

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :05.07.2018

PRONOUNCED ON : 26.07.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN
S.A.No.2254 of 2004
and
C.M.P.No.14786 of 2005

Minnala ... Appellant/
Defendant

Vs.

Visalatchiammal ... Respondent/Plaintiff

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed in A.S.No.134 of 1998 on the file of the Additional District Judge, Fast Track Court -II, Kancheepuram on 09.07.2002 confirming the Decree and judgment passed in O.S.No.986 of 1993 on 06.04.1998 by the Additional District Munsif of Kancheepuram.

For Appellant : Mr.K.S.Lakshmi Kumaran

For Respondent : Mr.N.Ramanujam

J U D G M E N T

In this second appeal, challenge is made to the judgment and decree dated 09.07.2002 passed in A.S.No.134 of 1998 on the file of the Additional District Judge, Fast Track Court -II, Kancheepuram confirming the decree and judgment dated 06.04.1998 passed in O.S.No.986 of 1993 on the file of the Additional District Munsif Court, Kancheepuram.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for declaration and possession.

4. The case of the plaintiff in brief is that she is the absolute owner of the suit site and the adjoining property on the eastern side, she having purchased the same by way of a registered sale deed dated 09.12.1959 and been in the possession

of the entire property including the suit site from the date of sale and she has constructed a thatched hut therein and a portion of the hut is situated in the site purchased by her and the remaining portion of the hut is situated in the site assigned to the plaintiff's son Pachaiyappan on the eastern side and she has left vacant site measuring 25 ft east-west on the western side, which is shown as ABCD in the plaint plan and using the said vacant site for the purpose of storing manure etc., and also raised Velikaathan trees and been in the enjoyment of the entire site. The extent purchased by her is 40 ft east-west. On the eastern side of the said site is the site assigned to her. On further east is the Panchayath area. The plaintiff and her son are enjoying the portion of Panchayath area and the plaintiff is paying house tax for the property purchased by her and one Balaraman tried to trespass into the suit property and in that connection, the plaintiff filed a suit against Balaraman in O.S.No.337 of 1986 for declaration of her title and permanent injunction and the said suit ended in a decree in favour of the plaintiff. The defendant has no right whatsoever in the suit property and during the pendency of O.S.No.337 of 1986, the defendant had trespassed into the suit property and put up a thatched shed in 1988 and the same could be evidenced from the report and plan of the Advocate Commissioner filed in O.S.No.337 of 1986. Hence 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 false to aver that the plaintiff is the absolute owner of the suit site and that she has purchased the same from Govindaraja Pillai and it is false to state that she had constructed a house in a portion of the said site and the plaint plan is misconceived and incorrect and it is false to state that the extent purchased by the plaintiff measures 40 ft east-west. The averments regarding the suit in O.S.No.337 of 1986 are not true. It is false to state that the defendant is an utter stranger to the suit property. The defendant does not admit the report and plan of the Advocate Commissioner in O.S.No.337 of 1986. It is false to state that the defendant attempted to trespass into the suit property and on the other hand, the defendant is the absolute and exclusive owner of the property measuring east-west 45 ft, north-south 76 $\frac{1}{2}$ ft bounded by the road in the north, by Visalatchiammal's house in the east, by the land of Krishnappa Pillai in the south and by the house of Balaraman, in the west, in survey No.25/1 out of acres 5.70 cents and purchased the same from Kuppasamy Pillai, who was the absolute and exclusive owner of the said property. The plaintiff has no right, title or interest in respect of the suit property and in fact, it is only the plaintiff, who is trying to trespass into the defendant's property and the plaintiff has no

title and right of possession in respect of the suit property and hence the suit is liable to be dismissed.

6. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A13 were marked. On the side of the defendant, D.W.1 was examined. Exs.B1 to B3 were marked. Exs.C1 to C4 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 granted the reliefs as prayed for. Impugning the same, the present second appeal has been preferred.

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

(i) Whether the judgment and decree of the Courts below are legally sustainable inasmuch as they have failed to note that the respondent has got no title to the suit property inasmuch as the appellant has purchased the suit property by Ex.B3?

(ii) Whether the judgment and decree of the courts below are legally sustainable inasmuch as they have not properly considered the suit O.S.No.162 of 1986 on the file of the District Munsif Court, Kancheepuram filed against the appellant that she was in possession of the suit property from 1986 pursuant to her purchase by Ex.B3?

9. The plaintiff claims title to the suit property by virtue of a sale deed dated 09.12.1959 and the copy of the same has been marked as Ex.A1. On a perusal of Ex.A1, it is found that by way of the said sale deed, the plaintiff has purchased in Survey No.25/1 out of 5.70 acres, the property measuring north-south 94 ft and east-west 40 ft lying to the east of Duraisami Pillai's site, south of road and west of Chinnapayan's site and to the north of Nallapillai site. Thus it is found that by virtue of Ex.A1 sale deed, if the same is accepted to be true, the plaintiff would be entitled only to an extent of east-west 40 ft, north-south 94 ft within the abovestated boundaries. Ex.A1 recites that the abovesaid property purchased by the plaintiff lies to the east of Duraisamy Pillai site. Thus, it is found that as per Ex.A1, the western boundary of the property described therein is the property belonging to Duraisamy Pillai.

10. However, in the plaint, the plaintiff has described the

suit property as measuring east-west 25 ft and to the entire length of adjacent sites north-south and described the same as being bounded on the east by the plaintiff's hut, on the west by Balaraman's land on the north by Thirupulivanam to Salavakkam Road on the south by Krishnapillai's land, which is shown as "ABCD" in the plaint plan. Thus, as per the plaint description, the western boundary is shown as Balaraman's property, whereas as per Ex.A1, under which the plaintiff claims title to the suit property, the western boundary is shown as Durisami Pillai's property. The abovesaid discrepancy has not been properly explained by the plaintiff in any manner. Thus, it is found that the description of the suit property in the plaint schedule does not conform to the description of the property purchased by the plaintiff by way of Ex.A1 as regards the western boundary. Now, it is the case of the plaintiff that one Balaraman had interfered with her possession and enjoyment of the suit property and hence she had levied the suit against him in O.S.No.337 of 1986 and the said suit ended in a decree in her favour. The decree passed in O.S.No.337 of 1986 has been marked as Ex.A10. In Ex.A10, the description of the property is found to be a portion marked as "ABCD" measuring 25 ft east-west and north-south as per the adjacent sites of the entire extent of 40 ft and the abovesaid extent is shown to be lying within, on the north by Thirupulivanam to Salavakkam Road, on the south by the land of Krishnapillai, on the west by the site of Duraisami Pillai and on the east by Panchayath building and the said property is further described as being 8 cents of 5.70 acres in suit survey No.25/1. Be that as it may, in O.S.No.337 of 1986, the suit property has been shown as being bounded on the western side by the property of Duraisami Pillai. When in 1986, the suit property has been shown to be bounded on the western side by Duraisami Pillai, it does not stand to reason as to how the plaintiff while preferring the present suit in 1993 has shown the suit property as being bounded on the western side by Balaraman's land. As above noted, the property acquired by the plaintiff by way of Ex.A1 is shown to be bounded on the western side by Duraisami Pillai's property. Therefore, it is seen that the description as far as the western boundary is concerned, the same is found to be similar in Ex.A1 and in Ex.A10 decree, Whereas in the plaint description of the suit property, the western boundary is shown as Balaraman's land. As above mentioned, the abovesaid discrepancy has not been properly explained. When the western owner of the plaintiff's property acquired under Ex.A1 is Duraisami Pillai and affirming the same, the plaintiff in 1986 has shown the western boundary owner as Duraisami pillai, it does not stand reason as to how in the present suit, the plaintiff has shown the western boundary owner as Balaraman.

11. In so far as the decree obtained by the plaintiff in

O.S.No.337 of 1986 against Balaraman, it is found that the defendant being not a party to the abovesaid proceedings, the same is no way binding upon the defendant. It is thus found that the decree obtained by the plaintiff in O.S.No.337 of 1986 would be of no use to sustain the plaintiff's case.

12. As per Ex.A1, it is found that the property described therein is bounded on the western side by the property belonging to Duraisami Pillai. It is the specific case of the defendant that he has purchased the property belonging to Duraisami Pillai by way of a sale deed dated 13.02.1986 and the copy which has been marked as Ex.B3. From Ex.B3, it is found that the defendant had purchased the property of Duraisami Pillai from his son Kuppusamy Pillai and others. In Ex.B3, the property acquired by the defendant is shown to be measuring east-west 45 ft and north-south 76 ½ ft in the suit survey number out of the total extent of 5.70 acres and the abovesaid extent of the property is shown to be bounded on the north by road, east by Vishalatchi's house site, South by Krishnapillai's property and west by Balaraman's property. Thus, it is found that the property owned by Duraisami Pillai was lying to the east of the property belonging to Balaraman and west of the property belonging to the plaintiff and accordingly it is found that the defendant had acquired the said property from the son of Duraisami Pillai by way of Ex.B3 sale deed and accordingly, it is seen that in Ex.A1 sale deed, the property acquired by the plaintiff has been shown to be lying to the east of Duraisami Pillai's property and in Ex.A10 also Duraisami Pillai's property is shown to be lying on the western side. However, in the plaint alone, the western boundary owner is shown as one Balaraman. When as from Ex.B3, it is found that the said Balaraman owns property only to the west of the property belonging to Duraisami Pillai, accordingly while describing the property in Ex.B3, the same is shown to be bounded on the western side by Balaraman's property and on the eastern side by the plaintiff Visalatchi Ammal's property. It is found that the plaintiff while laying the present suit had suppressed the property belonging to Duraisami Pillai lying on the western side and had chosen to lay the suit as if the suit property is lying to the east of Balaraman's property and thereby, as rightly put forth by the defendant, is attempting to grab the property belonging to Duraisami Pillai which had been purchased by the defendant by way of Ex.B3 sale deed.

13. Materials placed on record go to show that Balaraman, who is the western property owner of all the properties, as described in Ex.B3 has laid a suit in O.S.No.162 of 1986 against the defendant and others for the reliefs of declaration and possession and it is found that the abovesaid suit had been laid in respect of the property in suit survey No.25/1 measuring 45

ft east-west and 16 ½ ft north-south and the above said extent has been shown to be lying to the south of the road, west of Visalatchi Ammal's site, north of Krishnapillai's site and east of Balrama Maistry's site. Thus, it is seen that in O.S.No.162 of 1986, Balaraman has chosen to lay the suit against the defendant and others suppressing the property belonging to Duraisami Pillai lying in between Balaraman's property and the plaintiff Visalatchi Ammal's property and accordingly, while describing property in O.S.No.162 of 1986, has described the same as lying in between Balaraman's site and the plaintiff Visalatchi Ammal's site as if the same belonged to him, however when on a conjoint reading of Exs.A1, B3, A10 and B1, it is found that Duraisami Pillai's property, is lying between Balaraman's property and the plaintiff Visalatchi Ammal's property, it is found that Balaraman suppressing the same had chosen to lay the suit against the defendant as if he has title to the property lying to the west of Visalatchi Ammal's property. Similarly, the plaintiff Visalatchi Ammal suppressing the existence of Duraisami Pillai's property had chosen to lay the present suit as if the suit property is lying to the east of Balaraman's property. When under Ex.A1, the suit property is shown to be lying to the east of Duraisami Pillai's property, it does not stand to reason as to how come the said property is shown to be lying to the east of Balaraman's property. In the light of the above discussion it is found that one way or the other, the plaintiff Visalatchi Ammal as well as Balaraman had endeavored to grab the property belonging to Duraisami Pillai and accordingly giving wrong description of the property had been laying suits and thereby seeking to enrich themselves unjustly without showing their entitlement to the property in dispute. Accordingly, it is found that the suit laid by Balaraman has come to be dismissed, as could be seen from Ex.B1 document, however it is found that the plaintiff had been successful against Balaraman in O.S.No.337 of 1986. But, when the plaintiff has described the property in the abovesaid suit as lying to the east of Duraisami Pillai's property, accordingly, it is found that as Balaraman's property is located only to the west of Duraisami Pillai's property and he cannot lay a claim of title to the property lying to the east of Duraisami Pillai's property, the plaintiff was able to succeed in O.S.No.337 of 1986. As above seen, the defendant is not a party in the suit. When it is found that the defendant had purchased Duraisami Pillai's property under Ex.B3 sale deed, it is found that the plaintiff scheming to grab the said property, has come forward with the present suit as if the defendant has trespassed into the suit property and in that end, had wrongly shown the western boundary as the property of Balaraman. When, it is found that as per Ex.A1, the plaintiff had acquired the property only lying to the east of Duraisami Pillai's property, in guise of the present suit, the plaintiff cannot be allowed to

grab the property belonging to Duraisami Pillai by giving the wrong description in the plaint schedule.

14. The Commissioner's report and plan marked in the present case would be of no use to sustain the plaintiff's case and as could be seen from the Commissioner's report and plan, the defendant is found to be having property only east-west 45 ft and when it is seen that the defendant had purchased the property measuring east-west 45 ft as per Ex.B3 sale deed, it is seen that the defendant had not encroached into the plaintiff's property as projected by the plaintiff. Further the plaintiff under Ex.A1 is found to have purchased an extent of the site measuring east-west 40 ft and when it is seen from Commissioner's report and plan that the plaintiff's property is measuring east-west 61.7 ft, the case of the plaintiff that the defendant had encroached into the plaintiff's property does not merit acceptance and liable to be rejected. As far as the Commissioner's report and plan filed in O.S.NO.337 of 1986 and marked as Ex.A11, the same would not in any manner be useful to sustain the plaintiff's claim of title to the suit property as such. Similarly, the patta filed by the plaintiff marked as Ex.A12 and the patta granted in favour of the plaintiff's son marked as Ex.A13 are not shown to be related to the suit property and would be no use to sustain the plaintiff's claim of title to the suit property. The house tax receipts marked as Exs.A3 to A9 would be no purpose to uphold the plaintiff's claim of title to the suit property as described in the plaint. It is found that when the plaintiff is unable to correlate the property acquired by her under Ex.A1 with that of the suit property as described in the plaint and the suit property is found to be described wrongly vis-a-vis the property described by the plaintiff in O.S.No.337 of 1986 and when it is seen that in between the property of Balaraman and the plaintiff, Duraisami pillai was owning the property and when as per Ex.B3 sale deed, the defendant has purchased the property belonging to Duraisami Pillai and in possession and enjoyment of only 45 ft east-west as described in Ex.B3, as also mentioned in Exs.C1 and C2, it is found that the defendant has not encroached into the plaintiff's property purchased by her under Ex.A1 and on the other hand, it is found that it is only the plaintiff, by way of preferring the present suit is attempting to grab the property belonging to the defendant. In the light of the above discussions, the Courts below had failed to appreciate the materials placed on record in the right perceptive, particularly, Ex.B3 sale deed in conjunction with the other documents placed on record and failed to note that it is only the defendant, who has title to the suit property and the plaintiff has no title, right or interest in the suit property whatsoever and it is only the plaintiff who is attempting to grab the suit property from the defendant by giving the wrong

description of the suit property in the plaint as above discussed and it is further seen that the Courts below have failed to correctly appreciate the import of the decree passed in O.S.No.162 of 1986 marked as Ex.B1 particularly the description of the property given therein which would go to show that when compared with the other documents projected in the matter, the property belonging to Duraisami Pillai lies in between Balaraman's property and the plaintiff's property and as the property belonging to Duraisami Pillai had been acquired by the defendant by way of Ex.B3 sale deed, it is found that it is only the defendant, who has title to the suit property and hence the Courts below had completely erred in upholding the plaintiff's case by failing to appreciate the materials in the proper perspective, both factually as well as legally and in such view of the matter, the judgments and decrees of the Courts below, being perverse and illogical, are liable to be set aside. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the defendant and against the plaintiff.

15. The learned counsel for the defendant in support of his contentions placed reliance upon the decisions reported in 2017 (2) CTC 678 [Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, virudhunagar] and 2014 (4) CTC 471 [Union of India and Others Vs. Vasavi Co-op Housing Society Ltd and others] Similarly, the learned counsel for the plaintiff in support of his contentions placed reliance upon the decisions reported in 1999 (II) CTC 468 [Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar] and 1999 (II) CTC 256 [Lourdumari Vs. L.Jayachandra Babu and 10 others] The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

16. In conclusion, the judgment and decree dated 09.07.2002 passed in A.S.No.134 of 1998 on the file of the Additional District Judge, Fast Track Court -II, Kancheepuram confirming the decree and judgment dated 06.04.1998 passed in O.S.No.986 of 1993 by the Additional District Munsif Court, Kancheepuram are set aside and resultantly, the suit laid by the plaintiff in O.S.No.986 of 1993 is dismissed with costs. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS IV)

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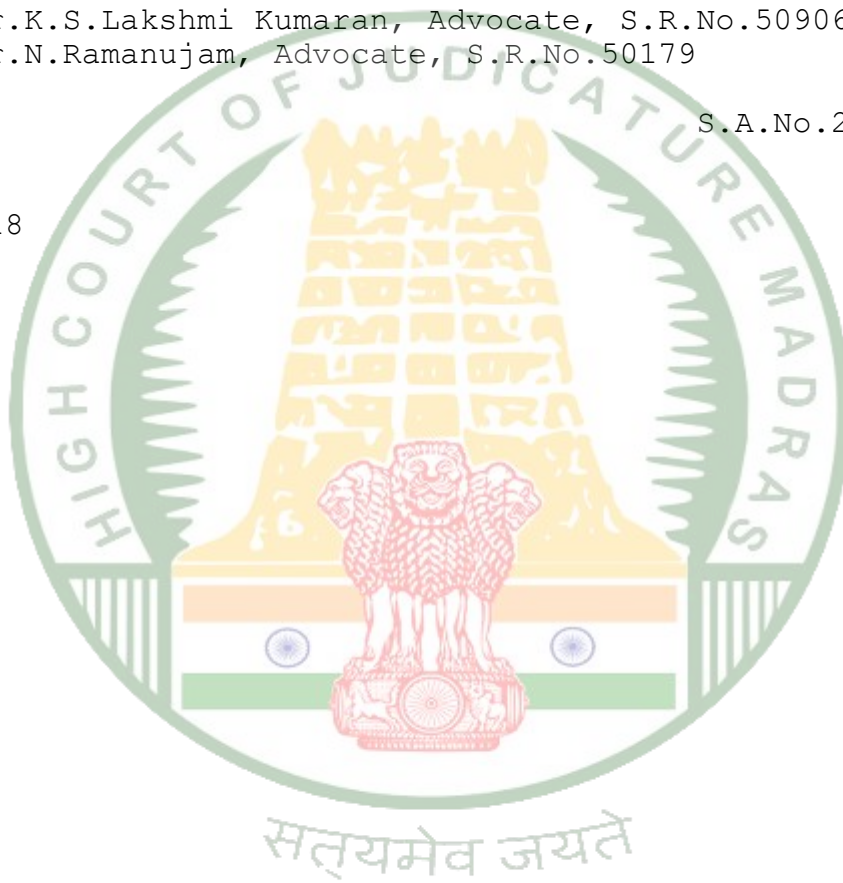
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