

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.1286 of 2008
and M.P.No.1 of 2008

1.D.Palani
2.D.Manoharan
3.D.Sivaraman

... Appellants / Respondents / Plaintiffs

Vs

E.Shankar Respondent / Appellant/Defendant

Prayer :- Second Appeal filed under Section 100 of the Civil Procedure Code, preferred against the judgment and decree in A.S.No.80/2006 on the file of Additional District cum Fast Track Court No.II, Ranipet, dated 12.03.2008 in reversing the judgment and decree in O.S.No.108/2004, on the file of District Munsif cum Judicial Magistrate Court, Arcot, Vellore District, dated 29.12.2005.

For Appellants : Mr.V.Raghavachari

For Respondent : Ms.S.Hemalatha

JUDGMENT

The plaintiffs who were successful before the trial Court in the suit for declaration of their title over a plot of 23 cents described in the B Schedule to the plaint and for the ancillary reliefs, but, lost the same before the first appellate Court, has come forward with this appeal. Parties would be referred to by their rank before the trial Court.

2. The brief facts that lead to the controversy are :

- There is a block of land measuring 2.84 acres comprised in Survey No.2 of Mangadu Village, Arcot Taluk. This is described in 'A' Schedule in the plaint. According to the plaintiffs, this property originally belong to plaintiffs' paternal grandfather Rajakanni Mudaliar and after his death in 1988, the said property devolved on his son Dhanancheya Mudaliar and on whose death in 1994, the said property devolve on the plaintiffs. The entire revenue records

originally stood in the name of Rajakanni Mudaliar and later their father Dhanancheya Mudaliar.

- The property described in 'B' schedule property is stated to have an extent of 23 cents, and it is part of the 'A' schedule property. The defendant with no manner of right, began excavating the earth from 'B' schedule property and despite resistance by the plaintiffs, there was no respite to plaintiffs. Hence the suit.

3.1 In the written statement, the defendant has contended that out of 2.84 acres in the A Schedule property, plaintiffs' grandfather Rajakanni Mudaliar was only entitled to 1.83 acres. Turning to the remainder, it belonged to one Gopala Mudaliar, who under Ext.B3 sale deed 27.3.1991, sold it to one Babu. Babu in turn had sold it to one Pandian under Ext.B2 sale deed dated 31.12.1992. From Pandian, the defendant purchased the property under Ext.B1, sale deed dated 29.06.1995. Before the trial Court, both sides adduced oral and documentary evidences. The plaintiffs essentially has filed only revenue records to support their title. The defendant on the other hand produced not only the list of title deeds already mentioned above, but also two sale deeds executed in favour of Rajakanni Mudaliar. These two sale deeds came to be marked during trial as Ext.B5 and Ext.B6.

3.2 The trial Court bestowed its focus only on Ext.A2, the UDR patta and compared that with the boundary description of the property purchased by the defendant under Ext.B1 sale deed obtained by the defendant. It came to the conclusion that while sale deed shows four boundaries, the UDR patta shows only 3 boundaries, and decreed the suit.

3.3 When the matter was taken by the defendant in the appeal, the first Appellate Court shifted its focus to Ext.B5 and Ext.B6, sale deeds for its consideration and held that plaintiffs' grandfather Rajakanni Mudaliar was entitled to, no more than 1.83 acres in A schedule, covered under these two documents. Accordingly, it dismissed the suit. Aggrieved by the same, the plaintiffs have preferred this second appeal.

4. Heard both sides. The second appeal is admitted on the following substantial questions of law :

- a) Whether the lower Appellate Court is justified in reversing the trial Court judgment when the appellants have substantiated their case by production of document which were prior to 1974?
- b) Whether the lower Appellate Court is right in dismissing the suit, when the boundary recital

under Ext.B1-B3 does not correlate with the suit schedule mentioned property?

c) When there is no piece of evidence prior to 1991 in the form of revenue records and on the contrary, the defendant admits that a portion of the property is that of the plaintiffs and produced Ext.B5, is the lower appellate court justified in dismissing the suit?

d) Based on admission of prior title evidenced from Ext.B5, should not the lower appellate court confirmed and finding of the trial Judge?"

5. The learned counsel for the appellants made a valiant effort to convince this Court that the entire A Schedule property measuring 2.84 acres belonged to Rajakanni Mudaliar. He further argued that Ext.A2, UDR patta has the survey plan of Survey No.2 and in mathematical terms it appears like a sector or a well defined triangle. Therefore, the sale deeds under which the defendant claims title cannot be fitted in this.

6. This Court is not convinced about the merit of the argument of the appellants. To start with, it needs to be stated that Ext.B1 does not deal with entire 2.84 acres in Survey No.2, but only part thereof. The vertex of the triangular shape in Survey No.2 starts from west and as the stretch of property moves to the east, it widens. This is an aspect that is naturally available and cannot be ignored.

7. Turning to plaintiffs' case, inasmuch as he had laid the suit for declaration, the initial burden is on them to prove their title. However, this title, the plaintiffs did not attempt to prove. On the other hand, the defendant took upon himself to provide the material in the form of Ext.B5 and Ext.B6, sales deeds in favour of Rajakanni Mudaliar. Ext.B5 is dated 07.09.1941 and under this document, Rajakanni Mudaliar had purchased 1.49 acres. Much later, on 24.06.1969, under Ext.B6 sale deed, he purchased another plot of 34 cents. Thus, his total holding is 1.83 acres. There is no evidence to indicate other than the revenue records produced that Rajakanni Mudaliar was entitled to the remaining 1.01 acres in Survey No.2. With a initial burden on them to prove their case and with no attempt to prove their case, the plaintiffs offered no explanation to Ext.B5 and Ext.B6. Justly, the first Appellate Court has dismissed the suit.

8. In conclusion, this Court holds that the appeal is devoid of merits and hence, it is dismissed, and the judgment and decree dated 12.03.2008 in A.S.No.80/2006 on the file of Additional District cum Fast Track Court No.II, Ranipet, is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To:

- 1.The Additional District cum Fast Track Court No.II, Ranipet.
- 2.The District Munsif cum Judicial Magistrate Arcot, Vellore District.
- 3.The Section Officer
VR Section, High Court, Madras.

+1cc to M/s.V.Raghavachari, Advocate Sr.67861

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