

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.NO.2209 OF 2004

L.David

...Appellant/Respondent/ Plaintiff

Vs

1.M.Palani

2.Samannan

... Respondents/Appellants/
Defendants

Prayer:-

Second Appeal filed under Section 100 of the Civil Procedure Code, preferred against the judgment and decree dated 28.07.2004 made in A.S.No.68 of 2003 on the file of the Sub Court, Tirupathur, reversing and setting aside the judgment and decree dated 29.07.2003 made in O.S.No.133 of 1997 on the file of the Principal District Munsif Court, Ambur.

For Appellant : Mr.S.R.Sundaram

For Respondents : Mr.K.Venugopal
(No Appearance)

The plaintiff in a suit for bare injunction has preferred this second appeal. The suit was decreed by the trial Court, challenging which the defendants have preferred first appeal in A.S.No.68 of 2003 before the Sub Court, Tirupathur, and the first appellate Court allowed the appeal. Hence, the plaintiff has approached this Court in this second appeal. Parties would be referred to by their ranks before the trial Court.

2.1 The bare facts are : There are two items of suit properties and both of them are comprised in Survey No.520/1A. It has a total extent of 56 cents. Out of this, the plaintiff has purchased Item No.1, measuring 16 cents under Ext.A1, sale deed, and Item No.2, measuring 24 cents under Ext.A2, sale deed. The plaintiff complains that the defendants are attempting to encroach into his properties.

2.2. The case of the defendants is that the first defendant along with one Govindasamy Gounder and another Kalaivani Ammal have purchased the remaining 16 cents in Survey No.520/1A from the original owner and Vide sale deed dated 28.11.1986. When Kalaivani Ammal applied to the authorities to survey the property and to sub-divide the plot, the plaintiff had objected to the same.

3.1 Before the trial Court, both sides have adduced more than adequate oral evidences and necessary documentary evidences. In his oral testimony, the first defendant as D.W.1 has made a categorical statement that plaintiff's 40 cents lie separately to the north of their 16 cents and based on the same, the trial Court granted a decree in favour of the plaintiff, that the defendants shall not stray into the plaintiff's plot.

3.2. Felt aggrieved by the said judgment, the defendants approached the appellate Court, and the first appellate Court has held that the plaintiff has not established his title to 40 cents, and dismissed the appeal. Therefore, the plaintiff has now approached this Court in this second appeal.

4.1 The appeal is not yet admitted. The learned counsel for the plaintiff/appellant argued that notwithstanding the contention taken by the defendants in the written statement, P.W.1 makes a categorical statement in the chief examination, tracing the entire history of the property. He would depose that the suit property originally belonged to one Dhanalakshmi Ammal, that on 21.8.1980, she executed three sale deeds, one in favour of P.Velu Gounder for an extent of 16 cents covered by Ext.A3, and another plot of 24 cents in favour of another person, A.Velu Gounder for a total extent of 24 cents covered by Ext.A4 sale deed, and yet another plot of 16 cents to one Muniammal. The sale to Muniammal is covered by Ext.B1. In other words, Vide Exts.A3, A4 and B1 sale deeds, Dhanalakshmi had parted with her entire 56 cents in Survey No.520/1A.

4.2. Turning to the plaintiffs' title, his vendors Vide Ext.A1 and Ext.A2 had sold the properties covered by their respective title deeds to the plaintiff. The first of the sale was dated 28.2.1983 (marked Ext.A1) and this sale relates to Item No.1. The second of the sale in favour of the plaintiff was one under Ext.A2, dated 24.11.1988 and this relates to the property covered under Ext.A4, and scheduled as Item No.2 in the plaint.

4.3. In between Ext.A1 and A2, sale deeds, Muniammal, the purchaser under Ext.B1 sale deed, had sold her plot to one Chakravarthy on 29.11.1980 under Ext.B2, sale deed. Chakravarthy, thereafter sold 16 cents he owned to the first

defendant herein (Palani), Kalaivani Ammal and Govindasamy Gounder under Ext.B3 sale deed. This would imply that while plaintiff has a total extent of 40 cents, the first defendant and his co-sharers jointly hold remaining 16 cents in Survey No.520/1A. It is in this context D.W.1 in his evidence admits plaintiff's title to 40 cents. He would also say that when one of his co-sharer Kalaivani applied for surveying the property and for sub-dividing it, the plaintiff opposed.

5. The learned counsel for the plaintiff would now argue that the issue is all about fixing the demarcating line and not about the title. If it is an issue of demarcation, then the defendants ought to proceed legally and shall not stray into the property purchased by the plaintiff.

6. Turning to the boundary description, Item No.1 in the plaint lies approximately on the north of Item No.2, and the defendant's property lies further south. This would be evident from the boundary description of Item No.2, where the southern boundary is given as Chakravarthy's property, who was defendants' predecessor-in-title.

7. The Court notice was served on the respondents, but none appeared on their behalf today. Heard the learned counsel appearing for the appellant.

8. This appeal was admitted on the following substantial question of law :

"Is not the Court below erred in allowing the first appeal contrary to the principles of law, Order XXXIX of CPC and contrary to the legal evidence?"

9. The property was a vacant side when the suit was laid. The suit is for bare injunction. In all such cases, the presumption that possession follows title will come to play, and this presumption will be valid, till the contra is proved. Necessarily the plaintiff's possession over the property covered under Ext.A1 and A2 sale deed must be upheld. In the written statement, even though the defendant has taken certain plea regarding mis-description of boundaries of the properties, the same was not agitated when he was examined before the Court. Going by the oral testimony, it does not appear that the defendants seriously challenge the identity of the separate plots that the plaintiff has purchased under separate sale deeds. Necessarily, the plaintiff would be entitled to have his possession protected by a decree of injunction.

10. So far as demarcation is concerned, if the statement of the defendants were to be trusted, this Court sees no reason as

to why the plaintiff has to object to the same. After all, it is necessary that the entire properties are measured and plots are divided into separate plots assigning it separate survey numbers.

11. In conclusion, the appeal is allowed and the judgment and decree dated 28.07.2004 made in A.S.No.68 of 2003 on the file of the Sub Court, Tirupathur, reversing the judgment and decree dated 29.07.2003 made in O.S.No.133 of 1997 on the file of the Principal District Munsif Court, Ambur, is hereby set aside. No costs.

Sd/-

Assistant Registrar(MDU)

//True Copy//

Sub Assistant Registrar

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To:

1. The Sub Court
Tirupathur.
2. The Principal District Munsif Court
Ambur.
3. The Section Officer
VR Section, High Court, Madras.

+lcc to Mr.S.R.Sundaram, Advocate, S.R.No.53728

S.A.No.2209 of 2004

AD(CO)
CS/14/12/2020

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