

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2019

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

S.A.No.303 of 2019

and

C.M.P.No.4546 of 2019

Manickam

... Appellant/Appellant/Defendant

Vs.

Murugesan

... Respondent/Respondent/Plaintiff

Prayer : This Second Appeal has been filed under Section 100 CPC against the judgment and decree of the Court of the District Judge, Tiruvannamalai in A.S.No.6 of 1995 dated 30.10.1995 in confirming the judgment and decree of the Principal District Munsif, Tiruvannamalai in O.S.No.1487 of 1980 as dated 21.10.1994.

For appellant : Mr. V.Raghavachari

JUDGMENT

The defendant, who has suffered a decree in both the Courts below, has filed the present Second Appeal. The respondent/plaintiff filed a suit in O/S.No.1487 of 1980 on the file of the Principal District Munsif Court, Tiruvannamalai for declaration and also for a consequential injunction. The trial Court decreed the suit and the appeal filed by the appellant / defendant also came to be dismissed. Now, challenging the same, the present Second Appeal has been filed.

2. The case of the plaintiff is that the suit schedule property originally belongs to the vendors of the plaintiff. On 09.08.1980, the plaintiff has purchased the same from the original owner and right from the bpurchase, he is in possession and enjoyment of the suit schedule property. The defendant, who has no right over the suit property, is now trying to interfere with his enjoyment. Hence, he filed the suit.

3. The defendant filed a written statement contending that the property was purchased by the plaintiff without any boundaries. The boundaries mentioned in the sale deed in Survey No.709/1 is not tallying with the boundaries of the suit property. But it is only tallying with Survey No.709/5. Originally the legal heirs of one Dharman Chettiyar were the owners of the property, and thereafter the defendant is in

possession and enjoyment of the property, and the plaintiff can not claim any right over the property in Survey No.709/1 and he can only claim right over the property in survey No.709/5.

4. The trial Court, after considering the pleadings and evidence and also considering the Advocate Commissioner's Report, has come to a conclusion that the boundaries given in the suit schedule property only tallies with Survey No.709/1 and not that of 709/5 and decreed the suit vide judgment and decree dated 21.10.1994. Aggrieved by the same, the defendant filed an appeal in A.S.No.6 of 1995 on the file of the District Court, Tiruvannamalai. The First Appellate Court, after considering the materials, concurred with the findings of the trial Court and dismissed the appeal filed by the defendant by judgment and decree dated 30.10.1995. Now, challenging the same, the defendant is before this Court in this Second Appeal. The Appeal is listed for Admission today.

5. In the grounds of Second Appeal the following substantial question of law raised :-

1. Whether the courts below are right in decreeing the suit on the basis of Ex.A9 particularly in the absence of boundary recitals and actual proof of ownership of the suit item ?

2. Whether the Courts below should not have held that the boundaries prevail over the extent and Ex.B4 and Ex.B5 establish the ownership of the appellant in respect of the suit item ?

3. Whether the Courts below are right in not applying the the principles laid down under Sec 13 of the Evidence Act?

4. Whether the Courts below are right in not considering the documents under Ex.B7 to Ex.B.9 and whether the judgment does not suffer from perverse finding on that account?

5. Whether the Courts below should not have held that the documents under Ex.A9 is inadmissible in evidence to prove the ownership of the respondent in the absence of examination of its author ?

6. Whether the order of the Courts below are not liable to be rejected on such other substantial question of law ?

7. I have heard the learned counsel appearing for the appellant and the materials available on records carefully.,

8. Though the specific case of the plaintiff is that, the suit property namely Survey NO.709/1, was purchased by him under Ex.A.9 on 09.08.1980 and by virtue of the same, he is in possession and enjoyment of the above property. However, the defendant contends that the plaintiff had purchased the property without any boundaries and the boundaries given in his sale deed Survey No.709/1, only tallies with the property in Survey No.709/5, which was purchased by the defendant, and the plaintiff can claim right over the property in Survey No.709/5.

Pending suit, an Advocate Commissioner was appointed and he inspected the the respective sale deeds of the parties. Based on the report filed by the Advocate Commissioner, and considering all other materials, the trial Court came to a conclusion that the boundaries in plaintiff's sale deed only tallies with Survey No.709/1. That apart, the suit schedule property is a panchami land, and it was originally assigned in favour of one Munian, and he was in possession of the property for more than 35 years, after his death, his legal heirs sold the property in favour of the plaintiff, which belongs to Aadhi Dravidar Community. But the defendant was said to have purchased the property from the legal heirs of one Dharman Chettiyar, but there is no material available on record to establish that the said Dharman Chettiyar was the owner of suit schedule property. Considering all those materials, both the Courts below decreed the suit . I have also gone through the records carefully and I find no infirmity or perversity in the judgment of the Courts below. In the above circumstances, no substantial question of law arises for entertaining this Second Appeal.

9. In the result, the second appeal is dismissed and the judgment and decree of the First Appellate court confirming the judgment and decree of the trial court is confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

mrp

To

1. The District Judge, Tiruvannamalai.
2. The Principal District Munsif, Tiruvannamalai.

Copy to: The Section Officer, V.R. Section,
High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate, SR.No.39762.

S.A.No.303 of 2019

RSL (CO)
CSR(16/12/2019)