

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.06.2018

PRONOUNCED ON : 20.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.420 of 2004

C.Kaliyaperumal ... Appellant/defendant

Vs.

1. Radhakrishnan

2. Shankar

... Respondents/Plaintiffs

(R1 & R2 Declared as major and father
natural guardian rajangam padayachi
discharged from the guardianship
vide order made in CMP.6774 & 6775/18
in SA.420/2004))

Prayer :- Second Appeal has been filed under Section 100 of CPC
against the Judgement and Decree dated 27.03.2003 passed in
A.S.No.54 of 1992 on the file of the Subordinate Court,
Ariyalur, confirming the Judgment and Decree dated 25.03.1992
passed in O.S.No.125 of 1991 on the file of the District Munsif
Court, Ariyalur.

For Appellant : Mr.P.Dinesh Kumar
for M/s.Sarvabhauman Associates

Respondents : No representation/ No appearance
(Set ~~exparte~~ vide order
dated 12.06.2018)

JUDGMENT

In this second appeal, challenge is made to the Judgement
and Decree dated 27.03.2003 passed in A.S.No.54 of 1992 on the
file of the Subordinate Court, Ariyalur, confirming the Judgment
and Decree dated 25.03.1992 passed in O.S.No.125 of 1991 on the
file of the District Munsif Court, Ariyalur.

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

3. Suit for Declaration and Permanent Injunction.

4. The case of the plaintiffs, in brief, is that the
plaintiffs have filed a plaint along with the plain and the

portion shown as DEGH in the plaint plan originally belonged to Annamalai Padayachi and he had alienated the same in favour of his eldest daughter Deivanai in the year 1952 and thereafter, Deivanai had alienated the portion situated in the south eastern corner shown as BCEF in the plaint plan in favour of her sister Valliammai in the year 1954 under a registered sale deed and thereafter, Valliammai had alienated the abovesaid BCEF portion in favour of one Muthammal by way of a registered sale deed during the year 1963 and the defendant is the son of Muthammal and in all the abovesaid sale deeds, though the western boundary is shown as Olungai, the measurements had been specifically mentioned as 17 human feet i.e. 14 $\frac{1}{4}$ standard feet and accordingly, the portion alienated in favour of Valliammai and thereafter, in favour of Muthammal, the defendant's mother, ends with BC line and only the portion shown as BCEF has been in possession and enjoyment of Muthammal and thereafter, her son, the defendant. The portion, on the western side of BCEF portion, continued to be in possession and enjoyment of Deivanai and after her demise, her legal heirs had alienated the same in favour of the plaintiffs by way of a registered sale deed dated 06.10.1988 and accordingly, it is only the plaintiffs, who are in possession and enjoyment of the western portion as abovesaid, which is the suit property and the defendant attempted to acquire the suit property, but, the same had been turned down by the plaintiffs and their vendors and accordingly, developing an enimical attitude, the defendant attempted to interfere with the plaintiffs' possession and enjoyment of the suit property, which had been prevented by the plaintiffs and in this connection, the complaint has been lodged with the police also and as the acts of the defendant persisted, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit laid by the plaintiffs is not maintainable either in law or on facts. The plaint plan is not correct. The measurements given in the plaint plan are imaginary. It is false to state that Deivanai ammal had sold only the south eastern corner portion shown as BCEF in the plaint plan in the year 1954 and it is further false to state that only that portion had been conveyed to the defendant's mother in the year 1963 by Valliammai. The plaintiffs, after his continuous defeats in the earlier suit pending between the parties in O.S.No.119/1983, have come forward with the present suit containing false allegations. It is false to state that only 17 human feet ending with the BC line has been sold to Muthammal and it is false to state that the suit property remained in the hands of Deivanai and thereafter, in the possession and enjoyment of the plaintiffs by way of the sale deed dated 06.10.1988. The property had been conveyed by Deivanai ammal within the four boundaries described in the sale

deed dated 01.08.1957 and the intention of the parties thereto was to convey the property only within the four boundaries specified therein and accordingly, Valliammai after enjoyment had conveyed the suit property to the defendant's mother by way of a registered sale deed dated 27.06.1963 specifying the four boundaries above referred to and accordingly, it is only Muthammal and the defendant, who have been in possession and enjoyment of the said property within the specified four boundaries, which includes the suit property and it is false to state that the plaintiffs had acquired the suit property from the legal heirs of Deivanai ammal as claimed in the plaint. The suit property has been in the possession and enjoyment of the defendant's mother and thereafter, the defendant for more than the statutory period and thereby, the defendant and his mother had perfected their title to the suit property by way of adverse possession. The plaintiffs cannot allow any claim over the suit property by way of the sale deed dated 06.10.1988 and they had never been in possession and enjoyment of the same nor their vendors had been in the possession and enjoyment of the same at any point of time and hence, there is absolute no cause of action for the plaintiffs to institute the suit and the suit is liable to be dismissed.

6. In support of the plaintiffs' case, PW1 has been examined and Exs.A1 to A4 were marked. On the side of the defendant, DW1 was examined and Exs.B1 to B7 were marked. Exs.C1 to C2 were also marked.

7. The Courts below, on an appreciation of the materials placed on record both oral and documentary evidence, was pleased to accept the plaintiffs' case and accordingly, granted the reliefs in favour of the plaintiffs as prayed for. Impugning the same, the present second appeal has been laid.

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

" (i). Whether the Courts below are right in law in holding that when there is conflict between the boundaries and measurements, the measurements will prevail over the boundaries? - vide 1998 1 LW 244

(ii). When the recitals in Exs.A2, A3 and B6 would clearly show that the intention of the vendor under Ex.A3 is to sell the entire property including the suit property within the specified four

boundaries, whether the Courts below are right in law in holding that the heirs of the vendor under Ex.A3 would have right, title and interest to alienate the property under Ex.A4 to the respondent, which is already sold by their predecessor in title?

(iii). Whether the Courts below are right in law in discarding the admission of respondent in the earlier proceedings marked as Exs.B2 to B4 and physical features noted down by the Commissioner under Exs.C1 and C3 which would clearly show the possession of the appellant in the suit property?

(iv). Whether the Courts below are right in law in granting decree on mere surmises and conjectures ignoring the material evidence marked as Exs.B1 to B6 and C1 and C2?"

9. The suit has been laid by the plaintiffs for declaration and permanent injunction. The suit property has been described in the plaint plan as ABCD measuring east-west 16 ½ feet and north-south 15 feet within the specific boundaries as described in the plaint. Thus, according to the plaintiffs, the suit property is located to the east of Olungai, to the north of Rajamanickam's house and garden, to the south of the property acquired by the plaintiffs and to the West of the site belonging to Muthammal (defendant). The plaintiffs' claim title to the suit property by way of the sale deed dated 06.10.1988, the copy of which has been marked as Ex.A4.

10. It is not in dispute that the property shown as DEGH in the plaint plan originally belonged to Annamalai and it is also not in dispute that the abovesaid property had been alienated by Annamalai in favour of Deivanai by way of a sale deed dated 20.02.1952, the certified copy of which has been marked as Ex.A2. Thus, it is found that Deivanai owned the entire property inclusive of the suit property shown as DEGH in the plaint plan. It is stated by the plaintiffs that Deivanai had sold the south eastern portion to her sister Valliammai measuring 17 human feet east- west and north -south 20 human feet by way of a sale deed dated 12.08.1957, the copy of which has been marked as Ex.A3. It is also stated that Valliammai had thereafter sold the property acquired by her under Ex.A3 in favour of the defendant's mother by way of a registered sale deed dated 27.06.1963, which has come to be marked as Ex.B6. On

a perusal of Exs.A3 & B6, it is found that though it has been averred in the said sale deeds that the property conveyed therein is situated to the east of Olungai, considering the specific extent and measurements conveyed under the abovesaid sale deeds, it is found that only the property measuring east-west 17 human feet had been conveyed thereunder and as far as the eastern boundary is concerned, there is no dispute between the parties, which is stated as the property owned by Rajangam. Thus, it is found that by way of Exs.A3 & B6, the title deeds of the defendant, only the property measuring east-west 17 human feet had been conveyed, which corresponds to 14 $\frac{1}{4}$ standard feet. There is no dispute as regards the abovesaid position. On a perusal of Ex.A2, the title deed of Deivanai ammal, it is found that under the said document, Deivanai ammal had purchased east-west 35 human feet and north-south 40 human feet within the specific boundaries, particularly, situated to the east of Olungai and to the west of Ponnusamy's land. As far as the eastern boundary is concerned, there is no dispute between the parties, the only dispute is whether the defendant's mother and her vendor had acquired the entire property measuring east-west 35 human feet by way of Exs.A3 & B6 from the original owner Deivanai. However, as rightly determined by the Courts below, it is found that when the measurements of the property conveyed under the abovesaid sale transactions are taken into consideration, it is found that only the property measuring east-west 17 human feet had been conveyed and such being the position, when it is found that Deivanai had acquired east-west 35 human feet and accordingly, it is found that considering the measurements given in Exs.A3 and B6, it is found that the defendant's mother and her vendor had purchased the property only measuring east-west 17 human feet, corresponding to 14 $\frac{1}{4}$ feet and accordingly, it is found that the boundary has been wrongly mentioned in the abovesaid sale transactions. When Olungai is found to be described as the western boundary in all the sale transactions, as rightly found by the Courts below, Valliammai and thereafter, Muthammal had acquired only the portion shown as BCEF in the plaint plan measuring east-west 17 human feet, corresponding to 14 $\frac{1}{4}$ standard feet and such being the position, the defendant cannot be allowed to take advantage of the boundary recitals found in their documents as if his mother and her vendor had been conveyed the entire property measuring east-west 35 human feet situated to the east of Olungai. On the other hand, when the specific measurements conveyed under the abovesaid documents are taken into consideration as rightly put forth by the plaintiffs, only the portion shown as BCEF had been conveyed and not the suit property.

11. However, it is contended by the defendant's counsel that when there is dispute or doubt as regards the measurements

and boundaries, it is only the boundaries, which would prevail and accordingly, it is his contention that the Courts below should have held that the defendant is entitled to the entire property situated to the east of Olungai taking into account of the boundaries mentioned in the sale transactions Exs.A3 & B6. In this connection, reliance placed upon the decisions reported in (2002) 1 M.L.J.675 (S.Vijayaraghavan Vs. Noorjahan and another), 1998-1-L.W.244 (Roohnisha Beevi and 15 others Vs. A.M.M.Mahudu Mohamed and 29 others), 2016 (2) CTC 77 (N.Valliammai (dead) and another Vs. M.Kanniah and others), (2000) 3 M.L.J. 327 (Ramaiya Asari Vs. Ramakrishna Naicker alias Kollimalai Naicker and another) and the judgment of this Court (Madurai Bench) dated 14.07.2016 passed in S.A.(MD) No.375 of 2011 and M.P.(MD).Nos.1,2 of 2011, 1 of 2012. However, as rightly found by the Courts below, it is only the intention of the parties, which would govern as to what was the extent of the properties conveyed by them under the respective sale deeds. Accordingly, when it is found that under Exs.A3 & B6, the extent and measurements had been correctly mentioned and accordingly, on that basis, we could easily determine the subject matter of the abovesaid conveyances, in such view of the matter, as rightly held by the Courts below, the boundaries would not weigh for consideration and on the other hand, it is only the measurements and extents, which would prevail and accordingly, it is found that on the abovesaid principles rightly followed by the Courts below, it is found that when by way of Exs.A3 & B6, the defendant had acquired the property measuring east- west 17 human feet corresponding to 14 ¼ standard feet situated to the west of Rajangam's properties, he cannot take advantage of the western boundary mentioned in the abovesaid transactions as if they conveyed the entire property situated to the east of Olungai. On the other hand, as rightly found by the Courts below, when the measurements and extents had been clearly spelt out in the abovesaid sale transactions, it is found that the defendant can at the most lay a claim of title, possession and enjoyment only to the BCEF portion shown in the plaint plan and not to the suit property as described in the plaint.

12. In addition to that, as rightly determined by the Courts below, it is found that even to the knowledge of the defendant and his mother for several years, the document of conveyance in their favour conferred right upon them only to the portion of the property in the suit survey number measuring east-west 17 human feet and north-south 20 human feet. If really, the intention of Valliammai was to convey the larger extent of the property to the defendant's mother and if to the knowledge of the defendant's mother or the defendant as the case may be, the document recites only a lesser extent, as rightly determined, nothing prevented the defendant or his mother to have the abovesaid discrepancies rectified by a duly executed

rectification deed by their predecessor in title as per law. However, it is found that no such endeavour is made by the defendant or his mother to get any rectification deed from Valliammai and this would only go to show that inasmuch as Muthuammal had been conveyed the property measuring east-west 17 human feet, accordingly, it is seen that neither she nor the defendant had shown interest to get any rectification deed from Valliammai and therefore, at present, the defendant cannot take advantage of the boundary recitals found in the document to contend that the entire property situated to the east of Olungai had been conveyed to Muthammal.

13. As regards the possession and enjoyment of the suit property, in particular, it is found that as determined by the Courts below, when the suit property is found to be only a vacant site and when as per the document of title marked as Ex.A1, the plaintiffs are found to have derived title to the suit property from the legal heirs of Deivanai under Ex.A4, as rightly found by the Courts below, possession follows title accordingly, it is seen that it is only the plaintiffs, who are entitled to be in possession and enjoyment of the suit property.

14. The Commissioner's report and plan exhibited in the matter would not in any manner advance the case of the defendant. The Commissioner has noted only the physical features obtaining the suit property and by way of the same alone, it could not be construed that it is the defendant, who is in possession and enjoyment of the suit property as claimed. The Commissioner's report and plan, as rightly determined by the Courts below, do not serve any purpose to entitle either of the parties to claim that they are in possession and enjoyment of the disputed property as such.

15. The defendant has also taken the plea of adverse possession. By way of the same impliedly, it is found that the defendant has admitted the title of the plaintiffs in respect of the suit property. However, as regards the plea of adverse possession and the aspects of the same, neither the requisite plea with reference to the same had been made by the defendant or the materials pointing to the same had been produced on the part of the defendant and in such view of the matter, merely from the solitary statement of the plaintiffs in O.S.No.119 of 1983 by itself would not enable the defendant to contend that he is in a valid possession and enjoyment of the suit property or that, he and his mother had perfected title to the suit property by way of prescription. Therefore, the claim of adverse title projected by the defendant cannot be countenanced in any manner.

16. In view of the foregoing discussions, considering the facts and circumstances of the case at hand, when there is a clear statement of the measurements in the documents of title involved in the matter and by way of the same, the property in dispute could be identified without any doubt, in such view of the matter, it is seen that only the measurements would prevail over the boundaries and therefore, the decisions relied upon by the defendant's counsel, on facts, would not be applicable to the case at hand. From the materials placed on record, it is found that the intention of Muthammal's vendors is to convey only the property measuring east-west 17 human feet and not more than that. The defendant or his mother Muthammal cannot be allowed to take advantage of the wrong boundary recitals to contend that she had been conveyed a larger extent than what had been described in the concerned sale transaction. The Courts below had properly appreciated the materials placed on record marked as Exs.B2 to B4 as well as the commissioner's report and plan marked as Exs.C1 & C2 in the right perspective and found that the plaintiffs having derived title to the suit property from the lawful owner, accordingly, upheld their claim of title, possession and enjoyment of the suit property as putforth by them. The Courts below cannot be faulted in any manner for upholding the case of the plaintiffs. It is seen that the determination of the Courts below in favour of the plaintiffs' case is based upon the proper appreciation of the materials placed on record both factually and legally and therefore, it is found that nothing is warranted as such to interfere with the findings and conclusions of the Courts below for upholding the plaintiffs' claim. The substantial questions of law formulated in the second appeal are accordingly answered against the defendant and in favour of the plaintiffs.

In conclusion, the second appeal fails and is, accordingly, dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

सत्यमेव जयते Assistant Registrar (CS-iv)

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WEB COPY Sub Assistant Registrar

sms

To

1. The Subordinate Court, Ariyalur.
2. The District Munsif Court, Ariyalur.

Copy to

- 1.The Section Officer, V.R.Section,
High Court, Madras.(2 copies)

+1cc to MR.SARVABHUMAN ASSO., Advocate, S.R.No.38811

Judgment made
in S.A.No.420 of 2004

ssi (CO)
TR(09/07/2018)



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