

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30.08.2018

DELIVERED ON: 14.09.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA  
S.A.No.1845 of 2002 and  
CMP Nos.5933 to 5935 of 2016

I.S.A.Hyder Ali ..... Appellant / plaintiff  
Vs.

Kanniappan ..... Respondent/ Defendant

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 28.02.2002 made in A.S.No.99 of 2001 on the file of the Additional Subordinate Judge, Chengalpattu upholding the decree and judgment dated 27.04.2001 made in O.S.No.111 of 1991 on the file of the District Munsif Court, Chengalpattu.

For Appellant : Mrs.C.R.Rukmani  
Respondents 2 to 5 : Mrs.V.Srimathi  
for Mr.V.Raghavachari

JUDGMENT

The unsuccessful plaintiff in O.S.No.111 of 1991 on the file of the District Munsif, Chengalpattu and appellant in A.S.No.99 of 2001 on the file of the Additional Subordinate Judge, Chengalpattu is the appellant herein.

2. The appellant/plaintiff filed a suit in O.S.No.111 of 1991 before the District Munsif, Chengalpattu for a declaration of his title to the suit 'B' schedule property shown as ABDE in the plaint plan (Ex.A3) and for a consequential relief of permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment over the B schedule properties.

3. The brief case of the appellant/plaintiff is as follows. The appellant/plaintiff purchased 'A' and 'B' schedule properties through two registered sale deeds dated 10.11.1982 (Ex.A1) and 10.05.1983 (Ex.A2) and ever since the date of purchase, he (plaintiff) was in peaceful possession and enjoyment of the said properties by putting up a construction. The appellant/plaintiff has been using 'B'

schedule property as a vacant passage for convenient enjoyment of 'A' schedule property. According to the appellant/plaintiff, the defendant, whose property is situate on the western side of the plaintiff's property is claiming right to the passage thereby casting cloud on the plaintiff's title to the 'B' schedule property and also attempted to trespass into the 'B' schedule property during the last week of March 1991 and the same was prevented by the plaintiff.

4. The defendant resisted the suit on the following grounds.

a. The plaintiff should establish his title to the 'B' schedule property.

b. The defendant has purchased a house site measuring 73 feet north-south, 24 feet east-west in Gramanatham Survey No.327 of Sathankuppam Village through a registered sale deed dated 18.05.2013 (Ex.B2),

c. Neither the plaintiff nor his vendors had any right over the suit lane and in fact the defendant has been using the northern portion of the lane for tying his cattle.

d. The plaintiff, who constructed a house, after demolishing a portion of defendant's compound wall on the south-east corner, raised a wall at the point 'E' shown in the plaint plan (Ex.A3).

e. The existence of defendant's compound wall on the southern side of his property till the point E on Thaiyur Road would establish defendant's title to suit 'B' schedule property.

f. The plaintiff left 2 ½ feet on the eastern side of his property and is wrongly making a claim over the defendant's property.

g. The plaintiff though had his toilets facing eastern side, closed the same just few days prior to the filing of the suit and opened the entrance of the toilets facing western side with an ulterior motive.

5. The trial court framed the following issues.

1. Whether it is true that the plaintiff has purchased 'A' schedule property through the sale deeds dated 10.11.1982 and 10.05.1983?
2. Whether the plaintiff is entitled to the relief of declaration and permanent injunction with regard to the 'B' schedule property?
3. Whether the defendant is having the right of adverse possession over the suit property?

4. To what relief the plaintiff is entitled?

6. In the trial court, the plaintiff examined his brother as PW1 and marked Ex.A1 to Ex.A8. The defendant examined himself and marked Ex.B1 and Ex.B2. The Advocate Commissioner's report and plan were marked as Ex.C1 to Ex.C7 and the learned advocate commissioner was also examined as CW1.

7. After full contest, the trial court dismissed the suit. Aggrieved over the same, the plaintiff filed an appeal in A.S.o.99 of 2001 before Additional Subordinate Judge, Chengalpattu, which again was dismissed.

8. Now, the present appeal is filed on the following questions of law.

1. Whether the lower appellate court is justified in holding that the appellant has not established his claim by adducing proper oral and documentary evidence?

9. The defendant did not dispute the sale deeds Ex.A1 and Ex.A2. The dispute is only with regard to the lane situate on the western side of the plaintiff's property and eastern side of the defendant's property, which is described in the plaint 'B' schedule property as 2 ½ feet wide on the southern side 1 ½ feet wide on the northern side and 45 feet long. This 'B' schedule property, according to the plaintiff, forms part of 'A' schedule property.

10. The plaintiff has purchased 1023 square feet through Ex.A1 with a specific boundary description. He has purchased 3 items through Ex.A2 measuring 2448 sq.ft. Thus, the total sq.ft., which belongs to the plaintiff as per Ex.A1 and Ex.A2 is 5163 sq.ft. The plaintiff has not proved that on what ground he is entitled to 5163 sq.ft.

11. When the trial court had directed the PW1 to identify the properties purchased by the plaintiff through Ex.A1 and Ex.A2, in the plan Ex.A3 attached with the plaint, PW1 could not identify the properties. The trial court had in fact recorded this fact. The PW1 also admitted before the trial court that the properties purchased under Ex.A1 and Ex.A2 were not measured by a surveyor prior to the purchase.

12. Mrs.C.R.Rukmani, learned counsel appearing for the appellant/ plaintiff would contend that the learned advocate commissioner during all his visits, confirmed that the measurement of the disputed lane is 135 feet and according to the learned counsel appearing for the appellant, the disputed lane fall within the portion marked as 'BE' in the report. She also drew the attention of the court to the cross examination of the defendant and



contended that the defendant having admitted the title deeds of the plaintiff and also the southern side measurement of the plaintiff's property as 135 feet, both the courts below did not consider the same. It is also contended by her that the measurements of the surveyor is inconsistent and he had not verified FMB sketch, when it is available for the suit land. According to Mrs.C.R.Rukmani, learned counsel appearing for the appellant, the defendant, during the pendency of the second appeal constructed a four-storey building in his property, violating Rules and Regulations of CMDA (Chennai Metropolitan Development Authority). In fact, the appellant filed CMP No.5933 of 2016 praying to take cognizance of the subsequent developments and to direct the respondent to demolish the superstructure put up by him. He also filed CMP No.5934 of 2016 and prayed for a compensation to the tune of Rs.5 lakhs for the mental agony undergone by the appellant.

13. It is true that the learned advocate commissioner visited the suit property twice along with a surveyor. The trial court has observed that the plaintiff is not able to establish that he is the owner of 'B' schedule property by adducing acceptable evidence and that the plaintiff also did not adduce the parent documents of Ex.A1 and Ex.A2. Apart from that there are several discrepancies in the evidence of PW1, DW1 and the surveyor with regard to the measurements of 'B' schedule property on ground. The sale deeds Ex.A1 and Ex.A2 shows that the plaintiff has purchased 5163 sq.ft. of land and he has not established that he has the properties with this measurements on ground. As rightly pointed out by the trial court, the plaintiff has not adduced any acceptable evidence in this regard. In a suit filed by the plaintiff for declaration and permanent injunction, the plaintiff must establish his case to the hilt. In fact, the appellant/plaintiff's claim over the 'B' schedule property is based on the sale deeds Ex.A1 and Ex.A2 and not on the surveyor's report or FMB sketch. The plaintiff failed to adduce the best evidence. He has not filed the parent documents of Ex.A1 and Ex.A2 and has not also examined his vendors. Since there are several discrepancies in the evidence of PW1 and the advocate commissioner, the advocate commissioner's report alone cannot be a conclusive proof to hold that the plaintiff is entitled to 'B' schedule property. Both the courts below have analysed the evidence on record and have concluded that the plaintiff has not established his title over the suit 'B' schedule property.

14. Curiously enough, the appellant/plaintiff wants to demolish the construction put up by the respondent/defendant and filed CMP No.5933 of 2016 for this purpose. It is not the case of the appellant that the respondent/defendant trespassed into his property. The suit is filed only for declaration of title and permanent

injunction restraining the respondent/ defendant from interfering with his possession over the suit 'B' schedule property. If the respondent/defendant has violated CMDA norms, it is for the CMDA to initiate action against the defendant. The appellant/plaintiff since failed in all his attempts, has filed these two frivolous applications in CMP No.5933 of 2016 and 5934 of 2016 and hence, these petitions are liable to be dismissed.

15. The concurrent findings given by both the courts below are based on facts and the scope of the High Court under Section 100 of the Code of Civil Procedure is very limited. Further more, the findings of both the courts below are well founded and they cannot be termed as perverse. Hence, I do not see any reason to allow this second appeal and the same is liable to be dismissed.

16. In the result,  
(i) The second appeal is dismissed. No costs.  
(ii) The CMP NO.5933 to 5935 of 2016 are dismissed.

Sd/-

Assistant Registrar (CS vi)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Additional Subordinate Judge, Chengalpattu.
2. The District Munsif, Chengalpattu.

Copy to

The section officer,  
VR Section,  
High court  
Madras

+lcc to M/S.C.RUKUMANI , Advocate SR.No. 64279

+lcc to Mr.V.RAGHAVACHARI , Advocate SR.No. 63615

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ASK(23/10/2018)