

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.10.2018

PRONOUNCED ON : 19.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.1904 of 2000

and

C.M.P.No.11006 of 2018

B.Devarajan ... Appellant/Plaintiff

Vs.

1. N.Sambandam

2. Raman

... Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgement and decree passed in A.S.No.13 of 1999 dated 02.11.1999 on the file of the Additional District Sessions Judge, Chengalpattu, reversing the judgment and decree dated 20.10.1997 made in O.S.No.38 of 1987 on the file of the District Munsif Court, Chengalpattu.

For Appellant : Mr.R.Thiyagarajan,
Senior Counsel
for Mr.P.Seshadri

For Respondents: Mr.S.Saravanan
for Mr.R.Mohan

JUDGMENT

This Second appeal has been filed by the appellant/plaintiff against the judgment and decree passed by the Additional District Judge, Chengalpattu in A.S.No.13 of 1999 dated 02.11.1999 reversing the judgment and decree passed by the District Munsif, Chengalpattu in O.S.No.38 of 1987 dated 20.10.1997.

2. The appellant herein had filed a suit in O.S.No.38 of 1987 on the file of the District Munsif, Chengalpattu to declare his title over the suit property : for permanent injunction to restrain the defendants from entering in to the suit property and for mandatory injunction directing the first defendant to

remove the basement which has been put up by the first defendant in the suit property.

3. The learned District Munsif, Chengalpattu by the Judgment dated 20.10.1987 had decreed the suit for declaration and permanent injunction, however, she dismissed the suit in respect of the mandatory injunction. Aggrieved by the same, the defendants had filed an appeal in A.S.No.13 of 1999 on the file of the Additional District Judge, Chengalpattu. The plaintiff had filed cross objections in respect of the dismissal of the suit for the relief of mandatory injunction. The learned Additional District Judge, Chengalpattu by the Judgment dated 02.11.1999 had allowed the said appeal and set aside the judgment and decree passed by the Trial Court. Further, he dismissed the cross objections filed by the plaintiff. Feeling aggrieved, the plaintiff has filed the present second appeal.

4. For the sake of convenience, the parties are referred to as described before the Trial Court.

5. The averments made in the plaint are in brief as follows:

One C.R.Srinivasan and K.S.Chellappa had jointly purchased the suit property and other adjacent lands under a registered sale deed dated 22.02.1964 and they had plotted out the lands and partitioned the plots on 19.06.1965 and in the said partition, the suit plot fell to the share of C.R.Srinivasan and the said C.R.Srinivasan had sold the suit plot to one P.Jeyaraman under a registered sale deed dated 03.03.1966. The plaintiff had purchased the suit plot from the said Jeyaraman under the sale deed dated 27.04.1983 and from the date of purchase, the plaintiff has been in possession and enjoyment of the suit property. The defendants are strangers to the suit property and they have no right over the suit property, but the first defendant had high handedly put up a basement on the western portion of the plot. The plaintiff came to know that the aforesaid act, when he made a casual visit to the suit site on 24.01.97. Hence, the plaintiff was constrained to file the above suit for the above said reliefs.

6. The averments made in the written statement filed by the first defendant and adopted by the second defendant are in brief as follows:

The plaintiff and his vendor had no title over the suit property. The Original purchasers C.R.Srinivasan and K.S.Chellappa also did not have any title as averred in the sale deed dated 22.02.1964. The suit property situated in Survey No.110. Originally, 43 cents of land in survey No.110 belonged to one Narasinga Naicker. The said Narasinga Naicker died leaving behind his four sons as legal heirs viz., 1) Raji

Naicker, 2) Arumugham Naicker, 3) Velu Naicker and 4) Magadeva Naicker. The said 43 cents were divided among their family members under a partition deed dated 07.08.1895 and in the said partition, the suit property measuring 13 cents situated in survey No.110 was allotted to the share of Velu Naicker. After the death of said Velu Naicker, his son Vedhachala Naicker got the said 13 cents by family oral partition in 1934. The said Vedhachala Naicker had sold the said 13 cents to one Meenakshi Ammal under a registered sale deed dated 05.06.1965. The said Meenakshi Ammal subsequently sold 6½ cents on the western side under a registered sale deed dated 13.03.1972 to one Sakunthala and the said Sakunthala in turn sold the said 6½ cents to the second defendant under a registered sale deed dated 25.11.1982. The said Meenakshi Ammal sold the Eastern 6½ cents to the first defendant with specific boundaries under a registered sale deed dated 18.06.1984. But, in the sale deeds, survey Number has been wrongly mentioned as 110/2. The correct survey No is 110/1. Subsequently, the properties purchased by the defendants 1 and 2 were sub divided as survey No.110/1B2 and survey No.110/B1 respectively. From the date of purchase, the defendants have been in possession and enjoyment of their respective shares. The first defendant dug the well in his portion and also laid foundation by spending more than Rs.16,000/-. These things were done to the knowledge of the plaintiff. The plaintiff estopped from questioning the title and possession of the defendants. The plaintiff was not in possession and enjoyment of the suit property at any point of time. Therefore, the defendants prayed to dismiss the suit.

7. Based on the aforesaid pleadings, the learned District Munsif, Chengalpattu had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and marked Exs.A.1 to A.3 as exhibits. On the side of the defendants, the first defendant examined himself as D.W.1 and the second defendant examined as D.W.2 and one more witness was examined as D.W.3 and the defendants have marked Exs.B1 to B10 as exhibits.

8. The learned District Munsif, Chengalpattu, after considering the materials placed before her found that the plaintiff had proved that he is the owner of the suit property and since the suit property is a vacant site, the principle of possession follows title will comply. Accordingly, he decreed the suit for declaration and permanent injunction, however she dismissed the suit in respect of the relief for mandatory injunction. Aggrieved by the same, the defendants had filed an appeal in A.S.No.13 of 1999 on the file of the Additional District Judge, Chengalpattu. The plaintiff also filed a cross objections in respect of the dismissal of his suit for mandatory injunction. The learned Additional District Judge, Chengalpattu

had allowed the said appeal and set aside the judgment and decree passed by the Trial Court. Further, he dismissed the cross objections which was filed by the plaintiff. Feeling aggrieved, the plaintiff has filed the present second appeal.

9. This Court at the time of admitting the second appeal has formulated the following substantial questions of law:

" (1) Whether the finding of the lower appellate court that the chitta extract as found in Ex.B.5 clearly indicate sub division of property purchased by the defendant in Ex.B.2 and B.10 , though, the recitals in Ex.B2 and B.10 refers only to S.No.110, is sustainable in law?

(2) Whether the lower appellate court is right in reversing the well considered finding of the trial court, especially when the trial court has clearly found that neither the boundaries recitals nor extent as found in Ex.B2 and Ex.B.10 tally with the plaint schedule property?

(3) Whether the lower appellate court has properly construed the recitals in Exs.B 1 , B2 and B3 in coming to the conclusion that the description of the property as found in the said document tally with the plaint schedule property?

(4) Whether the lower appellate court is right in reversing the well considered judgment of the trial court?"

10. The appellant/plaintiff has filed an application in C.M.P.No.11006 of 2018 under Order 41 Rule 27 of C.P.C seeking permission of the Court to file lay out sketch (Map) forming part of the Ex.A3 sale deed dated 03.03.1966 as additional evidence. According to the appellant, his vendor namely P.Jeyaraman had purchased the suit property under Ex.A.3 Sale Deed dated 03.03.1966 and at the time of sale, a lay out sketch was annexed to the said Sale deed. His further case is that when the said sale deed was produced before the Trial Court, inadvertently the said lay out sketch has not been enclosed with the said sale deed. His further case is that only recently, he came to know that the said lay out sketch has not been filed along with the Ex.A.3 Sale deed and for effective adjudication of the issues involved in the above case, the said sketch is absolutely necessary and hence he prayed to grant leave for producing the said document as additional documentary evidence.

11. Though a sufficient opportunity has been given to the respondents for filing counter, they have not filed counter and hence after hearing both sides and perusing the materials, order is being passed in the said petition.

12. Heard, Mr.R.Thiyagarajan, Senior Counsel for Mr.P.Seshadri, the learned counsel for the appellant and Mr.S.Saravanan for Mr.R.Mohan, learned counsel for the respondents.

13. The learned counsel for the appellant/plaintiff has submitted that the first appellate court erred in reversing the well considered judgment of the Trial Court. He further submitted that the first appellate court failed to consider the scope and effect of the recitals of Exs.A1, B2 and B10 in a proper perspective. He further submitted that the first appellate court failed to note that the particulars of the property as set out in Ex.A.1 which reflects in the plaint schedule totally differs from the property claimed to be the property of the defendants under Exs.B2 and B10 and that larger extent contained in survey No.110 in terms of Ex.B6 FM Register clearly show that what was purchased by the plaintiff and the defendants 1 and 2 are different properties. He further submitted that the first appellate court failed to note that the specific case of the defendants is that survey number as recited in Ex.B2 and B10 are not correct survey numbers and it refers only to survey No.110/2 and not Survey No.110/1 and on that ground alone, the claim of the defendants ought to have been rejected. He further submitted that the first appellate court has not considered the evidence of the second defendant who was examined as D.W.2 and he had clearly admitted during cross-examination that he was not aware of the fact to which survey number the property belongs. He further submitted that the first appellate court failed to consider the Ex.A.2 Kist Receipt for fasli year 1390 to 1393 which clearly prove possession of the plaint schedule property as on the date of suit. He further submitted that at the time of an execution of Ex.A.3, Sale deed dated 03.03.1966, a lay out plan was also annexed to the sale deed but at the time of filing the said sale deed before the Trial Court, inadvertently, the said sketch was not enclosed. He further submitted that only recently, the appellant came to know that the said sketch not filed before the Trial Court and therefore, he prayed to allow the C.M.P.No.11006 of 2018 and permit the appellant to produce the said rough sketch as additional documentary evidence. He further submitted that the first appellate court failed to note that the properties mentioned in the documents filed by the defendants are not tallied with the suit property and therefore, he prayed to allow the second appeal and set aside the judgment and decree passed

by the Trial Court and restore the judgment and decree passed by the Trial Court.

14. Per contra, the learned counsel for the respondents/defendants has submitted that the plaintiff tracing out the title to the suit property through the sale deed dated 22.02.1964 (Ex.B9), but the defendants tracing out their title through Ex.B3 dated 07.08.1895. He further submitted that the vendor of the plaintiff was not at all in possession of the suit property at any point of time. He further submitted that Ex.B3 would show that originally, the suit property was the ancestral property of one Raji Naicker, Arumuga Naicker, Velu Naicker and Magadeva Naicker and they had partitioned the suit property and other properties and in the said partition, the suit property was fell in to the share of Velu Naicker. He further submitted that subsequently, in the oral partition took place between the sons of said Velu Naicker, the suit property was allotted to the share of Vedhachala Naicker and the said Vedhachala Naicker had sold the said property to one A.R.Meenakchi Ammal under Ex.B1 Sale deed dated 05.06.1965. He further submitted that the said Meenakchi Ammal had sold 6½ cents on the western side to one Sakunthala under Ex.B4 Sale deed dated 13.03.1972 and the said Sakunthala in turn sold the said 6½ cents to the second defendant under Ex.B.10, sale deed dated 25.11.1982. He further submitted that the said Meenakchi Ammal had sold the remaining 6½ cents on the eastern side to the first defendant under Ex.B2 Sale deed dated 13.06.1984 and hence, the entire extent of 13 cents is in possession and enjoyment of the defendants 1 and 2. He further submitted that the first defendant had dug a well in his property and also laid a basement with the knowledge of the plaintiff and hence the plaintiff is estopped from claiming any right over the suit property. He further submitted that the Trial Court, without considering the oral and documentary evidence in a proper perspective, had decreed the suit for declaration and permanent injunction, but the first appellate Court, after considering the evidence in a proper perspective, had rightly allowed the appeal and dismissed the suit and in the said factual findings, this Court cannot interfere.

15. In so far as C.M.P.No.11006 of 2018 is concerned, the said petition has been filed by the appellant under Order 41 Rule 27 of CPC seeking permission of the Court to file a lay out sketch as additional documentary evidence. According to the appellant, the said lay out sketch was annexed with Ex.A.3 sale deed dated 03.03.1996 but at the time of producing the said sale deed before the Trial Court, inadvertently the said sketch was not enclosed. Though a sufficient opportunity was given to the respondent for filing counter, they have not filed any counter opposing the said application. Further, in Ex.A3 itself, it is clearly stated that the property sold under the said document

has been marked in blue in the lay out plan which is annexed with the said sale deed. So, the respondent may not have any objection for receiving the said lay out plan. Hence, this Court inclined to allow the C.M.P.No.11006 of 2018. Accordingly, CMP.No.11006 of 2018 is allowed.

16. According to the plaintiff, he purchased the suit property under Ex.A.1 sale deed dated 27.04.1983 from one P. Jeyaraman and the said Jeyaraman in turn had purchased the suit property under Ex.A.3 sale deed dated 03.03.1966 from one C.R.Srinivasan . Though, in Ex.A.3, it is stated that the said C.R.Srinivasan and one K.S.Chellapa had purchased larger extent of properties in Survey Nos 97 to 110 of Guduvancheri Village under a registered sale deed dated 22.02.1964, the plaintiff had not produced the said sale deed. However, the defendants had produced a registration copy of the said sale deed dated 22.02.1964 and marked as Ex.B.9.

17. According to the defendants, the suit property originally ancestral property of one Raji Naicker, Arumugham Naicker, Velu Naicker and Magadeva Naicker and they had partitioned their family properties under Ex.B3 Registered Partition Deed dated 07.08.1895 and in the said partition, the suit property fell into the share of Velu Naicker. Their further case is that subsequently, in the partition which took place on 01.06.1934 between the sons of Velu Naicker, the suit property fell to the share of Vedhachala Naicker and the said Vedhachala Naicker had sold the entire extent of 13 cents to one A.R.Meenakchi Ammal under Ex.B.1 Sale deed dated 05.01.1965. Their further case is that the said Meenakchi Ammal had sold 6½ cents on the western side to one Sakunthala under Ex.B.4 Sale deed dated 13.03.1972 and the said Sakunthala in turn sold the said portion to the second defendant under Ex.B.10 Sale deed dated 25.11.1982. Their further case is that the said Meenakchi Ammal had sold the remaining 6½ cents on the eastern side to the first defendant under Ex.B2 Sale deed dated 18.06.1984.

18. A perusal of Ex.B.3 would show that in the partition which took place on 07.08.1895 between the sons of one Narasinga Naicker namely Raji Naicker, Arumugham Naicker, Velu Naicker and Magadeva Naicker, the property admeasuring 13 cents in Survey No.110 was allotted to the share of Velu Naicker. Ex.B.1 would show that in the partition which took place on 01.06.1934 between the said Velu Naicker and his sons, the said 13 cents in Survey No.110 was allotted to the share of Vedhachala Naicker and the said Vedhachala Naicker had sold the said 13 cents to one Meenakchi Ammal on 05.06.1965. Though in Ex.B3 the boundaries for the said 13 cents not mentioned, in Ex.B1 boundaries have been mentioned for the said 13 cents.

19. Ex.B4 would show that the said Meenakchi Ammal had sold 6½ cents on the western side to one Sakunthala on 13.03.1972 and the said Sakunthala in turn sold the said 6½ cents to the second defendant vide Ex.B10 dated 25.11.1982. The remaining 6½ cents had been sold by the said Meenakchi Ammal to the first defendant under Ex.B2 Sale deed dated 18.06.1984. Though, in Ex.B2 sale deed, it is stated that the property sold under the said document situated in Survey No.110/2 and its total extent is 10 acres, a combined reading of Exs B4 , B10 would show that the aforesaid property is situated only in Survey No.110 and total extent is only 2.10 acres. So, it is clear that in Ex.B2 instead of mentioning the survey number as 110 and the total extent as 2.10 acres, it has been wrongly mentioned as Survey No.110/2 and total extent as 10 acres. Anyhow, the vendor of the first defendant namely Meenakchi Ammal had purchased the property under Ex.B4 only in Survey No.110 and its total extent was 2.10 acres. Since, she sold 6½ cents on the western side under Ex.B4 to Sakunthala, the remaining 6½ cents on the eastern side alone was sold under Ex.B2 to the first defendant and therefore, the survey number has been wrongly mentioned in Ex.B2 as 110/2 instead of Survey No.110.

20. Ex.A1 would show that the plaintiff had purchased his property from one P.Jeyaraman on 27.04.1983 and the said Jeyaraman had purchased the property from one C.R.Srinivasan under Ex.A3 dated 03.03.1966 and the said C.R.Srinivasan and K.S.Chellapa had purchased larger extent of the properties in Survey Nos.97 to 110 under Ex.B9 Sale deed dated 22.02.1964 from one Patel Mohammed Sahib and Zulika Bai. In the said Ex.B9 Sale deed, it is stated that three items were sold in Survey No.110. Item No.1 is 92 cents with specific boundaries and Item No.2 is 10 cents with specific boundaries and Item No.3 is 12 cents with specific boundaries. So, in Survey No.110 totally 1.14 acres sold to the said C.R.Srinivasan and K.S.Chellappa, but, while mentioning the total extent of lands sold in Survey No.110, it has been mentioned as 1.21 acres i.e., 7 cents has been excessively mentioned.

21. It is also to be pointed out that in Ex.B9, for Item No.1 of Survey No.110 measuring 92 cents while giving boundaries, it has been mentioned that the said 92 cents is situated south of Valli Ammal Ramasami and Velu Naicker's lands. As already pointed out that Ex.B1, B4 and B10 would show that the total extent of Survey No.110 is 2.10 acres. In Ex.B9, Sale deed in Survey No.110 totally 1.14 acres sold by one Patel Mohammed Sahib and Zulika Bai in favour of C.R.Srinivasan and K.S.Chellappa. So, it is clear that the remaining portion in the aforesaid Survey Number not sold under Ex.B9. Further, as already pointed out that one of the boundaries has been shown as Velu Naicker's land and that also would show that under Ex.B9,

the lands of Velu Naicker not sold. The plaintiff claimed title through C.R.Srinivasan and K.S.Chellappa and the said C.R.Srinivasan and K.S.Chellappa had purchased their properties under Ex.B9. Whereas the defendants claimed title through Velu Naicker. The said C.R.Srinivasan and K.S.Chellappa had purchased the properties excluding Velu Naicker's property. So, it is clear that the properties claimed by the plaintiff and the properties claimed by the defendants are totally different properties. But both the parties claimed the suit property as their property and in such a case, this Court is of the view that the properties have to be measured with reference to Exs.A1, A3, B1, B2, B4, B9 and B10, field measurement plan and other revenue records and the properties should be identified and located what were the properties purchased by the both parties and for that purpose, an Advocate Commissioner has to be appointed. Further, since C.M.P.No.11006 of 2018 has been allowed, for marking the said document, necessary oral evidence also to be adduced. Therefore, this Court inclined to remand the matter to the Trial Court.

22. In the result, this second appeal is allowed. The Judgments and decrees passed by the Courts below are set aside. The matter is remitted back to the Trial Court. The Trial Court is directed to appoint an Advocate Commissioner to measure the properties with reference to Exs.A1, A3, B1, B2, B4, B9 and B10, field measurement plan and other revenue records with the help of a qualified surveyor and identify and locate the properties purchased by both the parties and get report with plan. It is further directed that the Trial Court has to give an opportunity to both parties for adducing further evidence including to mark the lay out sketch which has been filed by the appellant/plaintiff before this Court in C.M.P.No.11006 of 2018 as exhibit and dispose of the suit in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Vv

To

1.The Additional District Sessions Judge,
Chengalpattu.

2. The District Munsif Court,
Chengalpattu.

3. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.P.Seshadri, Advocate Sr.25796
+1cc to Mr.R.Mohan, Advocate Sr.26687

S.A.No.1904 of 2000
and
C.M.P.No.11006 of 2018

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