

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :05.04.2019
PRONOUNCED ON:03.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1289 of 2007
&
M.P.1 of 2007

1.Manjula

2.Ravi Shankar sha

3.Minor Harishankar Sha
[Rep by his mother and
guardian Manjula]

4.Kathiravan
[4th appellant impleaded
vide order of Court dated
13.12.2018 made in
CMP.No.20377 of 2018] ...Appellants / Defendants

Vs.

Sivachidambaram ...Respondent / 2nd Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C.,
against the judgment and Decree of Additional Sub Court,
Mayiladuthurai dated 06.04.2006 made in A.S.No.190 of 2004
confirming the judgment and decree of District Munsif Court,
Sirkali dated 15.10.2004 made in O.S.No.110 of 1989.

For Appellants : Mr.S.Sounthar

For Respondent : Mr.C.Ramesh

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J U D G M E N T

Challenge in this second appeal is made to the judgment and
decree dated 06.04.2006 passed in A.S.No.190 of 2004 on the file
of the Additional Subordinate Court, Mayiladuthurai,
confirming/modifying the judgment and decree dated 15.10.2004
passed in O.S.No.110 of 1989 on the file of the District Munsif
Court, Sirkali.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for possession and permanent injunction.

4. The case of the plaintiffs in brief is that the plaintiff A schedule properties belong to the first plaintiff having been allotted to her by way of a registered partition deed dated 09.03.1973. As per the recitals of the abovesaid partition deed, the first plaintiff had been allotted the plaintiff A schedule properties and other properties to be enjoyed by her till her lifetime and thereafter by her second son R.Nagarajan. The properties allotted to R.Thiyagarajan under the abovesaid partition deed had been sold by him through his power of attorney Agent R.Krishnasamy to the defendant and the same had been described as plaintiff B schedule property by way of a sale deed dated 24.06.1988. Pending the trial, the defendant had died and his LRs had been brought on record. As per the description of the property comprised in the sale deed dated 24.06.1988, the items 1 and 2 of the plaintiff A schedule are shown as the western and northern boundaries of the plaintiff B schedule property. In the plaintiff plan, the plaintiff A schedule properties are shown as DEFG, the first item, and ABCD, the second item. The defendant while constructing a house in the property sold to him, had encroached upon the lane portion and put up the cross wall, thereby blocking the access of the plaintiffs through the lane portion. The abovesaid encroachment is illegal. Hence the first plaintiff issued a notice to the defendant on 04.02.1999 directing him to admit in writing the title of the first plaintiff to the abovesaid lane portion and also to remove the cross wall put up by the defendant and to the abovesaid notice, the defendant has sent a reply notice dated 14.02.1999 containing false allegations. It is false to state that the defendant had purchased the property of an extent of 3764 sq.ft, on the other hand, the property sold to the defendant had been described by specific boundaries and only to the property comprised within the abovesaid boundaries, the defendant can claim title. Even if there is any discrepancies in the extent, only the boundaries will prevail and therefore the defendant is not entitled to the items 1 and 2 of the plaintiff A schedule properties. The second item in the plaintiff A schedule properties is the septic tank and the pipe leading from the latrine in Kunnam's house belong to the first plaintiff. The defendant's vendor had no right to convey the same to the defendant and therefore the defendant cannot lay any claim of title to the second item of the plaintiff A schedule properties. The defendant had constructed a cattle shed in his backyard and thereby obstructing the plaintiffs access through the lane portion. After the notice, the defendant had put up the cross wall in BC line blocking the access of the first plaintiff to go further

east and enjoy the property shown as BB1C1 and C. The second plaintiff purchased the suit properties and other adjacent properties by way of a sale deed dated 15.09.1994 and hence the second plaintiff is necessitated to obtain the reliefs prayed for in the suit and hence the suit.

5. The defendants mainly resisted the plaintiffs' suit contending that the suit laid by the plaintiffs is not maintainable either in law or on facts and put forth the case that the first plaintiff is not entitled to any right in the property comprised in R.S No.34/23 and the first plaintiff was not allotted any share in R.S. No.34/23 under the partition deed dated 09.03.1973 and therefore the first plaintiff cannot lay any claim of title to the lane portion and the septic tank comprised in R.S.No.34/23. The first plaintiff is not entitled to claim any right to any portion lying to the east of her eastern compound wall and therefore the second plaintiff also cannot claim any right to the plaint A schedule properties based on the purchase of the same from the first plaintiff. The suit is barred by limitation and accordingly prayed for the dismissal of the plaintiffs suit.

6. In support of the plaintiffs' case, P.Ws.1 and 2 were examined. Exs.A1 to A6 were marked. On the side of the defendants, D.W.1 was examined. Ex.B1 was marked. Exs.C1 to C4 were also marked.

7. The trial court, on an appreciation of the materials placed on record, was pleased to decree the suit in favour of the plaintiffs as prayed for. On appeal, the first appellate court, on an appreciation of the materials placed on record, was pleased to confirm / modify the judgment and decree of the trial court and thereby granted the relief of recovery of possession in favour of the plaintiffs as prayed for in respect of the second item of the plaint A schedule properties and declared that the first item of the plaint A schedule properties i.e., the lane portion is common lane to both the plaintiffs and the defendants and directed the defendants to remove the cattle shed put up in the lane portion and further directed them to keep the lane portion as common for both the parties and accordingly disposed of the first appeal. Impugning the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

1. Whether the lower appellate court is justified in granting the relief of possession to the plaintiff on the sole ground that the defendant has not proved his title over the suit

property?

2. Whether the grant of mandatory injunction is justified in the absence of a prayer to that effect?

9. On a reading of the plaint averments and the materials placed on record, it is found that the first plaintiff in particular, lays claim of title to the items 1 and 2 of the plaint A schedule properties by way of a partition deed dated 09.03.1973. The certified copy of the partition deed has been marked as Ex.A1. It is found that the first plaintiff, her husband late.K.S.Ramamurthy Iyer and her sons Nagarajan and Thiagarajan, Krishnasamy and one V.Bala Subramaniam are the parties to the abovesaid partition deed. Under the abovesaid partition deed, the abovesaid parties had been allotted different shares in the properties belonging to them and it is seen that by way of the abovesaid partition deed, the first plaintiff has been allotted the properties described in the B schedule to the said partition deed. On that footing, the first plaintiff had come forward with the suit claiming title to the plaint A schedule properties projecting the case, as if she had been allotted to the plaint A schedule properties under the abovesaid partition deed. In the plaint A schedule properties both the items 1 and 2 are described to be located in R.S.No.34/23.

10. It has been admitted by the plaintiffs that Thiagarajan who had been allotted the D schedule properties in Ex.A1 partition deed had sold his share to the defendant. According to the plaintiffs, the defendant acquired title to the plaint B schedule property from Thiagarajan by way of the sale deed dated 24.06.1988, the certified copy of which sale deed has been marked as Ex.A4. It is found that Ex.A4 sale deed had been executed in favour of the defendant by the power agent Krishnasamy Iyer on behalf of Thiagarajan. The abovesaid power agent Krishnasamy Iyer has been examined as P.W.1 in the present case.

11. According to the defendants, the first plaintiff has not been allotted any property comprised in R.S.No.34/23 under Ex.A1 partition deed and in such view of the matter, it is put forth that the first plaintiff or for the matter the plaintiffs are not entitled to claim any property comprised in R.S.No.34/23 and resultantly it is stated that inasmuch as, the plaint A schedule properties in respect of which the reliefs have been claimed by the plaintiffs in the suit are stated to be comprised in R.S.No.34/23, it is put forth that the plaintiffs are not entitled to seek and obtain the reliefs prayed for in the suit in respect of the abovesaid items comprised in R.S.No.34/23.

12. In the light of the abovesaid defence version, at the foremost, for seeking and obtaining the reliefs prayed for in the suit, in respect of the subject matter, the plaintiffs should establish that the first plaintiff has been allotted to the plaint A schedule properties under Ex.A1 partition deed. As above noted, under Ex.A1 partition deed, the B schedule properties described therein had been allotted to the first plaintiff. On a perusal of the description of the B schedule properties in Ex.A1 partition deed, it is found that the properties described therein is shown to be comprised in R.S.No.34/18 and not in R.S.No.34/23. In such view of the matter, when the first plaintiff has not been allotted any property comprised in R.S.No.34/23 under Ex.A1 partition deed, it does not stand to reason as to how the first plaintiff would be entitled to claim the reliefs by way of the present suit in respect of the properties comprised in R.S.No.34/23. The present suit is laid by the first plaintiff or for the matter, the plaintiffs based on title. The title deed projected by them for claiming right over the plaint A schedule properties is Ex.A1 partition deed. On a perusal of Ex.A1 partition deed, only the B schedule properties prescribed therein had been allotted to the first plaintiff. As abovenoted, no property comprised in R.S.No.34/23 had been allotted to the first plaintiff in the abovesaid partition deed. The first plaintiff had been allotted the B schedule properties described in the abvoesaid partition deed and the same is found to be located within the specific boundaries i.e., lying to the north of North Madavilham Street, east of the house and backyard of Venkatasamy Naidu, south of North street and to the west of the house belonging to V.Bala Subramaniya Iyer and R.Thiyagarajan Iyer and the abovesaid property is described as including the eastern and western compound walls and the abvoesaid property bears the house bearing door No.5 and accordingly, it is found that the abovesaid property is stated to be of an extent of 47 cents, east-west 45 ft 3 inches and north-south 151 ft 4 inches inclusive of the septic tank located therein. It is thus found that when the first plaintiff had been allotted the properties under Ex.A1 partition deed lying within the specific boundaries, as pleaded by the defendants. The first plaintiff would be entitled to claim only the properties by way of Ex.A1 partition deed lying within the specific boundaries as described in the Ex.A1 partition deed. In such view of the matter, when the first plaintiff had been allotted only the properties to the west of the house belonging to Balasubramaniya Iyer and R.Thiyagarajan Iyer and the said properties are inclusive of the eastern and western boundary wall, it is evident that beyond the eastern parent compound wall, the first plaintiff would not be entitled to claim any property lying to the east of the same.

13. Admittedly, it is found that the items 1 and 2 of the plaint A schedule properties are found to be lying to the east of the eastern compound wall of the properties allotted to the first plaintiff under Ex.A1 partition deed. In view of the above position, the claim of the plaintiffs that the first plaintiff has been allotted the plaint A schedule properties under Ex.A1 partition deed cannot at all be countenanced in any manner. As above noted, the first plaintiff's son Thiagarajan had been allotted the properties described in the D schedule under Ex.A1 partition deed. On a perusal of the properties described in the D schedule under Ex.A1 partition deed, it is found that the abovesaid property is located in R.S.No.34/20 lying to the east of Kunnam's house, west of the house of R.Thiruvengkata Chettiyar, south of the house and backyard of V.Subramaniya Iyer and to the north of street, bearing door No.6, east-west 36ft, north-south 56ft 10 inches. Therefore, when the property that had been allotted to Thiagarajan is shown to be lying to the east of Kunnam's house and when there is no dispute that Kunnam's house is with reference to the first plaintiff's house bearing door No.5, allotted to her under Ex.A1 partition deed and when the properties allotted to the first plaintiff under Ex.A1 partition deed is inclusive of the eastern and western compound walls, in such view of the matter, when to the east of the Kunnam's house, the property allotted to Thiagarajan is found to be lying and accordingly it is seen that as rightly put forth by the defendants' counsel, the first plaintiff would not be entitled to claim any right to any portion on the eastern side of her eastern compound wall land, in such view of the matter, the claim of the first plaintiff or for the matter, the plaintiffs that they have right to the plaint A schedule properties by way of Ex.A1 partition deed cannot at all be accepted in any manner.

14. No doubt, according to the defendant, he had purchased the share allotted to Thiagarajan by way of Ex.A4 sale deed and it is stated that accordingly it is only the defendant who has the right to the plaint A schedule properties. However, on a perusal of Ex.A4 sale deed, it is found that though by way of the same, the defendant has been conveyed an extent of 3764 sq.ft while describing the said property, it is mentioned as lying to the north of north madavilaham street, south of the house and backyard of V.Balasubramaniya Iyer and the septic tank of Kunnam's house bearing door number 5, to the east of the lane of Kunnam's house and to the west of the house and backyard of R.Thiagarajan. On that footing, it is contended by the plaintiffs that inasmuch as the items 1 and 2 of the plaint A schedule properties are shown to be lying to the west and north of the property described in Ex.A4 sale deed, according to the plaintiffs, the defendant is not entitled to claim any area of the lane portion on the western side ie., the first item of the

plaint A schedule properties and the septic tank on the northern side i.e., the second item of the plaint A schedule properties. No doubt, as per the Ex.A4 sale deed, the property had not been conveyed inclusive of the lane portion and the septic tank portion, on the other hand, the lane portion and the septic tank are shown as the western and northern boundaries to the property acquired by the defendant by way of Ex.A4 sale deed. However, it is to be noted that the defendant's vendor Thiyagarajan had been allotted the property to the west of Kunnan's house and to the south of the house and backyard of V.Balasubramaniya Iyer. Thus it is found that though Thiyagarajan had been allotted the lane portion as well as the septic tank portion in dispute towards his share under Ex.A1 partition deed, while conveying the same to the defendant by way of Ex.A4 sale deed, the property conveyed is not shown to be inclusive of the lane portion and the septic tank portion and on the other hand in the sale deed Ex.A4, the lane portion and the septic tank portion had been shown as the western and northern boundaries of the property comprised in Ex.A4 sale deed. On that footing, it is put forth by the plaintiff, the defendants are not entitled to claim any right whatsoever to the plaint A schedule properties. No doubt, as put forth by the plaintiffs, the defendants may not be able to claim any portion as such to the plaint A schedule properties by way of Ex.A4 sale deed alone. But that would not in any manner entitle the plaintiff to claim right to the plaint A schedule properties by way of Ex.A1 partition deed.

15. As rightly put forth by the defendants' counsel merely because, the defendants have failed to establish their claim of title to the properties in dispute, that would not automatically lead to the conclusion that the plaintiffs have title to the said properties. The suit laid by the plaintiffs being based on title, in such view of the matter, it is for the plaintiffs to establish their title to the plaint A schedule properties in dispute as put forth by them. The only title deed relied upon by the plaintiffs for claiming title to the plaint A schedule properties is Ex.A1 partition deed. Under Ex.A1 partition deed, when it is seen that no property had been allotted to the first plaintiff comprised in R.S.No.34/23 and on the other hand, the plaint A schedule properties are found to be allotted only to Thiyagarajan under Ex.A1 partition deed and even if it is to be held that Thiyagarajan had not conveyed the plaint A schedule properties to the defendant by way of Ex.A4 sale deed, that would not automatically lead to the conclusion that the first plaintiff had acquired a pucca title to the plaint A schedule properties as put forth by the plaintiffs. The only conclusion which could be arrived in such a scenario is that the plaint A schedule properties continue to remain with Thiyagarajan to whom the same had been allotted under Ex.A1 partition deed and when

Thiyagarajan is found to be the owner of the plaint A schedule properties by way of Ex.A1 partition deed and the first plaintiff having not been allotted the said properties under Ex.A1 partition deed as above pointed out and when according to the plaintiffs, only the boundary recitals should be taken for consideration for determining the rights of the parties under their respective title deeds and on that footing, if the case of the plaintiffs is viewed, when as per Ex.A1 partition deed, the first plaintiff had not been allotted any right over the lane portion and septic tank portion described in the plaint A schedule properties, merely because, the defendant has failed to establish his claim of title to the plaint A schedule properties by way of Ex.A4, it cannot be inferred or held that the plaintiffs have a valid title to the plaint A schedule properties.

16. In the light of the abovesaid factual position, the trial court is found to have mis-appreciated the materials placed on record and the recitals contained in Ex.A1 partition deed and erroneously proceeded to uphold the plaintiffs' case as if the plaintiffs have title to the plaint A schedule properties. The first appellate court has also had erroneously upheld the plaintiffs' claim of title to the second item of the plaint A schedule properties, on the footing that the defendant has no title to the said item and as above noted, the failure of the defendant to establish his claim of title to the properties in dispute would not lead to the conclusion that the plaintiffs have a valid title to the same. The parties to the lis have not projected any case that the lane portion i.e., the first item of the plaint A schedule is common to both. On the other hand, without any pleadings by both the parties and without any materials whatsoever, the first appellate court had proceeded to hold that the lane portion described in item 1 of the plaint A schedule is a common lane to both the parties and accordingly granted appropriate reliefs in favour of the plaintiffs. However, when the parties have not come forward with the case that the lane portion is common to both and on the other hand, they had been vying with each other claiming independent title to the said lane portion one way or the other and when the plaintiffs as the suitor should establish their claim of title to the same and as above discussed when the plaintiffs have failed to establish their claim of title to the lane portion as well as the septic tank portion described as items 1 and 2 of the plaint A schedule properties, in all, it is found that the first appellate court had also failed to appreciate the nature of the properties allotted to the various sharers under Ex.A1 partition deed and thereby erroneously granted the reliefs in favour of the plaintiffs, on that footing that the defendants had failed to establish his claim of title to the properties in dispute. In such view of the matter, it is seen that the

judgment and decree of the first appellate court also granting the reliefs in favour of the plaintiffs are liable to be set aside as suffering from perversity and also on the ground that the same had been based upon an erroneous appreciation of the materials available on record, both oral and documentary and thereby, it could only be described that the judgment and decree of the first appellate court are totally illogical and irrational. Furthermore, the first appellate court is also found to have granted the relief of mandatory injunction in favour of the plaintiffs without there being any specific relief claimed by the plaintiffs with reference to the same.

17. In the light of the abovesaid discussions, the judgment and decree of the Courts below are liable to be set aside and accordingly the substantial questions of law formulated in the second appeal are accordingly answered in favour of the defendants and against the plaintiffs.

18. The counsel for the defendants in support of his contentions placed reliance upon the decisions reported in

1. 2010 (6) CTC 192 [Robust Hotels Private Limited others Vs. E.I.H Limited and others]

2. 2013 (5) SCC 397 [Thomson Press (India) Limited Vs. Nanak Builders and Investors Private Limited and others]

Similarly the counsel for the plaintiffs in support of his contentions placed reliance upon the decisions reported in

1. 2016 (4) CTC 888 [Muddasani Venkata Narsaiah (D) through Lrs Vs. Muddasani Sarojana]

2. 1997 (2) LW 691 [R.R. Square, by partner Ramachand Rao Vs. Shobalatha Debi]

3. 1995 (2) LW 169 [Kannu Reddiar Vs. T. Palanirajan and 4 others]

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

19. For the reasons aforesaid, the judgment and decree dated 06.04.2006 passed in A.S.No.190 of 2004 on the file of the Additional Subordinate Court, Mayiladuthurai, modifying/confirming the judgment and decree dated 15.10.2004 passed in O.S.No.110 of 1989 on the file of the District Munsif Court, Sirkali are set aside and resultantly, the suit laid by the plaintiffs in O.S.No.110 of 1989 is dismissed with costs.

20. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Subordinate Judge,
Additional Sub Court,
Mayiladuthurai.
2. The District Munsif,
District Munsif Court, Sirkali.

Copy to

The Section Officer,
VR Section, High Court, Chennai.

+1 cc to M/s.S.Sounthar, Advocate, S.R.No.44671

+1 cc to M/s.C.Ramesh, Advocate, S.R.No.44534

judgment made in
S.A.No.1289 of 2007
&
M.P.1 of 2007

CNR (CO)
SSM(22/10/2019)

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