

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

S.A.No.570 of 2009 and
M.P.No.1 of 2009 and
CMP No.9218 of 2019

Dr.R.Palanivel ...Appellant / 1st Respondent /Plaintiff

Vs.

1. V.E.Ladamani
2. V.E.Sundaram (deceased)
3. V.E.Swaminathan(deceased)
4. V.E.Krishnamoorthy
5. V.E.Viswanathan
6. V.E.Chandrasekaran
7. N.Somasundaram (deceased)
8. N.Deivanayaki
9. N.Rajeswari
10. N.Gayathri
11. N.Gowrisankar
12. N.Subashini
13. Vishnupriya
14. Padmapriya

.. Respondents 1 to 14 /
Appellants / Defendants 1 to 3,
5 to 7, 10,11 and 13 to 18.

15. K.Natarajan
16. S.Chandrakeela
17. Sundaram

.. Respondents 15 to 17 /
Respondents 2 to 4 /
Defendants 8 , 9 & 12

18. S.Gunasekaran
19. K.N.S.Appu

(R18 and R19 brought on record as LR's of the
deceased R7 vide order dated 30.10.2017 made
in M.P.No.1 to 3 /2013 in SA No.570/2009.

.. Respondents 18 & 19 / LR's of the
Respondent No.7

20. Jayalakshmi
21. Ravindran
22. Jeyakumar

..Respondents 20 to 22 / LR's of the
Respondent No.2

- 23. Vatchala
- 24. Alagunachi
- 25. Kasinathan

(R20 to R22 brought on record as LR's of the deceased
R2 vide order dated 28.02.2019 made in CMPP No.
19343 to 19347/2017 in SA No.570/2009.

(R23 to R25 brought on record as LR's of the deceased
R3 vide order dated 28.02.2019 made in CMPP No.
19343 to 19347/2017 in SA No.570/2009.

..Respondents 23 to 25 / LR's of the
Respondent No.3

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 12.02.2009 passed in A.S.No.37 of 2000 by the Subordinate Judge, Namakkal, reversing the decree and judgment dated 01.09.1999 passed in O.S.No.175 of 1995 by the District Munsif cum Judicial magistrate, Paramathi.

For Appellant : Mr.N.Manokaran
For Respondents 4 to 6
and R9 to R11 : Mr.M.Sudhakar
For Respondents 8,18,19 : Mr.C.Jagadish
for Mr.S.Senthil
For Respondents 20 to 25 : Mr.R.Anbukarasu
For Respondents 12 to 17 : No appearance

JUDGMENT

Aggrieved over the decree and judgment passed by the first appellate court, reversing the decree and judgment passed by the trial court, this second appeal has been filed.

2. The brief facts leading to file the second appeal is as follows. The appellant is the plaintiff in the original suit. He is the absolute owner of the A schedule property, in which he is running a hospital under the name and style of "Raja Maruthuvamani ". The said property was purchased by the plaintiff's father from the father of the defendants 1 to 7 by virtue of sale deed dated 01.09.1965 (Ex.A1) and it was allotted to the plaintiff by his father. It is the contention of the plaintiff that the B schedule property described in the plaint is also covered under the sale deed Ex.A1. Therefore, he filed a suit for declaration and injunction.

3. Whereas, it is the contention of the defendants in their written statement that only 6000 sq.ft. was sold to the father of the plaintiff. Taking advantage of the description in the boundary that instead of 6 cents, referred as 6 feet land, the plaintiff has filed the suit.

4. The trial court framed 4 issues. On the side of the plaintiff, he himself was examined as PW1 and Ex.A1 to Ex.A8 were marked. On the side of the defendants, 5 witnesses were examined as DW1 to DW5 and Ex.B1 to Ex.B5 were marked. Also, Ex.C1, Ex.C2 and Ex.X1, Ex.X2 were marked. After analysing the evidence on record, the trial court decreed the suit. However, the first appellate court considering the evidence and documents, held that the property conveyed under Ex.A1 is only 6000 sq.ft with specific linear measurements and merely because, one of the boundary description was wrongly mentioned, that cannot be taken advantage by the plaintiff and allowed the appeal. Against which, the present second appeal has been filed.

5. At the time of admitting the second appeal, the following substantial questions of law were framed.

1. Whether the first appellate court is correct in dismissing the suit holding that in the event, if any dispute between the boundaries and measurements given in the title deeds, the later will prevail over the former?

2. Whether the first appellate court has committed an error in giving much reliance to the patta on the ground that the plaintiff has not challenged Ex.B1?

3. Whether the first appellate court is correct in respect of Ex.A1, even though there is a legal presumption in favour of the plaintiff as per Section 90 of the Evidence Act?

6. I have perused the records. Heard the learned counsel for the appellant and the learned counsels for the respondents. During the hearing date on 03.04.2019, both side counsels argued. Thereafter, this court found that the extent of the property purchased by the plaintiff is only 6000 sq.ft. with linear measurement and some boundaries of the sale deed were wrongly described as 6 feet land, instead of 6 cents and that cannot be taken advantage by the plaintiff.

7. Having found that, this court directed the parties to appear before this court. Accordingly, both of them appeared before this court on 10.04.2019. The plaintiff has openly admitted before this court that he leave the matter to the court

and also stated that he is not able to purchase the property, as per the value fixed by the defendants.

8. The plaintiff mainly relied upon Ex.A1 to contend that the B schedule property is also covered under Ex.A1. The report of the Advocate Commissioner clearly indicates that ever since the date of purchase, the plaintiff has put up proper fencing and he is in exclusive possession of the property. Ex.A1 clearly indicates that 6000 sq.ft. was conveyed with linear measurements. One of the boundaries i.e. the eastern boundary is shown as 6 feet land. Taking advantage of the same, the plaintiff has claimed right over the 6 cents, which is the B schedule property.

9. The trial court in fact decreed the suit on the principle that the boundary will prevail over the extent. Whereas, the first appellate court has clearly noted that a clear linear measurements have been given in Ex.A1 and the specific extent has been sold with linear measurements and hence that extent alone will prevail over and dismissed the suit.

10. This court perused the evidence of the parties. The report filed by the Advocate Commissioner makes it clear that the property purchased under Ex.A1 is only 6000 sq.ft., which was already under the possession of the plaintiff and proper fence also put up by the plaintiff. The evidence of the parties also clearly indicates that the B schedule property is not in possession of the plaintiff. If really Ex.A1 covered the B schedule property, the plaintiff would not have kept the property vacant all these days and he would have developed the same. The above facts clearly indicates that the plaintiff has purchased only 6000 sq.ft.

11. Further, in Ex.A1 sale deed, it is specifically mentioned about the extent with linear measurements, purchased by the plaintiff and that will alone prevail over the boundary. The general rule that, when there is no extent is giving in the document, only the boundaries are available, and in that situation, the boundaries will prevail over. Whereas, when the document clearly indicates the specific extent with linear measurement, beyond the specific extent and linear measurements, the boundary description would not convey any title, other than the extent and linear measurements to the purchaser. Therefore, I do not find any error or illegality on the orders passed by the first appellate court.

12. This court in its judgement in Dina Malar Publications, a Tamil daily, represented by its partner R.Krishnamoorthy Vs. The Tiruchirapalli Municipality,

represented by its Executive Authority, the Commissioner reported in 1997 L.W. 365 in Paragraph No.11, held as follows:-

"The suit property is a portion of a street, vested with the Municipality for a limited purpose. For the sale of such a property, the Municipality will have to obtain the sanctions of the State Government. Here, in this case, the Municipality did obtain the sanction from the State Government, as evidence by Ex.B1, viz, G.O.Ms.No.1525 R.D. & L.A. Department dated 24.July 1972, and Ex.B2 proceedings of the Collector, Tiruchi, dated 15th August, 1972. It is seen from the said documents that the State Government had permitted the assignment of a land measuring 2100 sq.ft. in T.S.No.371/2 to one S.Paneerselvam. The sale deed executed by the Municipality in pursuance of the above said Government Order mentions the extent sold as 60'x 35' with an area of 2100 sq.ft. From the above said documentary evidence, it is clear that what was intended to be sold was only an extent of 60'x 35' i.e. an area of 2100 sq.ft. In the fact of this evidence, it cannot be contended for a moment by the appellant that what was intended to be sold was only the land comprised within the said four boundaries and not the extent of 60'x 35' as mentioned in the sale deed. The principle laid down in the above cited decisions can be applied only to a case where there is an element of doubt with reference to the extent and in this case, it cannot be said that there is any element of doubt with reference to the extent. The documents Ex.B1 and Ex.B2 unambiguously prove that what was permitted to be conveyed was an extent of 60'x 35' and not the entire area covered by the four boundaries. Hence, the above cited decisions cannot be of any avail to the appellant. Besides Ex.B1 and Ex.B2, the Government Order and the proceedings of the Collector do not mention the boundaries."

When the Ex.A1 specifically conveyed only 6000 sq.ft. with linear measurements, beyond that, the plaintiff cannot claim any right over the B schedule property. Admittedly, patta was also granted in favour of the defendants. Merely because Ex.A2 and Ex.A3 did not refer the B schedule property, it cannot be presumed that the B schedule property was also conveyed under Ex.A1 to the plaintiff.

13. Further Ex.A1 is of the year 1965. The presumption has to be drawn with respect to execution alone and not with regard to the other aspects. Whereas, Ex.A1 clearly indicates that only 6000 sq.ft. with linear measurements has been conveyed to the plaintiff's father. That being the position, the plaintiff claiming right beyond the area conveyed under Ex.A1, taking advantage of the wrong boundary description, is not sustainable. Accordingly, the first appellate court rightly decided the issue and the substantial questions of law are answered against the appellant.

14. As far as the CMP No.9218/2019 filed to receive additional document is concerned, the learned counsel for the respondents No.8, 18, 19 seeks permission of this court to withdraw the petition and he has also made endorsement to that effect. Hence the petition is dismissed as withdrawn.

15. In the result,

(i) The second appeal is dismissed. The connected civil miscellaneous petition in MP No.1 of 2009 is closed and CMP No.9218 of 2019 is dismissed as withdrawn. No costs.

(ii) The decree and judgment of the first appellate court is confirmed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Subordinate Judge, Namakkal.

2. The District Munsif cum Judicial Magistrate, Paramathi

+1 cc to Mr.N.Manoharan, Advocate, S.R.No.36061

+1 cc to Mr.S.Senthil, Advocate, S.R.No.36114

S.A.No.570 of 2009 and
M.P.No.1 of 2009 and
CMP No.9218 of 2019

SSP (CO)
SSM(02/07/2019)