

IN THE HIGH COURT OF JUDICATURE AT MADRAS

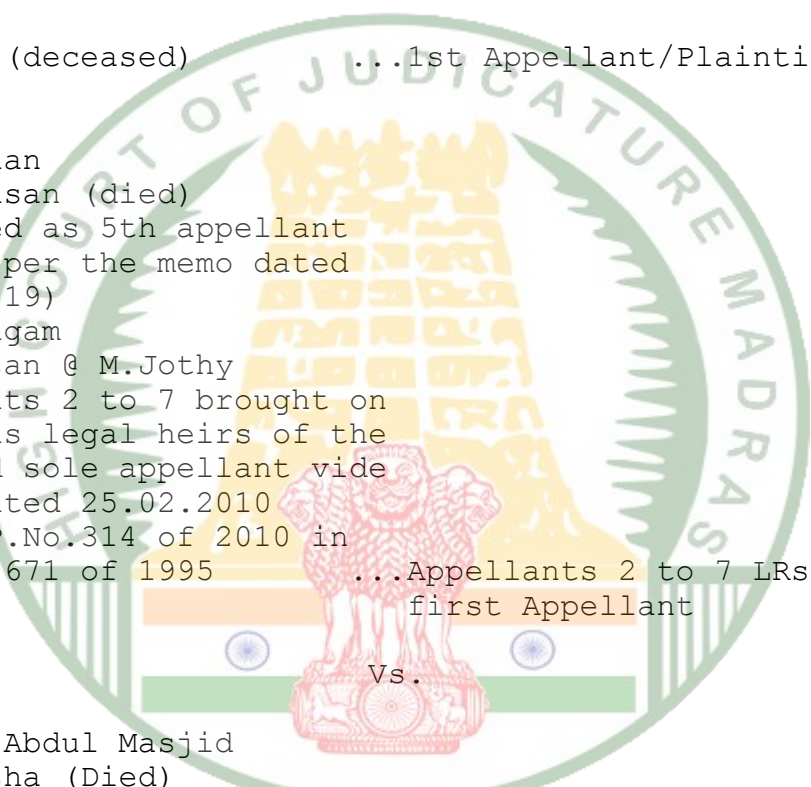
Reserved on : 11.12.2019

Date of Verdict : 20.12.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1671 of 1995

- 
1. Maraiyan (deceased) ...1st Appellant/Plaintiff
2. M.Jothy
3. M.Suba
4. M.Saravanan
5. M.Srinivasan (died)
 (Recorded as 5th appellant
 died as per the memo dated
 28.01.2019)
6. M.Thirumugam
7. M.Jegadesan @ M.Jothy
 (Appellants 2 to 7 brought on
 record as legal heirs of the
 deceased sole appellant vide
 Order dated 25.02.2010
 in C.M.P.No.314 of 2010 in
 S.A.No.1671 of 1995 ...Appellants 2 to 7 LRs of
 first Appellant
Vs.
1. Ayyavu @ Abdul Masjid
2. Akbar Basha (Died)
3. Iqbal ...Respondents 1 to 3/
 Appellants/Defendants 1 to 3
4. Muhamadu Abi
 R4 name corrected vide
 order of the Court dated
 21.01.2019 made in S.A.
 No.1671 of 1995 as per
 the memo dated 18.01.2019)
5. Niyas
6. Nizamudin
7. Sidique Alee
8. Allaudeen (died)
9. Sadic Alee
- 1/7

10. Sahita Banu

R2-LRS as per the order of this Court

in C.M.P.No.1732 of 2009

in S.A.No.1671 of 1995 order dated 08/02/2017

(R4 to 10 are brought on
record as legal heirs of the
deceased second respondent
and recorded R8 died as
unmarried and no legal heirs as Memo
filed USSR/001/17 and recorded on
26/11/2018 dated 30/01/2017

...Respondents 4 to 10

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 17.11.1994 made in A.S.No.23 of 1994 on the file of the Subordinate Court, Sankagiri, preferred by the respondents herein as against the judgment and decree dated 14.02.1994 made in O.S.No.557 of 1985 on the file of the District Munsif Court, Mettur.

For Appellants : Mr.S.Saravana Kumar

For Mr.M.Sudhakar

For Respondents

For R1, R3, R4

to R6 & R9: Mr.K.Ramanraj

R2 & R8 : Died

R7 & R10 : Not ready in notice

JUDGMENT

This appeal is directed as against the judgment and decree dated 17.11.1994 passed in A.S.No.23 of 1994 on the file of the Sub Court Sangagiri, reversing the judgment and decree dated 14.02.1994 passed in O.S.No.557 of 1985, on the file of the District Munsif Court, Mettur.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for permanent injunction. The plaintiff is the second son of his father late Angappa Aasari. His elder brother is one Narayanan and one Mani is his younger brother. The plaintiff is doing brass vessels business at Muthu nayakkanpatti. Since his elder brother settled at Harur, Dharmapuri District, he was not able to manage the joint family consisting the plaintiff and his younger brother, after demise

of their father. Hence, the plaintiff had taken over the entire management of the joint family consisting his younger brother.

3.2. On 21.01.1955, the plaintiff's father sold out one portion of his house property at Muthu nayakkanpatti village in favour of one Kamala and the remaining property in the form of vacant land has been maintained by his father. After sale of the said property by his father, on 07.02.1963 again the said property was purchased from the said Kamala in the name of the plaintiff's sister Saroja. The said property measuring to an extent of 36 feet north-south and 21 feet east-west along with the property of the joint family. The total vacant land measuring to an extent of 45 feet east-west and 42 feet north-south with specific boundaries, eastern by vacant land belongs to one Mani, northern by street and Muthu nayakkanpatti Higher Secondary School, western by north-south common lane and southern by Saroja and Arunachala Asari houses, as more fully described in the suit schedule property.

3.3. While being so, the defendants are very well aware that they have no right, title or interest over the suit property, threatened the plaintiff to sell the suit property in favour of them. When the plaintiff refused to do so, there was an enmity between the defendants and the plaintiffs. On 14.09.1985, the defendants tried to trespass into the suit property as such, the plaintiff lodged complaint before the concerned police station. In fact, the defendants appeared before the police and undertook not to interfere with the peaceful possession and enjoyment of the property by the plaintiff. Again the defendants on 18.09.1985, tried to trespass into the suit property and it was prevented by the plaintiff. In support of the case of the plaintiff, they produced sale deed dated 20.01.1955 and 07.02.1963 along with the house tax receipt and kirst receipt for the suit property. Hence the suit.

4. Resisting the same, the defendants filed a written statement and averred that the suit property belongs to one Kathar Basha Ravuthar and Paathu ammal, who is the sister-in-law of the first defendant and they are the absolute owners of the vacant land. The said Kathar Basha Ravuthar mortgaged the property on 29.03.1919 and registered as document No.964 of 1919. There is a house in No.7/52 and bearing assessment No.589. The said Kathar Basha Ravuthar executed a registered Will dated 30.10.1922, which clearly shows the owners of the suit property. The property tax stand in the name of the said Pathu ammal. Out of the total land, in 30 cubit north-south and 70 cubit east-west, in part of the portion, a house was constructed. The remaining vacant land out of 30 X 70 cubit, belongs to this

defendants and they are in possession and enjoyment of the suit property. The defendants further submitted that description of the property does not tallied with the documents filed by the plaintiff and therefore the plaintiff has no right over the suit property, and the same is the subject matter of another suit in O.S.No.666 of 1985. Therefore, the defendants prayed for dismissal of the suit.

5. On the side of the plaintiff, P.W.1 to P.W.4 were examined and marked the documents under Ex.A.1 to Ex.A.11. On the side of the defendants, they examined D.W.1 & D.W.2 and marked Ex.B.1 to Ex.B.13. The Commissioner's report and plan were marked as Ex.C.1 and Ex.C.2. Based on the material placed on record, both the oral and documentary evidences of the respective parties and the submissions made, the trial Court decreed the suit in favour of the plaintiff. Aggrieved by the same the defendants filed an appeal suit in A.S.No.23 of 1994 and the first appellate Court allowed the appeal in favour of the defendants. Aggrieved by the same, the plaintiff has filed this present second respondent.

6. At the time of admission of this second appeal on 11.04.1996, this Court formulated the following substantial question of law:-

1. Is the appellate Court right in holding that the trial Court erred in going into the question of title?
2. Whether the Courts below appreciated the evidentiary value of Ex.A.4 to Ex.A.8 and Ex.A.11?
3. Has the lower appellate Court not erred in deciding the suit without going into the question of easement of necessity?
4. Is the appellate Court justified in reversing the decree of the trial Court?

7. The learned counsel appearing for the appellants/plaintiffs and the respondents/defendants are present and they are reiterated the avernments set out in the plaint as well as the written statement.

8. Heard Mr.S.Saravana Kumar, learned counsel appearing for the appellants and Mr.K.Ramanraj, learned counsel appearing for the respondents.

9. Interestingly, the plaintiff as well as the defendants filed separate suit for injunction in respect of the very same property situated in Muthu nayakkanpatti Village, Omalur Sub Registration District and Salem Revenue district in O.S.No.557 of 1985 and O.S.NO.666 of 1985. In both suits, common judgment and decree were passed by the trial Court. The trial Court allowed the suit filed by the plaintiff in O.S.No.557 of 1985 and dismissed the suit filed by the defendants in O.S.No.666 of 1985 by the common judgment. As against, which both the defendants in O.S.No.557 of 1985 and the plaintiff in O.S.No.666 of 1985 filed appeal suits in A.S.No.23 of 1994 and 22 of 1994 respectively. The first appellant Court dismissed both the appeals. Admittedly, in both suits the parties did not mentioned the survey number and no proper description mentioned in the schedule of property. Simply they stated as vacant land measuring to the extend of 45 feet east-west and 42 feet north south with boundaries eastern by vacant land belongs to one Mani, northern by street and Muthu nayakkanpatti Higher Secondary School, western by north-south common lane and southern by Saroja and Arunachala Asari houses.

10. In the suit filed by the defendants in O.S.No.666 of 1985, an Advocate Commissioner was appointed and he inspected the suit schedule property and filed his report along with the plan, which were marked as Ex.C.1 and Ex.C.2. According to the Advocate Commissioner, the suit property is classified as village natham, comprised in S.No.216/1. He noted down the physical feature and measurement of the suit property and filed his report. Accordingly he also filed the plan showing the plaintiff as well as the defendants houses. According to the commissioner report, the plaintiff house is located southern side of the suit property. Opposite to the suit property, the defendants houses are located. The suit property is the vacant land. According to the plaintiff, they are using the vacant land for their business purpose viz., brass vessels shop. Ex.A.1, the sale deed is of the year 1984 and it is not legible and could not able to find whether the vacant site belongs to the plaintiff, though the plaintiff claimed title through Ex.A.1 in respect of the suit schedule property.

11. However the other sale deeds Ex.A.2 and Ex.A.3 indicated the boundaries and shown the suit property. But the possession of the suit property is not clear. Even then, the trial Court decreed the suit on the basis of Ex.A.11, saying that from the year 1977, the plaintiff is doing brass vessels business and the same was also supported by P.W.2 & P.W.3.

However no documents were marked to show that the suit property belongs to the plaintiff. At the same time, the defendants also failed to produce peace of evidence to prove that they are in possession of the suit property and they have title over the property. On the basis of the plaint in O.S.No.666 of 1985, and the schedule mentioned property in the said suit, the trial Court found that suit schedule property is under possession and enjoyment of the plaintiff and decreed the suit.

12. The first appellate Court after pursuing the oral and documentary evidence of the plaintiff as well as the defendants reversed the findings of the trial Court and dismissed the suit filed by the plaintiff. The first appellate Court found that there is no evidence to show that the plaintiff has the title and he failed to prove the possession and enjoyment of the suit property. While being so, on the basis of the other sale deeds and boundaries mentioned in those documents, the sale deed could not ascertain the possession and enjoyment of the suit property by the plaintiff. Therefore, the appellate Court rightly allowed the appeal and dismissed the suit filed by the plaintiff.

13. However, the learned counsel appearing for the defendants submitted that pending this appeal they filed suit for declaration of title for the very same suit property in O.S.No.167 of 2017 on the file of the District Munsif Court, Omalur, as against the legal heirs of the plaintiff and the same is pending for trial. In fact, the plaintiff as well as the defendants filed the suit for injunction for the very same property and only differing in the measurement of length and breath and survey numbers. Therefore, the discrepancies in the property themselves are bereft of facts and as such the injunction cannot be granted without deciding the title over the property. Now the defendants filed a suit for declaration for the very same property and the same is pending for trial. Hence, the parties are at liberty to agitate the issue of title in the suit filed by the defendants in O.S.No.167 of 2017 on the file of the District Munsif Court, Omalur. Accordingly, all the substantial questions of law, formulated by this Court in this Second Appeal, are answered in favour of the defendants and as against the plaintiff.

14. In the light of the above discussion, this Court finds that the first appellate Court has analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the

suit filed by the plaintiff. Accordingly, this Second Appeal stands dismissed by confirming the judgment and decree of the lower appellate Court. Consequently, connected miscellaneous petition is closed. No order as to costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

rts

To

1. The Subordinate Judge,
Sankagiri.
2. The District Munsif,
Mettur.

Copy to

The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

- +1 cc to Mr.A.Sudhakar Advocate sr106407
+1 cc to Mr.K.Ramanraj Advocate sr106347

Judgment
in S.A.No.1671 of 1995
and C.M.P.No.18658 of 1995

pm(co)
aa01/10/2020

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