

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.02.2018
PRONOUNCED ON : 02.03.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.922 of 2003

Sagarvanam Nachiar ... Appellant/Plaintiff

Vs.

Megar @ Megarunnisa ... Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 21.02.2003, made in A.S.No.94/2002 on the file of the Principal District Court at Nagapattinam, reversing the judgment and decree dated 24.10.2002 made in O.S.No.320/99 on the file of the District Munsif Court, Nagapattinam.

For Appellant : Mr.Srinath Sridevan

For Respondent : Mr. Mubarak Basha
for M/s. D.Abdullah

JUDGMENT

This second appeal is directed against the judgment and decree dated 21.02.2003, passed in A.S.No.94/2002, on the file of the Principal District Court, Nagapattinam, reversing the judgment and decree dated 24.10.2002, passed in O.S.No.320/99, on the file of the District Munsif Court, Nagapattinam.

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 she is the owner of the house bearing Door no. 1, karaiyan pillaiyar koil sannathi street, Nagapattinam and its appurtenances and backyard as described in the plaint schedule. According to the plaintiff, the said property was purchased by Sheigu Dawood Maricar, by way of a sale deed dated 09.02.1925 and on the eve of the marriage of the plaintiff, her father Sheigu Dawood Maricar gifted a specified portion of the house as recited in the Nikka Kaditham and the same was accepted by the plaintiff

and acquired possession of the said property and the plaintiff got release deeds from her mother and brothers in respect of their right and interest in the other portions of the house and thus, the plaintiff has acquired absolute title to the plaintiff's scheduled properties and the plaintiff has filed a rough plan along with the plaint and the defendant is the neighbour on the western side of the plaintiff's property and the property of the plaintiff is in the shape of "L" and the defendant demolished the wall on her backyard portion and gained entry into the northern side of the plaintiff's house and constructed a wall over the septic tank of the plaintiff from south to north to an extent of 12 feet length and height of 7 feet and if the same is allowed to continue, it would be difficult for the plaintiff to clean the septic tank and accordingly, the plaintiff lodged a complaint with the police as regards the alleged encroachment made by the defendant in her property and the police also advised the defendant to stop further construction in the encroached portion and as the defendant failed to stop further construction and also not removed the unauthorised construction put up by her, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit is not maintainable either in law or on facts. The property belonging to the plaintiff is covered by T.S.No.1030 and the property belonging to the defendant including the backyard portion is only a rectangular shape and not in the shape of "L" as claimed by the plaintiff. The suit property is covered by T.S.No.1029 and not under T.S.No.1030 and the entire area covered by T.S.No.1029 belongs to the defendant and the defendant has acquired title to the property by way of the settlement deed dated 30.09.73 and hence, the claim of the plaintiff that inclusive of the suit property, she had been conferred right by way of Nikka Kaditham and the release deeds executed by her mother and brothers is false and the defendant at no point of time encroached into the backyard portion of the plaintiff's property and the boundaries given for the property in dispute is also misleading and this would prove the falsity of the plaintiff's claim to the suit property and it is false to state that the defendant had encroached into the plaintiff's property and put up a wall over the septic tank and thereby prevented the plaintiff from enjoying her septic tank. The plaintiff by way of the present suit is only attempting to annex the portion belonging to the defendant without any right over the same and the plaintiff, on the other hand, attempted to put up a septic tank in the property belonging to the defendant illegally and therefore, the so called unlawful construction alleged to have been put up by the defendant is false and the plaintiff is not entitled to obtain the reliefs sought for and further, the suit laid by the plaintiff without seeking the relief of declaration is not maintainable and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case PWs 1 and 2 were examined, Exs.A1 to A10 were marked. On the side of the defendant DW1 was examined, Exs.B1 to B6 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 trial Court was pleased to decree the suit and on appeal, the first appellate Court was pleased to set-aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendant, dismissed the suit laid by the plaintiff. Aggrieved over the same, the present second appeal has come to be laid.

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

1. Whether the reference to the existence of the backyard in an ancient documents (Ex.A8) will not be prima facie proof of existence of such backyard?

2. Whether in a dispute over the property, the Court can decide the dispute on the basis of extent alone, when there are other materials available to establish the title?

3. Whether the admission by DW1 is that he is willing to submit the suit claim is not sufficient proof of the plaintiff's case?

9. The materials placed in the matter would go to show that the plaintiff's property is covered in T.S.No.1030 only. It is further found that the property belonging to the defendant is covered under TS.No.1029. It is further found that the plaintiff's property and the defendant's property are situated adjacent to each other and from the title deeds projected by the plaintiff, it is found that the property belonging to the plaintiff measures only 1205 square feet. Hence, as per the description of the properties found in the title deeds as well as the other materials placed on record, particularly, the commissioner's report and plan, marked as Exs.C1 to C4, it is found that the claim of the plaintiff that her property is of the shape "L" is not correct and it is found that the plaintiff's property is only in rectangular shape and it is thus found that the very description of the property in her plaint schedule is not correctly given and considering the measurements of the plaintiff's property and the defendant's property as noted by the advocate commissioner, it is found that the plaintiff cannot claim any right more than what she had been granted under her title deeds as projected in the plaint. It is thus seen that considering the boundary recitals contained in

the said documents, the plaintiff's property cannot at all be in "L" shape as claimed by the plaintiff and on the other hand, it could only be rectangular in shape and if as alleged by the plaintiff the disputed property acquired by her in "L" shape, definitely, the boundary recitals of the property would not be as given in the plaint schedule and in such view of the matter, the first appellate Court has rightly appreciated and determined on the basis of the materials placed on record that the property comprised in T.S.No.1030 is only rectangular in shape.

10. Admittedly, the plaintiff has no right to the property comprised in T.S.No.1029. In such view of the matter, when it is found that, according to the defendant, the offending construction had been put up only in the property belonging to the defendant, as per the materials placed on record, particularly, the commissioner's report and plan, the claim of the plaintiff that the defendant had illegally put up the offending wall in her property comprised in T.S.No.1030, as such, cannot be accepted in any manner, as rightly determined by the first appellate Court, the plaintiff has not placed any material worth acceptance to show that the offending wall is comprised in T.S.No.1030 and the plaintiff having failed to establish the above facts and on the other hand, when the materials placed on record show that the wall in dispute lies only in the suit property comprised in T.S.No.1029, it is found that the plaintiff cannot be granted the reliefs sought for and accordingly, it is seen that the first appellate Court had rightly declined the plaintiff's action.

11. The plaintiff having come forward with the suit seeking the reliefs prayed for based on her title to the property and when the claim of the property in dispute by the plaintiff as belonging to her is seriously disputed by the defendant, as rightly determined by the first appellate Court, the plaintiff should have laid the suit seeking for the relief of declaration and other consequential reliefs and the plaintiff having failed to lay the suit for relief of declaration and only laid the suit for mandatory injunction and further, the plaintiff having failed to establish that the plaintiff's property is of "L" shape and that the defendant had put up the offending construction encroaching into her property and on the other hand, the materials pointing out that the property is only rectangular in shape, it is found that the first appellate Court has, on proper reasonings and conclusions rejected the plaintiff's action.

12. The counsel for the respondent in support of his contentions placed reliance upon the decisions reported in (1997) 1 SCC 477 (Ninge gowda Vs.Linge gowda and others) and (1999) 3 SCC 722 (Kondiba dagadu kadam Vs. Savitribai sopan gujar and others). The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the case at hand.

13. In the light of the above discussions, in my considered opinion, no substantial question of law is involved in this second appeal. In such view of the matter, the first appellate Court is found to have analysed the materials placed on record, both oral and documentary, in the right perspective and correctly come to the conclusion that the plaintiff has miserably failed to establish her title to the property in dispute so as to entitle her to claim the reliefs sought for. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
The Principal District Court, Nagapattinam.

2. The District Munsif,
District Munsif Court, Nagapattinam.

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

+ 1 cc to Mr.D. Abdullah, Advocate Sr.16101

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SR(CO)

EU(18/04/2018)

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