

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	22.01.2019
Pronounced on	04 .02.2019

CORAM

THE HONOURABLE Mr. JUSTICE C.V.KARTHIKEYAN

S.A. No.1737 of 2000
and
C.M.P. No.16388 of 2000

Mr.P.A.Ganapathy Iyer .. Appellant/Plaintiff
Vs.
1.Ms.Meerabai
2.Mr.Sathyanarayanan @ Sathi ..Respondents/Defendants

Prayer: Second Appeal has been filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 27.04.2000 made in A.S. No. 99 of 1999 on the file of the Subordinate Judge Court, Bhavani, Erode District reversing the Judgment and decree dated 28.07.1999 made in O.S. No. 282 of 1989 on the file of the Principal District Munsif Court, Bhavani, Erode District.

For Appellant :: Mr.V.Rajesh
for M/s.Sarvabhauman Associates

For Respondents :: No appearance

J U D G M E N T

The Plaintiff in O.S. No.282 of 1989 on the file of the Principal District Munsif Court, Bhavani, is the Appellant herein. The suit in O.S. No. 282 of 1989 had been filed by the plaintiff, P.A. Ganapathy Iyer, against the two defendants, namely, Meerabai and Sathyanarayanan @ Sathi, seeking a judgment and decree for permanent injunction restraining the Defendants from putting up a staircase in the suit property or causing the disturbance to the Plaintiff's enjoyment of the suit property. By judgment dated 28.07.1999, the suit was decreed. The defendants then filed A.S. No. 99 of 1999 on the file of the Sub-Court, Bhavani. By judgment and decree dated 27.04.2000, the appeal was allowed and the suit was dismissed. Consequently, the Plaintiff has filed the present Second Appeal. The Second Appeal had been admitted on the following substantial questions of law:

"1. Whether the findings of the Appellate

Court regarding interpretation of the document Ex-A1 are vitiated by perversity?

2. Is the lower Appellate Court is correct in law in not drawing an adverse inference against the respondents for not producing the best evidence that is the sale deed under which they claim title?"

O.S. No. 282 of 1989

Principal District Munsif Court,
Bhavani, Erode.

2.It was the claim of the plaintiff that the suit property was common to the plaintiff and the first defendant. The first defendant is the wife of the second defendant. The suit property was provided for the purpose of taking water from the well. The defendants' predecessor is title did not use the suit property. It was claimed that the defendants had lost the right to use the suit property. It was stated that however the defendants trespassed into the suit property for constructing a staircase. This was prevented by the plaintiff. The suit was therefore filed seeking permanent injunction as stated above. The suit property is a vacant space leading to Door No.100, Rajaveedhi, Bhavani, Erode District.

3.The first defendant filed a written statement denying the plaint averments. She stated that she put up a new construction after purchasing the property in Door No.1/29 and made arrangements to put up a staircase within the suit property without causing any structural damage. It was stated that the plaintiff was not affected by putting up the said staircase. It was stated that the plaintiff has no right to prevent the defendants from putting up the staircase. It was therefore, stated that the suit should be dismissed.

4.On the basis of the above pleadings, the learned Principal District Munsif Court, Bhavani framed the following issues:-

"1. Whether the plaintiff is entitled to the relief of permanent injunction?

2. To what other relief the plaintiff is entitled to?"

5.During trial, the plaintiff examined himself as PW-1. The second defendant examined himself as DW-1 and examined another witness, Kumarakuruparan examined as DW-2. The plaintiff marked Ex-A1, which is a Partition deed dated 20.07.1935. The defendants marked Ex-B1, which is the plan for construction of the staircase. An advocate commissioner had also been appointed and his report was marked as Ex-C1 and sketch was marked as Ex-C2.

6.On the basis of the oral and documentary evidences, the

learned Principal District Munsif found that the suit property was used in common by the plaintiff and the defendants and consequently, held that the plaintiff was entitled for a permanent injunction. It was also found that the construction of the staircase would cause interference with the peaceful possession by the plaintiff. Consequently, the Suit was decreed.

A.S. No. 99 of 1999 :
Sub-Court, Bhavani.

7.The defendants filed a first appeal before the Sub-Court, Bhavanai. This came up for consideration on 27.04.2000. The learned Subordinate Judge framed necessary points for consideration and re-appraised the evidence. The learned Subordinate Judge found that in the space allotted to the defendants, there was a six feet passage to go to the well to take water. It was also found that the defendants have not objected to the plaintiff using the said six feet passage. It was also found that the place where the staircase is to be constructed was within the defendants' place on the western side corner. It was stated that the well was also used in common. It was also found that without obstructing the six feet passage the staircase can be constructed and there will not be any interference with the usage of the plaintiff. Consequently, the learned First Appellate Judge reversed the findings of the Trial Court and allowed the appeal and set aside the order of the Trial Court.

S.A. No.1737 of 2000:

8.Challenging the said Judgement, the plaintiff has filed the present Second Appeal. The Second Appeal was admitted on the following substantial questions of law:-

- "1. Whether the findings of the Appellate Court regarding interpretation of the document Ex-A1 are vitiated by perversity?
2. Is the lower Appellate Court is correct in law in not drawing an adverse inference against the respondents for not producing the best evidence that is the sale deed under which they claim title?"

9.The first substantial question of law is with regard to the interpretation of the document Ex-A1. Ex-A1 is a xerox copy of the Partition deed dated 20.07.1935. It is inadmissible in evidence. In his chief examination, the plaintiff had stated that the well was to be jointly used by him and his elder brother. However, he later stated that he was alone using the well. It had been clearly found that by perusal of the

commissioner's report that the construction was to be put up leaving six feet. It was also found from EX-A1, Partition deed that only six feet was left open for the lane. In the commissioner's report EX-C1, the vacant site was situated on the southern side of the east and west land. It is also seen as a fact that the staircase, which was proposed to be constructed by the defendants was within their property. They had not encroached into the property of the plaintiff. A clear finding on fact had given whereby it had been held that the staircase was being constructed only in the passage and would not cause any interference with the usage of the property of the plaintiff. It was also found by the First Appellate Court that the plaintiff cannot object to the construction of the staircase within the property of the defendants. These are all findings on fact and it would be inappropriate to interfere with the said findings on fact. As a matter of fact, DW2 was an engineer. He also deposed that there was space available for construction of the staircase and that it would not in any manner affect the enjoyment of the plaintiff. The Partition deed of the year 1935, which had been marked as EX-A1 was between the plaintiff and his brother. It is also to be kept in mind that the first defendant was a purchaser of the property in Door No.1/29, which had been allotted to A.Yegnasami Iyer, the brother of the plaintiff. Consequently, the defendants claim title through the brother of the plaintiff from whom he had been divided by the Partition deed, Ex-A1. I hold that the First Appellate Court has correctly decided the issue and there is no perversity in the interpretation of Ex-A1.

10.The second substantial question of law is with respect to adverse interference against the defendants for not producing the best evidence under which they claimed title. As a matter of fact, Ex-A1 produced by the plaintiff which is a Partition deed between himself and his brother is more than sufficient to prove the title of the defendants, since, the defendants claim title through the brother of the plaintiff. Consequently, adverse inference cannot be drawn as against the defendants. It must be remembered that the plaintiff had filed the suit for bare injunction alone and not for title. Consequently, the burden was on the plaintiff to establish his possession and more over, exclusive possession over the six feet passage where the staircase was proposed to be constructed. It has been categorically found that the passage was used in common. Consequently, the substantial question of law is answered that the Lower Court was correct in its appreciation of the evidence on record.

11. In view of the above reasoning, I hold that the plaintiff has not made out any ground to interfere with the judgment and decree of the First Appellate Court. Accordingly,

the Second Appeal is dismissed. With costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge Court,
Bhavani, Erode District.
2. The Principal District Munsif Court,
Bhavani, Erode District.
3. The Section Officer, VR Section,
Madras High Court.

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.9954

S.A. No.1737 of 2000

CNR(CO)
GMY(17/06/2019)