dismissal of O.S.No.178/94, the defendant has not preferred any first appeal. So, it is seen that the judgment and decree passed in O.S.No.178/94 has attained finality. However, as regards the dismissal of O.S. No.468/94, the plaintiff has preferred the first appeal and as above noted, the first appellate Court reversed the judgment and decree of the trial Court and granted

the reliefs in favour of the plaintiff as prayed for. Impugning the same, the present second appeal has been laid.

6. Materials placed on record go to show that as determined by the trial Court, the defendant has laid a claim for 12 cents of land as belonging to him on the strength of the sale deed dated 30.11.80, marked as Ex.A2 in the trial Court. However, on a perusal of the abovesaid document, as rightly found by the trial Court, it is found that only a specific extent of land i.e., 5 cents had been conveyed to the defendant by way of the abovesaid sale deed and the Courts below had negatived the claim of the defendant that he had acquired title to an extent of 12 cents of land by way of the abovesaid sale deed. In this connection, the Courts below had also noted that the defendant had not examined his vendor to establish that he had been actually conveyed 12 cents of land as put forth by him by way of Ex.A2 and further, the defendant also having failed to produce the parent title deed to sustain his claim of purchase of 12 cents of land by way of Ex.A2 sale deed and also not having obtained any rectification deed to correct the extent of land described in Ex.A2 sale deed and also failed to establish his alleged claim of possession and enjoyment of 12 cents of land on the strength of Ex.A2 sale deed, accordingly holding that there is no valid proof placed by the defendant to sustain his claim of the purchase of 12 cents of lands and also noting that the defendant at one point pleaded that he has purchased 12 cents of land by way of Ex.A2 sale deed and on the other hand, also pleaded that he has set up adverse title in respect of the seven cents not mentioned in Ex.A2, both being in consistent with each other, accordingly holding that the tax receipts projected by the defendant would not in any manner be helpful to sustain his case, on that reasonings, concluded that the defendant has failed to establish his claim of title to the disputed property and thereby, dismissed the defendant's suit in O.S.No.178/94. As above noted, the defendant has not preferred any appeal as against the said dismissal.

7. It is the specific case of the plaintiff that the property in dispute lies only in S.No.799/4B and on the strength of the injunction order obtained by the defendant in O.S.No.178/94, he has trespassed into the disputed property lying in S.No.799/4B and put up the unauthorised construction and hence, she has been necessitated to lay the suit for appropriate reliefs. Even in O.S.No. 178/94, the defendant has specifically pleaded that to the east of 5 cents of land described in Ex.A2 sale deed, S.No.799/4B lies and when admittedly the eastern boundary of the defendant's property has shown to be the property comprised in S.No.799/4B, it is seen that, admittedly, the plaintiff has been admitted to be the owner of the property comprised in S.No.799/4B. However, the

trial Court, despite the dismissal of the defendant's suit in O.S.No.178/94, has on technical grounds holding that the plaintiff has not placed any document to sustain her claim and on that ground choosing to dismiss her suit, as such, cannot be readily accepted and accordingly, it is seen that the first appellate Court, on the proper reasonings holding that the property in dispute belongs only to the plaintiff as abovenoted and also as admitted by the defendant himself in O.S.No.178/94 and accordingly, when it is found that on the basis of the materials placed on record, the defendant has failed to establish his claim of title to the excess 7 cents of land which he seeks to hold lawfully and on the other hand, when it is found that the defendant is entitled to only 5 cents of land lying in S.No.799/4A and does not own any property in S.No.799/4B, accordingly, it is seen that the first appellate Court has rightly upheld the relief sought for by the plaintiff in O.S. No.468/94.

8. In this connection, the only ground projected by the defendant's counsel is that the property in dispute has not been properly described by the plaintiff in her suit and she has only described the disputed property lying to the west of S.No.799/4B and on that ground alone, the suit laid by the plaintiff deserves rejection. As above seen, when it is seen that the property owned by the defendant measuring an extent of 5 cents of land in S.No.799/4A is shown to be lying to the west of S.No.799/4B and accordingly, when the plaintiff has put forth a claim that the defendant in the guise of Ex.A2 sale deed had trespassed into the property in dispute lying in S.No.799/4B, accordingly, it is seen that the disputed property i.e., the property which had been trespassed by the plaintiff in S.No.799/4B has been rightly shown to be located to the west of the remaining property lying in S.No.799/4B and in such view of the matter, I do not find any discrepancy in the description of the property or the identity of the property in dispute in the present litigation. It is thus found that the defendant having laid the suit claiming title to the excess land than what he had acquired by way of Ex.A2 and failed in that exercise, however, on the strength of the injunction order obtained, had trespassed into the disputed property i.e., the present suit property and proceeded to put up construction, accordingly, it is found that the plaintiff has been necessitated to lay the suit for appropriate reliefs and in such view of the matter, it is found that the first appellate Court has rightly observed that the trial Court should have upheld the plaintiff's case on the facts and circumstances of the case projected, holding that the trial Court has erroneously dismissed the plaintiff's suit, accordingly, rightly reversed the judgment and decree of the trial Court and granted the appropriate reliefs in favour of the plaintiff.

9. In the light of the above discussions, it is found that the plaintiff is entitled to the reliefs sought for in the suit with reference to the B schedule property and there is no improper description of the plaint B schedule property as sought to be projected by the defendant and accordingly, the substantial questions of law formulated in the second appeal are answered in favour of the plaintiff and against the defendant.

10. In addition to that, when it is noted that both the suits as abovenoted were jointly tried and common evidence had been recorded and when it is noted that the defendant has not preferred any appeal challenging the dismissal of his suit and on the other hand, it is only the plaintiff, who had preferred the first appeal challenging the dismissal of her suit and thereafter, the said matter had taken up further by way of second appeal, as rightly contended by the plaintiff's counsel, the failure of the defendant in challenging the dismissal of his suit would operate as res judicata to his present defence and accordingly, it is seen that the plaintiff's counsel placed reliance upon the decision reported in (2015) 3 SCC 624 (Sri Gangai Vinayagar Temple and another Vs. Meenakshi Ammal and others). On a perusal of the abovesaid decision, it is found that when the questions/issues raised in respect of the disputed property had been directly and substantially been involved in the abovesaid two suits and the appeal had been preferred only against the decree passed in one suit and no appeal had been preferred against the decree passed in the other suit, it is found that the dismissal order as against which no appeal had been preferred, would assume the character of the former suit and in such view of the matter, the decree passed therein having attained finality, would operate as res judicata and on the abovesaid ground also, it is seen that the present defence version projected by the defendant for challenging the second appeal cannot be accepted in the light of the position of law as outlined by the Apex Court in the abovesaid decision.

11. The principles of law outlined in the decision relied upon by the defendant's counsel dated 14.07.2016 passed in S.A. (MD)No.375 of 2011 are taken into consideration and followed as applicable to the case at hand.

C.M.P.No.3044 of 2017

12. C.M.P.No.3044 of 2017 has been laid for the reception of additional evidence by the defendant in the second appeal. In the said petition, the defendant has projected the case that his daughter had purchased 5 cents of land in S.No.799/4A by way of a sale deed dated 21.8.96 and he had also purchased another 5 cents of land in the abovesaid survey number by way of a sale

deed dated 19.06.2002, which sale deed stands both in his name as well as in the name of his wife Kalyani and accordingly, seeking to project the abovesaid documents as additional evidence, has laid the abovesaid petition. However, when the defendant has not made such pleas either in his plaint filed in O.S. No.178/94 or in the written statement filed in the present suit and by way of the abovesaid documents projected. the defendant seeks to raise new pleas not put forth by him earlier, it is found that the abovesaid pleas could not be allowed in the guise of the reception of the additional evidence as sought to be projected by the defendant. It is thus found that, by way of the present petition, new pleas are sought to be raised by the defendant, which cannot be sustained. That apart, when none of the parameters outlined in the provisions of law laid under Order 41 Rule 27 are made out, it is found that the abovesaid petition deserves rejection.

13. In the light of the abovesaid reasons, the second appeal fails and is accordingly dismissed with costs. C.M.P.No.3044 of 2017 is also dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge, Ranipet, Vellore District.
2. The District Munsif Judge, Ranipe, Vellore District.
3. The Section Officer,
V.R.Section,
High Court, Madras.(2 Copies)

+1cc to Mr.R.Margabandhu, Advocate SR.No.48142
+1cc to Mr.V.Raghavachari, Advocate SR.No.46749

S. A.No.1868 of 2004
and
C.M.P.No.3044 of 2017

BR(CO)
GN(28/08/2018)