



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.07.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.No.20 of 2010

Sivakumar ... Appellant /Respondent

Vs.

1. S.Lakshmi

2. Chinnusamy,
Proprietor, Saravana Tailors,
170, Cauvery Nagar,
Tamilnadu Housing Board-
Trichy Main Road, Namakkal,
Namakkal District.

3. Muthu, Proprietor,
Velavan Lorry Service,
44/24, Pidil Muthu Street,
Namakkal,
Namakkal District.

... Respondents/Appellants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 29.06.2009 passed in A.S.No.23 of 2006 by the Subordinate Judge, Namakkal, reversing the decree and judgment dated 21.11.2005 passed in O.S.No.521 of 2003 by the Principal District Munsif, Namakkal.

For Appellant : Mr.D.Gopal

For Respondents : Mr.T.Dhanyakumar

JUDGMENT

The appellant is the plaintiff in O.S.No.521 of 2003 on the file of the Principal District Munsif, Namakkal and the respondent in A.S.No.23 of 2006 on the file of the Subordinate Judge, Namakkal.

2. The case of the plaintiff in nutshell is as follows:

The suit property is described as XY lane in the plan appended to the plaint. The defendants' properties are indicated as D1, D2, and D3 and the plaintiff's property is indicated as ' P ' in the plaint plan. The suit XY lane originally belonged to one Ramasamy Padayachi, paternal grandfather of the plaintiff. The said Ramasamy Padayachi



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purchased the property along with the suit XY lane through a sale deed dated 07.01.1951 (Ex.A1) from one Bodiboyan and that ever since the date of purchase, he was in possession and enjoyment of the properties conveyed through the sale deed dated 07.01.1951. Subsequently, he executed a sale deed dated 11.06.1985 (Ex.A2) in favour of his son Jegannathan. After the death of Jegannathan, the plaintiff and his brothers and sisters filed a suit for partition in O.S.No.237 of 2001 before the District Munsif, Namakkal. As per the final decree passed in O.S.No.237 of 2001, the suit XY lane was allotted to the share of the plaintiff. On the eastern side of the plaintiff's property, the property of his brother Baskaran is situated. Previously, Ramasamy Padayachi bequeathed his properties in favour of his sons and daughters who in turn sold their respective shares to one Nachimuthu Chettiyar, Varadarajan, Muthusamy, Sivagami and others. All of them were given right to drain the sewerage through the XY lane. On the eastern side of XY lane, there is a 3 1/4 wide passage. The defendants had never been in enjoyment of the said XY lane. However, they are attempting to trespass into the said XY lane and one such attempt was made on 09.01.2003. Hence, the suit for declaration of plaintiff's title to the XY lane and for a consequential relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit XY lane.

3. The third defendant filed his written statement and the same was adopted by the defendants 1 and 2. The following points are raised by the defendants in their written statement.

- (i) The plaintiff is not entitled to XY lane.
- (ii) Since the defendants are not parties to the suit in O.S.No.237 of 2001 on the file of the District Munsif, Namakkal, the decree passed in the said suit would not bind the defendants.
- (iii) Ramasamy Padayachi has wrongly indicated the XY lane as his own property and sold the property to his son Jegannathan.
- (iv) Jegannathan was never in possession of the suit XY lane.
- (v) Ramasamy Padayachi had already filed a suit in O.S.No.621 of 1985 before the District Munsif, Namakkal against the defendants 2 and 3 and the husband of the first defendant and the said suit was dismissed for default.
- (vi) There is no cause of action for filing the suit and hence the suit is liable to be dismissed.

4. The learned Principal District Munsif, Namakkal framed necessary issues and after full contest, decreed the suit in favour of the plaintiff vide her decree and judgment dated 21.11.2005. Aggrieved over the same, the defendants preferred an appeal in A.S.No.23 of 2006 before the Subordinate Judge, Namakkal. The learned Subordinate Judge, Namakkal reversed the findings of the Principal District



Munsif, Namakkal and allowed the appeal. Now, the present second appeal is filed by the plaintiff.

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

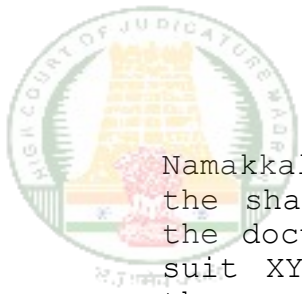
(i) Whether the First Appellate Court erred in law in reversing the well considered findings of the trial court merely on the basis of physical features noted in the commissioner's report and plaint particularly when the plaintiff has proved his title under Ex.A2 (11.06.1985) and the parent document dated 07.01.1951 (Ex.A1)?

(ii) Whether the first appellate court is correct in law in dismissing the suit on the ground of non joinder of necessary parties, especially when the court is empowered to add the parties who are necessary for effective and complete adjudication of the dispute even without any application under Order 1 Rule 10(2) of the Code of Civil Procedure?

6. The parties are referred to as per their ranking in the original suit and at appropriate places, their ranks in the present appeal would also be indicated, if necessary.

7. The plaintiff claims title to the suit XY lane and also contends that the defendants are attempting to trespass into the suit XY lane. He therefore filed the suit for declaration of his title to the suit XY lane and also for a permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit XY lane. In order to establish that the suit XY lane exclusively belongs to the plaintiff, the plaintiff relies on his oral evidence as well as the evidence of two other witnesses. He has also adduced Ex.A1 to Ex.A7. According to the plaintiff, the suit property was purchased by his paternal grandfather Ramasamy Padayachi through a sale deed dated 07.01.1951(Ex.A1). The further contention of the plaintiff is that the plaintiff has been in possession and enjoyment of the suit property, as per the decree passed in O.S.No.237 of 2001 (Ex.A3), which is a suit for partition filed by the brothers and sisters of the plaintiff on the file of the District Munsif, Namakkal.

8. Mr.D.Gopal, learned counsel appearing for the appellant contended that in Ex.A1, the northern boundary is described as the property of Kanniammal and that the said Kanniammal is the vendor of the defendants. He would further contend that in Ex.A2 sale deed, Ramasamy Padayachi had clearly mentioned that the XY lane belonged to him and has sold the southern portion of the land along with the XY lane to his son Jegannathan, the father of the plaintiff. He also relied on Ex.A3, which is a final decree for partition in O.S.No.237 of 2001 on the file of the District Munsif,



Namakkal and contended that the suit XY lane was allotted to the share of the plaintiff. He would therefore contend that the document Ex.A1 to Ex.A3 would clearly go to show that the suit XY lane exclusively belonged to the plaintiff and that the revenue officials have also issued a patta (Ex.A4) dated 04.11.2003. His specific contention is that though the trial court decreed the suit in favour of the plaintiff, the first appellate court without considering the documentary evidence adduced on the side of the plaintiff, had dismissed the suit filed by the plaintiff. He would further contend that the second appeal is liable to be allowed.

9. Per contra, Mr.T.Dhanyakumar, learned counsel appearing for the respondents would contend that Ex.A1 to Ex.A3 are not the title deeds to the suit XY lane and that in Ex.A1, the suit XY lane is indicated as one of the boundaries to the property purchased by Ramasamy Padayachi. His next contention is that the plaintiff, who examined himself as PW1 had also deposed that his father purchased the property during the year 1985 from his paternal grandfather and that when he constructed a house, there was a sewerage running east to west and therefore, the suit sewerage was shown as one of the boundaries to his house. He also drew the attention of this court to Ex.A3, wherein, it is indicated that the plaintiff can use the disputed XY lane only for white washing and carrying out repairs to his building. His contention is that as per the final decree passed in O.S.No.237 of 2001 on the file of the District Munsif, Namakkal, the plaintiff was given only a right of passage through the XY lane and therefore, he cannot claim exclusive right over the same. He further pointed out the averments in the plaint, wherein, the plaintiff has clearly averred that the eastern side of the plaintiff's property belongs to his brother and that Ramasamy Padayachi bequeathed his properties to his sons and daughters, who in turn sold their respective properties to various persons and that they are owners of the properties adjacent to the XY lane. He therefore contended that since all these persons had not been impleaded in the present suit, the suit filed by the plaintiff for declaration of his title to the suit XY lane is not maintainable.

10. An Advocate Commissioner was appointed by the trial court, who had inspected the suit property and filed his reports and plans, which were marked as Ex.C1 to Ex.C4. The learned counsel appearing for the respondents mainly contended that the physical features noted down by the learned advocate commissioner would clearly go to show that the suit XY lane would not have been in possession of the plaintiff and that the documentary evidence adduced by him in the form of Ex.A1 to Ex.A3 would not also prove the title to the suit XY lane. The trial court held that since in the sale deed Ex.B1, executed by Kanniammal, in favour of the defendants, the suit XY lane has not been included, the defendants are not entitled to the suit XY lane. The trial court further held that since



11. At this juncture, it is relevant to point out that in Ex.A1 dated 07.01.1951, the northern boundary is clearly indicated as Kanniammal's house and the western boundary is indicated as Marimuthu Mudaliar. Through Ex.A2 sale deed, Ramasamy Padayachi had sold the property to his son, which is situated on the southern side of the 3 1/4 wide lane. In Ex.A2, he has indicated that 3 1/4 wide lane belongs to him. It is also pertinent to point out that even in the plaint, the plaintiff has contended that Ramasamy Padayachi had bequeathed his various properties to his legal heirs and some of his legal heirs have also sold their respective shares to various third persons.

13. In the result,

(ii) The decree and judgment 29.06.2009 passed in

<https://hcservices.ecourts.gov.in/hcservices/>



(iii) The suit in O.S.No.521 of 2003 on the file of the Principal District Munsif, Namakkal is dismissed with costs.

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Assistant Registrar (CS-V)

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Sub Assistant Registrar

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To

1. The Subordinate Judge, Namakkal.
2. The Principal District Munsif, Namakkal.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.N.Manokaran, Advocate, S.R.No. 58303
+1cc to Mr.T.Dhanya Kumar, Advocate, S.R.No. 58350

S.A.No.20 of 2010

BS(CO)
GN(15/11/2019)