

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07 .03.2019

PRONOUNCED ON : 28.03.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1411 of 2005

Janakaraj ...Appellant

Vs.

Natarajan ...Respondent

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.85 of 2004 on the file of the Subordinate Judge, Tiruvarur dated 29.06.2005 in reversing the judgment and decree in O.S.No.141 of 2002 on the file of the District Munsif Court, Nannilam dated 18.06.2004.

For Appellant : Mr.V.Raghavachari

For Respondent : Mr.N.Sankaravadivel

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 29.06.2005 passed in A.S.No.85 of 2004 on the file of the Subordinate court, Tiruvarur reversing the judgment and decree dated 18.06.2004 passed in O.S.No.141 of 2002 on the file of the District Munsif Court, Nannilam.

2. The second appeal has been admitted on the following substantial questions of law.

"1) Whether the lower appellate court is right in placing reliance upon Ex.B1 alone and in reversing the judgment of the trial court when the said document had no binding effect upon the plaintiff?

2) Whether the ancient document under Ex.A1 establishes the lease hold rights of the plaintiff in and over the B schedule property, is the lower appellate court justified in

ignoring it as well as the other attendant documents under Ex.A4 to A15?

3) Whether the lower appellate court is right in its appreciation of fact and had it not ignored the clear admission of D.W.1 as regards the location of the well separating the B schedule property from his property?

4) Whether the appellate court ought not to have held that the admission of D.W.1 and 2 is binding upon the defendant and should it not have applied the fundamental principles that the admission is the best from of evidence?"

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. The Parties are referred to as per their rankings in the trial Court for the sake of convenience.

5. Suffice to state that the plaintiff has laid the suit against the defendant for mandatory injunction and permanent injunction. The suit has been laid by the plaintiff claiming the abovesaid reliefs in respect of the 'B' schedule property. According to the plaintiff, the 'B' schedule property forms part of the 'A' schedule property. The 'B' schedule property, with reference to which the parties are at issue, is measuring 12 feet east west and 2 ½ feet north south. As above noted, it is the case of the plaintiff that 'B' schedule property forms part of the 'A' schedule property and the 'A' schedule property is described as located within the specific boundaries in R.S.No.24 with an extent of 8 cents of land. Claiming title to the suit property, the plaintiff would put forth the case that while putting up the new construction in the plaintiff 'A' schedule property, it is stated that he had left a way near the western wall and also a lane on the eastern side of the house and further it is stated that on the northern side he had left 4 feet x 15 feet space for the purpose of putting up septic tank and while so, the defendant, while putting up the construction in their property, had encroached into the plaintiff's property on the southern side of an extent of 2 ½ feet x 10 feet and raised construction taking advantage of the absence of the plaintiff and accordingly seeking appropriate reliefs with reference to the same, it is stated that the plaintiff has been necessitated to institute the suit against the defendant.

6. The case of the plaintiff that he has ear marked a space on the northern side measuring 4 feet x 15 feet for the purpose

of putting up the septic tank is being seriously challenged by the defendant. According to the defendant, the abovesaid portion said to have been ear marked for constructing the septic tank does not belong to the plaintiff and also disputed the fact that the plaintiff is entitled to 8 cents of land as described in the plaint 'A' schedule property. The disputed portion is shown as ABCD in the plaint plan. According to the defendant, the ABCD portion has not been enjoyed by the plaintiff at any point of time. It is stated by the defendant that his brother's wife Janaki Ammal had purchased the property by way of a sale deed dated 31.05.1979, and the same is under the management of the defendant and accordingly, the construction had been put up in the said property within the area purchased and therefore, the claim of the plaintiff that the defendant had put up the construction by encroaching into the ABCD portion of the plaint plan is false and inasmuch as the plaintiff has no right, whatsoever, over the property in dispute and on the other hand, the same belongs to Janaki Ammal, accordingly, it is stated that the suit has been laid by the plaintiff without any cause of action and the same is liable to be dismissed.

7. Based on the materials placed on record, both oral and documentary, the trial court was pleased to decree the suit as prayed for. Impugning the same the defendant preferred the first appeal. The first appellate court, on an appreciation of the materials available on record and the submissions made, was pleased to set aside the judgment and decree of the trial court and thereby, dismissed the suit laid by the plaintiff. Challenging the same, the plaintiff has preferred the present second appeal.

8. As rightly determined by the first appellate court, the main point that has to be determined in this matter is whether the defendant had encroached into the plaintiff's property and put up the construction as claimed by the plaintiff. It is stated by the plaintiff that the defendant has encroached into the plaintiff's area and put up a wall measuring 8 feet in height and accordingly seeking the removal of the same and for the other reliefs, the plaintiff has laid the suit against the defendant. As above noted, according to the plaintiff, the property in dispute, namely, the 'B' schedule property, forms parts of the plaint 'A' schedule property. The plaint 'A' schedule property is shown to be measuring 8 cents of land. On the other hand, the document of title relied upon by the plaintiff marked as Ex.A1 shows that the land comprised therein, let on paguthi, is only 7 ½ cents and not 8 cents. In such view of the matter, when other than Ex.A1, there is no other material on the part of the plaintiff to sustain his claim of ownership or enjoyment of 8 cents of land as described in the plaint 'A' schedule property, it is found that the plaintiff is not

entitled to lay any claim of land more than 7 ½ cents of land. When, as rightly determined by the first appellate court, the other documents projected by the plaintiff do not help to advance the plaintiff's case that he is entitled to 8 cents of land, on the other hand, on a perusal of the title deed projected by the defendant, marked as Ex.B1, standing in the name of Janaki Ammal, it is found that inclusive of the property in dispute, Janaki ammal had purchased the property and therefore, the determination of the first appellate court that the plaintiff has no title to the 'B' schedule property does not warrant any interference. As above noted, the dispute is only with reference to the ABCD portion shown in the plaint plan. When the plaintiff has failed to establish that he has entitlement to 8 cents of land as described in the plaint 'A' schedule and on the other hand, he is shown to be having only 7 ½ cents of land and on the other hand, the title deed of the defendant shows the entitlement to the property inclusive of the property in dispute on the southern side by showing it as an inward portion, in such view of the matter, no interference is called for in the judgment and decree of the first appellate court holding that the plaintiff has failed to establish his right or interest over the property alleged to have been entered into or encroached by the defendant and put up the construction thereon. In such view of the matter, merely on the basis of the photographs projected by the plaintiff as well as the commissioner's report and plan marked in the suit, we cannot determine that the plaintiff is having title, right or interest in respect of the plaint 'B' schedule property and as held by the first appellate court, when the suit property in dispute is not shown to be forming part of the plaint 'A' schedule property and when the plaint 'A' schedule property is described to be comprising of more extent of land than to which the plaintiff is actually entitled to and on the other hand, when Ex.B1 points out that the defendant i.e. Janaki ammal is entitled to the inward area on the southern side of the said property as described therein, in all, it is found that the plaintiff, without any basis or cause of action, has come forward with the suit by falsely claiming that the plaint 'B' schedule property also belongs to him and the defendant had put up the construction thereupon during his absence without any basis. On the other hand, as rightly determined by the first appellate court, the construction put up by the defendant is only within the property belonging to him and not in the property belonging to the plaintiff as such and in such view of the matter, the suit laid by the plaintiff is found to be without any cause of action and rightly dismissed by the first appellate court.

9. In the light of the abovesaid position, in my considered opinion, no substantial question of law is involved in this second appeal. Be that as it may, the substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and infavour of the defendant.

10. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any is, closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

bga
To

1. Subordinate court,
Tiruvarur.
2. District Munsif Court,
Nannilam.

Copy to

The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.V.Raghavachari, Advocate Sr.29470

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srg 03/10/2019

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