

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 22.10.2018

Delivered on: 05.02.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.411 of 2001

- 1.Abdul Majid (Died)
- 2.Ayisa Bee
- 3.Abdul Muthalif
- 4.Sarbhaunisha
- 5.Nasurinnisha
- 6.Akbar Basha

... Appellants

(Appellants 2 to 6 brought on record as Lrs of the deceased sole appellant viz., Abdul Majid vide Court order dated 08.06.2018 made in CMP.Nos.545 & 546/2010 in S.A.No.411/2001).

Vs.

- 1.Rameeja Bibi (Died)
- 2.Noornisa
- 3.Mumtaz Begum

... Respondents

(R1 died as per the Memo dated 15.03.2018. R2 is recorded as LR of the deceased R1 vide order dated 16.03.2018 in S.A.No.411/2001 R3 brought on record as LR of the deceased appellant vide order dated 08.06.2018 made in CMP.Nos.545 & 546/2010 in S.A.No.411/2001)

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 18.10.2000 made in A.S.No.31 of 2000, on the file of the learned Additional District Court, Perambalur, reversing the judgment and decree dated 16.08.1995 preferred in O.S.No.450 of 1992, on the file of the learned District Munsif Court, Perambalur.

For Appellants : Mr.Victor Prasath
For Sarvabhauman Associates

For Respondents : Mr.A.G.Rajan for R2
: Mr.S.Murugaian for R3

JUDGMENT

This second appeal has been filed by the plaintiff against the Judgment and decree passed by the learned Additional District Judge, Perambalur, in A.S.No.31 of 2000, dated 18.10.2000, reversing the Judgment and decree passed by the learned District Munsif, Perambalur, in O.S.No.450 of 1992, dated 16.08.1995.

2. The first appellant herein, has filed a suit in O.S.No.450 of 1992, on the file of the learned District Munsif, Perambalur, for declaration of his title over the suit property and as a consequential relief thereto for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property. The learned District Munsif by the Judgment dated 16.08.1995, has decreed the suit as prayed for without costs.

3. Aggrieved by the same, the defendants have filed an appeal in A.S.No.31 of 2000, on the file the learned Additional District Judge, Perambalur. The learned Additional District Judge by the Judgment dated 18.10.2000, has allowed the said appeal with costs and set aside the Judgment and decree passed by the Trial Court and dismissed the suit with costs. Feeling aggrieved, the plaintiff has filed the present second appeal.

4. During pendency of the Second Appeal, the sole appellant died and his legal representatives have been impleaded as appellant Nos.2 to 6 and the third respondent. The first respondent also died leaving behind the second respondent as her legal representative. For the sake of convenience the parties are referred as described before the Trial Court.

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

The suit properties absolutely belong to the plaintiff, he having got the same ancestrally. Originally, the suit properties formed part of survey field No.471, measuring 20.56 acres, when it was under Inam tenure. After the introduction of the ryotwari Settlement, the Survey No.34/3, was allotted to the suit properties. In the year 1961, patta has been issued in Patta No.74, to the suit properties measuring 2.70 acres in S.F.No.34/3. Thereafter, the survey was taken under the Surveys and Boundaries Act and in the said survey, the suit properties were sub-divided as survey No.34/3A, measuring 0.03 cents and Survey No.34/3C, measuring 2.55 acres totally 2.58 cents for the

said lands and a new patta has been issued on 26.07.1974, in favour of the plaintiff. Thereafter, in Survey No.34/3C, the plaintiff had sold 1.25 acres on the southern side to one Mohammed Ali Sahib under the registered sale deed dated 12.05.1976. So, in the said Survey No.34/3C, the plaintiff has retained 1.33 acres on the northern side. While so, when third parties transferred the suit lands from patta No.74, plaintiff was forced to issue a notice to the District Collector, Trichy by marking copy to the Tahsildar, Perambalur. The Tahsildar Perambalur, after enquiry had passed an order to grant a separate patta for the land situated in Survey No.34/3A and joint patta for Survey No.34/3C. After survey, patta has been changed for the suit properties as patta No.215 for Survey No.34/3C and patta No.163 for Survey No.34/3A. For both the items of properties, plaintiff has been paying kist. While so, the defendants, who are mother and daughter respectively are attempted to interfere with the plaintiff's peaceful possession and enjoyment of the suit properties by claiming that the suit properties are ancestral to them. Hence, the plaintiff had filed the above suit for the relief of declaration of the title over the suit properties and permanent injunction restraining the defendants for interfering with the peaceful possession and enjoyment of the suit properties.

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

It is false to state that the suit properties are the ancestral properties of the plaintiff. It is true that originally the suit properties formed part of Survey No.471, comprising 20.56 cents. Subsequently, the suit properties have been sub-divided and a new Survey No.34/3, has been assigned for 2.70 cents. But, it is false to state that after the abolition of inam tenure Ryotwari settlement patta has been granted to the plaintiff, that would not confer any title to him. The land situated in Survey No.34/3 has not been properly sub-divided. It was wrongly sub-divided and patta also was wrongly granted. Merely, because patta was granted in favour of the plaintiff and the plaintiff also paid kist would not confer any right to him over the suit properties. The plaintiff has no right to sell 1.25 cents of land, which is situated on the southern side in Survey No.34/3C. The said sale deed was falsely created. The recitals found in the sale deed are all false. The said sale deed will not bind upon the defendants. The western portion of the land in Survey No.34/3 and the land situated in Survey No.34/2 measuring about 2.66 cents, originally belonged to one Pachaimuthu Udaiyar and others and that they sold the said properties under the registered sale deed dated 26.06.1942, to

one Aaji Mohideen Sahib, with proper boundaries. Out of the said land, on the northern side, the said Aaji Mohideen Sahib, sold 1.08 acres to the plaintiff under the registered sale deed dated 07.09.1950. The said land was subsequently sub-divided as Survey No.34/2. On 25.06.1960, the said Aaji Mohideen Sahib, had sold 1.24 acres of land, which is situated on the southern side of the land which was already sold to the plaintiff, to husband of the first defendant and father of the second defendant namely Jamal Mohideen Sahib. From the date of purchase the said Jamal Mohideen Sahib, was in possession and enjoyment of the said property and after his death the defendants have been in possession and enjoyment of the same. After selling 1.24 acres to the said Jamal Mohideen Sahib, the said Abdul Majid, has retained 0.34 cents for him. The revenue authorities have granted patta to the defendants for the properties purchased by the said Jamal Mohideen Sahib, and the patta has been assigned as patta No.215. The defendants are in possession and enjoyment of the said lands and therefore, prayed to dismiss the above suit.

7. Based on the aforesaid pleadings, the learned District Munsif 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 he also examined one more witness P.W.2. He has marked Ex.A.1 to Ex.A.39 as exhibits on his side. On the side of the defendants, the second defendant was examined as D.W.1 and they had marked Ex.B.1 to Ex.B.12 as exhibits. Ex.X.1 to Ex.X.5 were marked by third party.

8. The learned District Munsif, after considering the materials placed before him found that the suit properties are the ancestral properties of the plaintiff and accordingly, he decreed the suit as prayed for without costs. Aggrieved by the same, the defendants had filed an appeal in A.S.No.31 of 2000, on the file of the Additional District Judge, Perambalur. The learned Additional District Judge, had allowed the said appeal with costs and set aside the Judgment and decree passed by the trial Court and dismissed the suit with costs. As against the same, 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:-

"a) Whether the Lower Appellate Court was correct in law in failing to see that a mistake in the description of the boundaries should not

be given undue importance and it has to be ignored by applying the doctrine of false demonstration no nocet vide 1996 1 Law weekly 443?

b) Whether the Lower Appellate Court was correct in law in failing to see that the principles of boundaries prevail over extent would apply only when there is a minor discrepancy and not to such cases where there is such a large variance?

c) Whether the Lower Appellate Court was correct in law in failing to take note of the intention of the vendor by looking into the recitals and the consideration paid under the Ex.B3?"

10. Heard, Mr.Victor Prasath for M/s.Sarvabhauman Associates, the learned counsel for the appellants and Mr.A.G.Rajan, the learned counsel for the second respondent and Mr.S.Murugaiyen, the learned counsel for the third respondent.

11.Substantial Question Nos.1, 2 and 3:

The learned counsel for the appellants 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 that the plaintiff was the owner of the property measuring 2.55 acres comprised in S.No.34/3C and 00.03 cents comprised in S.No.34/3A which being is ancestral property obtained after the estate abolition and this is clearly evidenced by Ex.A1 patta issued in 1921, Ex.B2 notice issued under the Survey Boundaries Act and Patta Pass Book marked as EX.A3 and kist receipts marked as Exs.A4 to A17. He further submitted that the first Appellate Court failed to consider that the plaintiff had sold 1.25 acres out of the 2.55 acres in S.No.34/3C to one Mohammed Ali retaining 1.30 acres in S.No.34/3C and 00.03 cents in S.No.34/3A which are the suit properties. He further submitted that the first Appellate Court failed to consider that in the sale deed executed by the plaintiff in favour of Mohammed Ali (Ex.A15), a portion of the property has been retained by the plaintiff. He further submitted that the first Appellate Court failed to consider that the vendor of the defendants sold totally 3.12

acres under Ex.B1, Ex.B2 and Ex.A39, while he had title to lands of 2.66 acres only. He further submitted that the first Appellate Court erred in coming to the conclusion that the lands in S.No.34/3C belonged to the defendants' vendor on the sole ground that the Southern boundary in Ex.A24 sale deed is erroneously shown to be the property of the defendants' vendor.

12. He further submitted that the first Appellate Court failed to see that the plaintiff has produced Ex.A1 to Ex.A3 to show his long, continuous and uninterrupted possession of the suit property. He further submitted that the first Appellate Court failed to see that the principle of boundaries prevail over extent would apply only when there is a minor discrepancy and not to such cases where there is such a large variance. He further submitted that the first Appellate Court failed to take note of the intention of the vendor by looking at the recitals under Ex.B3 and hence he prayed to set aside the judgment and decree passed by the first Appellate Court and restored the judgment and decree passed by the trial Court.

13. Per contra, the learned counsel for the respondents has submitted that as per Ex.B2 sale deed dated 07.09.1950, the plaintiff had purchased only 1.80 acres and that he has not produced any documentary evidence to show that is having any ancestral property in the aforesaid Survey numbers. He further submitted that as per Ex.A18 sale deed dated 12.05.1976, the plaintiff had sold 1.25 acres of land to one Aaji Mohideen Sahib son of Mohideen Sahib and thereafter, he would have only 65 cents and that being so, he cannot claim 1.30 acres in S.No.34/3C and 00.03 cents in S.No.34/3A. He further submitted that the husband of the first defendant namely, Jamal Mohideen Sahib had purchased 1.24 acres of land under Ex.B1 dated 25.06.1960 from one Aaji Mohideen Sahib son of Mustafa Sahib and from that date onwards, he was in possession and enjoyment of the same and after his death, the defendants are in possession and enjoyment of the same, and now, the plaintiff is claiming only the suit property.

14. He further submitted that the patta which was granted in favour of the plaintiff will not bind upon the defendants because, at the time of granting patta in favour of the plaintiff, no notice was given to the defendants. He further submitted that the property which was purchased by the plaintiff under Ex.B2 sale deed, now comes under S.No.34/2 and therefore, the plaintiff cannot claim any right in the suit property. He further submitted that the plaintiff has admitted in his evidence that he had purchased the suit property and that being so, he cannot claim that it is an ancestral property to him. He further submitted that the trial Court without taking into

consideration of all the aforesaid facts had rightly decreed the suit, but the first Appellate Court properly appreciated the evidence and rightly reversed the judgment and decree passed by the trial Court and dismissed the plaintiff's suit and in the said factual findings, this Court cannot interfere and therefore, he prayed to dismiss the Second Appeal.

15. The plaintiff has stated in his plaint that the suit properties are his ancestral properties and after the abolition of estates, the suit properties were comprised in S.No.34/3 measuring 2.70 acres. He further submitted that prior to that, the suit properties formed part of S.No.471 measuring 20.56 acres when it was under inam tenure. He further stated that after the introduction of ryotwari settlement, an enquiry was conducted by the Assistant Settlement Officer and patta was issued in the year 1961, in his favour in patta No.74 for the land situated in S.No.34/3 measuring 2.70 acres. The defendants have admitted in their written statement that the suit properties originally formed part of S.No.471 measuring 20.56 acres and subsequently, a new Survey number has been assigned as S.No.34/3 measuring 2.70 acres. So, it is clear that both the parties admitted that the suit property is situated in S.No.34/3 and the said property originally formed part of the inam S.No.471 measuring 20.56 acres.

16. Though the plaintiff claims that the property situated in S.No.34/3 measuring 2.70 acres is his ancestral property, to substantiate the said claim he has not produced any documentary evidence. Ex.B2 (sale deed dated 07.09.1950) shows that the plaintiff had purchased 1.80 acres of land in inam S.No.471 from one Aaji Mohideen Saheb son of Mustafa Saheb with specific boundaries. In the said document, it is nowhere stated that the plaintiff got any ancestral property adjacent to the property which was purchased under Ex.B2. In Ex.A2, it is stated that the original extent of S.No.34/3 was 1.81 acres and the said extent tallied with the extent mentioned in Ex.B2 sale deed dated 07.09.1950. It is also stated in Ex.A2 that the present extent of the said Survey number is 2.70 acres. The plaintiff has not given any explanation, as to when, he purchased only 1.80 acres under Ex.B2 sale deed, how it enlarged into 2.70 acres under Ex.A2.

17. Ex.A18 (sale deed dated 12.05.1976) shows that the plaintiff had sold 1.25 acres with specific boundaries to one Aaji Mohideen Sahib sons of mohideen Sahip. In the said document, he has stated that out of 3.70 acres comprising in S.No.34/3, he sold 1.25 acres to the said Aaji Mohideen Sahib son of Mohideen Sahib. There is no explanation from the plaintiff as to how he got 3.70 acres in S.No.34/3, because he

had purchased only 1.80 acres from one Aaji Mohideen Sahib son of Mustafab under Ex.B2 sale deed dated 07.09.1950.

18. It is also to be pointed out that in Ex.A18, the plaintiff has not stated how he got the said property either by purchase or by inheritance. This also shows that the plaintiff made attempts to show as if he got 3.70 acres in S.No.34/3. It is also to be pointed out that Ex.A3 (patta pass book) dated 26.07.1974 shows that S.No.34/3 has been sub-divided and patta was granted infavour of the plaintiff only in respect of the land situated in S.No.34/3A ad-measuring 00.03 cents and S.No.34/3C ad-measuring 2.55 acres and only thereafter, he had sold 1.25 acres under Ex.A18 to one Aaji Mohideen Sahib son of Mustafa Sahib on 12.05.1976 and at that time, he has not mentioned the Sub division numbers. On the contrary, he has mentioned in Ex.A18 sale deed only the old survey number i.e., 34/3.

19. It is seen from Ex.B3 sale deed dated 26.06.1942, one Aaji Mohideen Sahib son of Mustafa Sahib had purchased 2.66 acres of land in inam S.No.471 out of total extent of 20.56 acres from one Pachaiyamuthu Udaiyar and his sons. As already pointed out that, the plaintiff had purchased 1.80 acres of land in the aforesaid inam S.No.471 under Ex.B2 sale deed dated 07.09.1950 from the Aaji Mohideen Sahib son of Mustafa Sahib. It is seen from Ex.A39, the said Aaji Mohideen Sahib son of Mustafa Sahib had sold 2.40 acres of land in inam S.No.471 in favour of one Ghulam Mohideen son of Bavateen Sahib under document No.2217/1950 on 07.09.1950. On the very same date, the said Aaji Mohideen Sahib son of Mustafa Sahib had sold 1.80 acres in inam S.No.471 infavour of the plaintiff under Ex.B2 sale deed document No.2218/1950.

20. In Ex.A39 and Ex.B2, the said Aaji Mohideen Sahib son of Mustafa Sahib had stated that he acquired the said properties by purchase. It is also seen from Ex.B1(sale deed dated 25.06.1960), the same Aaji Mohideen Sahib son of Mustafa Sahib had sold 1.24 acres, in the same inam S.No.471 infavour of the first defendant's husband namely, Jamal Mohideen Sahib son of Sulaiman Sahib. As already pointed out, the said Aaji Mohideen Sahib son of Mustafa Sahib had purchased only 2.66 acres in inam S.No.471 under Ex.B3 sale deed 26.06.1942. That being so, through Ex.A39, Ex.B1 and Ex.B2, the said Aaji Mohideen Sahib son of Mustafa Sahib totally sold 5.44 acres whereas he had purchased only 2.66 acres under Ex.B3 sale deed dated 26.06.1942. The defendants have not produced any other document to show that the said Aaji Mohideen Sahib son of Mustafa Sahib

had purchased any other property, other than the property purchased under Ex.B3 sale deed.

21. Among three sale deeds which were executed by the said Aaji Mohideen Sahib, son of Mustafa Sahib, Ex.A39 is the earliest document through which the said Aaji Mohideen Sahib son of Mustafa Sahib had sold 2.40 acres infavour of one Ghulam Mohideen son of Banvateen Saheb. After selling 2.40 acres to the said Ghulam Mohideen under Ex.A39, the said Aaji Mohideen Sahib son of Mustafa Sahib had only 26 cents but, on the same date under Ex.B2 the plaintiff had purchased 1.80 acres from the same Aaji Mohideen. As already pointed out, after executing Ex.A39 sale deed infavour of Ghulam Mohideen, the said Aaji Mohideen Sahib son of Mustafa Sahib got only 26 cents. But he executed the sale deed infavour of the plaintiff for 1.80 acres and thereafter, the same Aaji Mohideen Sahib had sold 1.24 acres in favour of the husband of the first defendant under Ex.B1 sale deed dated 25.05.1960. Both the parties have not produced any documentary evidence to show that the said Aaji Mohideen Saheb son of Mustafa Sahib had purchased more than 2.66 acres. Further, the purchaser under Ex.A39 namely, Ghulam Mohideen has not been added as a party.

22. Since the plaintiff has approached the Court seeking declaration of title in respect of the suit properties, the burden is upon him to prove title over the suit properties. The documentary evidence produced by both the parties are confusing. From the said documentary evidence, it is not possible to come to a just conclusion as to the entitlement of the suit properties. Under the said circumstances, declaratory decree in favour of the plaintiff cannot be granted. Therefore, this Court is of the view that the Second Appeal is liable to be dismissed. Accordingly, the substantial questions of law are answered against the appellants/plaintiffs.

23. In the result, confirming the judgment and decree passed by the first Appellate Court in A.S.No.31 of 2000 dated 18.10.2000, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

dna

To

1.The Additional District Judge, Perambalur.

2.The District Munsif Court, Perambalur.

+2cc to Mr.A.G.Rajan, Advocate SR.No.10020

+1cc to M/s.Saravabhauman Assocaites, Advocate SR.No.11442

S.A.No.411 of 2001

GJ II(CO)
GMY (26/04/2019)



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