

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.02.2019	Delivered on: 26.02.2019
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CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
S.A.No.16 of 2013
and
M.P.No.1 of 2013

Dhanruparam Choudhary ... Appellant/Respondent/Plaintiff

Vs.

Ravichandran ...Respondent/Appellant/Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 28.09.2012 made in A.S.No.35 of 2012 on the file of the Principal Sub Court, Erode, reversal of the judgment and decree dated 29.11.2011 made in O.S.No.18 of 2010 on the file of the First Additional District Munsif, Erode.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.M.Guruprasad

JUDGMENT

This Second Appeal has been filed by the plaintiff against the judgment and decree passed by the Principal Sub-Judge, Erode, in A.S.No.35 of 2012 dated 28.09.2012 reversing the judgment and decree passed by the First Additional District Munsif Court, Erode, in O.S.No.18 of 2010 dated 29.11.2011.

2. The appellant herein had filed a suit in O.S.No.18 of 2010 on the file of the First Additional District Munsif, Court, Erode, to restrain the defendant, his men, etc., from trespassing into the suit property or disturbing his peaceful possession and enjoyment of the same by means of permanent injunction. The learned First Additional District Munsif, Erode, by the judgment dated 29.11.2011 had decreed the said suit without costs. Aggrieved by the same, the defendant had filed an appeal in A.S.No.35 of 2012 on the file of the Principal Sub-Judge, Erode. The learned Principal Sub-Judge, Erode by the judgment dated 28.09.2012, had allowed the said appeal and set aside the judgment and decree passed by the trial Court and dismissed the said suit. Feeling aggrieved, the

plaintiff has filed the present second appeal. For the sake of convenience, the parties are referred to as described before the trial Court.

3. The averments made in the plaint are in brief as follows:-

The plaintiff had purchased the suit property for proper and valuable consideration of Rs.4,95,000/- under a registered sale deed dated 11.04.2008. His wife also purchased the adjacent land. From the date of purchase, the plaintiff is in possession and enjoyment of the suit property. The defendant is a total stranger insofar as the suit property is concerned. The plaintiff came to know that there were some disputes between the vendor of the plaintiff and the defendant. On account of misunderstanding, the defendant made an attempt to trespass and disturb the plaintiff's peaceful possession. Hence, the plaintiff had sent a notice dated 19.11.2009 to the defendant. The defendant had received the said notice. But he did not send any reply. After receipt of the said notice on 02.01.2010, the defendant again attempted to trespass into the suit property and hence, the plaintiff was constrained to file the above suit for the relief of permanent injunction.

4. The averments made in the written statement filed by the defendant are in brief as follows:-

The sale deed dated 11.04.2008 said to have been executed by one Visweswaran, in favour of the plaintiff is a self-serving document which will not bind on the defendant. The plaintiff is not at all the owner of the property and he is not in possession as alleged. The allegation that the defendant attempted to trespass into the suit property is false. The description of the property itself is wrong and irrelevant. According to the plaintiff, he had purchased the property in R.S.No.1369/1 of Erode Village. The defendant is in no way connected with the said Survey number. In fact, the said Survey number has already been sub-divided into 1369/1-A and 1-B even on 01.10.1992. The plaintiff has purchased the property only on 11.04.2008, quoting the old Survey number. The mother of the defendant had already filed a suit in O.S.No.295 of 2004 on the file of the District Munsif, Erode for partition and separate possession against 15 persons in which a compromise decree was passed on 08.10.2009 and the property situated in R.S.No.1369/2 had been allotted to the defendant's mother and in that suit no property was allotted to the defendant and therefore, the suit is bad for misjoinder of party. The defendant's mother had made some arrangements in her property in R.S.No.1369/2. Taking advantage of the same, the plaintiff has created some records in his favour which will not

bind the defendant. In any event, the plaintiff has no right or title over the property situated in R.S.No.1369/2 and the present suit is clearly abuse of process of law and filed against the wrong person with wrong description. There is no cause of action for the suit and therefore, the defendant prayed to dismiss the suit.

5. Based on the aforesaid pleadings, the learned First Additional District Munsif, Erode, had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and he has also examined one more witness as PW2. He has marked Exs.A1 to Ex.A3 as exhibits. On the side of the defendant, the defendant examined himself as DW1 and he has marked Exs.B1 to Ex.B5 as exhibits.

6. The learned First Additional District Munsif, Erode, after considering the materials placed before her found that the suit property absolutely belongs to the plaintiff and he is in possession and enjoyment of the same. Accordingly, she decreed the suit as prayed for without costs. Aggrieved by the same, the defendant had filed an appeal in A.S.No.35 of 2012 on the file of the Principal Sub-Judge, Erode. The Principal Sub-Judge, Erode, by the judgment dated 28.09.2012 had allowed the said appeal and set aside the judgment and decree passed by the trial Court and consequently dismissed the suit which was filed by the plaintiff. Feeling aggrieved, the plaintiff has filed the present Second Appeal.

7. This Court, at the time of admitting the second appeal, has formulated the following substantial questions of law:-

" 1. Whether the lower Appellate Court has committed an error in holding that the respondent/defendant does not have any property abutting the suit property and hence, the alleged attempt to trespass into the suit property could not be true?

2. Whether the lower Appellate Court has rendered a perverse finding holding that the cause of action alleged was not proved when the respondent/defendant himself has disputed the appellant's plaintiff's claim that he is in possession of the suit property?".

8. Heard, Mr.N.Manokaran, the learned counsel for the appellant and Mr.M.Guruprasad, the learned counsel for the respondent.

9. Substantial Questions of law :

The learned counsel for the appellant/plaintiff has submitted that the first Appellate Court has failed to note that the suit is filed for permanent injunction on the basis of title through the sale deed dated 11.04.2008 Ex.A3 and the plaintiff has proved the possession over the vacant site. He further submitted that the first Appellate Court has failed to note that the defendant has categorically stated that he has no objection for decreeing the suit in respect of the property situated in R.S.No.1369/1. He further submitted that the first Appellate Court has erroneously dismissed the said suit on the ground that the plaintiff has not given any police complaint with regard to the alleged trespass. He further submitted that the cause of action is bundle of facts and failed to consider the oral evidence adduced by PW1 and PW2. He further submitted that the first Appellate Court has failed to note that the defendant did not send any reply for the pre-suit notice. He further submitted that the first Appellate Court having come to the conclusion that the plaintiff is the owner of the suit property, erred in reversing the well considered judgment of the trial Court on the ground that the plaintiff failed to prove the cause of action and therefore, he prayed to allow the Second Appeal and set aside the judgment and decree passed by the first Appellate Court and restore the judgment and decree passed by the trial Court.

10. Per contra, the learned counsel for the respondent/defendant has submitted that Ex.B2 would show that even on 01.10.1992 itself S.No.1369/1 has been sub-divided as 1369/1-A and 1-B, but the plaintiff while purchasing the property under Ex.A3 on 11.04.2008, had purchased the property by mentioning the R.S.No. Viz., 1369/1. He further submitted that in the plaint schedule, the plaintiff has purposely given wrong boundaries especially on the southern side as east west 40 feet Road. He further submitted that on the south of S.No.1369/1, the property belonging to the defendant's mother is situated in R.S.No.1369/2. He further submitted that only with a view to claim Road from the property of the defendant's mother i.e., R.S.No.1369/2, the plaintiff gave wrong description in the plaint schedule. He further submitted that the plaintiff has failed to prove the cause of action as the defendant made attempts to trespass into the suit property. He further

submitted that instead of adding the defendant's mother as a party, the plaintiff has purposely filed the suit against a wrong person with wrong description of property. He further submitted that the trial Court failed to consider the aforesaid facts in proper perspective and granted decree but the first Appellate Court properly considered the aforesaid facts and rightly reversed the judgment and decree of the trial Court and dismissed the suit and in the said factual findings, this Court cannot interfere and therefore, he prayed to dismiss the Second Appeal.

11. According to the plaintiff, he had purchased the suit property under a registered sale deed dated 11.04.2008 for Rs.4,95,000/- from one Visweswaran, and from the date of purchase, he is in possession and enjoyment of the same. The suit property is ad-measuring about 3050 feet situated in R.S.No.1369/1 (Old S.F.No.1228) of Kasipalayam, Erode Village. The defendant has not claimed any right over the property situated in R.S.No.1369/1. His case is that as per Ex.B2, the said R.S.No.1369/1 was sub-divided as R.S.No.1369/1-A and 1-B as early as on 01.10.1992, but the plaintiff while purchasing the property under Ex.A3 sale deed dated 11.04.2008, instead of mentioning the sub-division numbers, he has mentioned the old Survey Number i.e., R.S.No.1369/1 in the sale deed and hence, the description of the property given in Ex.A3 and plaint schedule are not correct.

12. At this juncture, it would be relevant to refer to Order 7 Rule 3 of CPC, which reads thus:-

"3. Where the subject-matter of the suit is immovable property:- Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers."

13. A plain reading of the aforesaid provision of law would show that if the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. In this case from the description given in the plaint schedule

there will not be difficulty to identify the suit property. Further, in this case the Survey number as well as boundaries have been mentioned. Since boundaries have been also mentioned, with the help of said boundaries, the suit property can easily be identified.

14. The learned counsel for the respondent/defendant has submitted that the defendant's mother is having property in R.S.No.1369/2 and the same is situated on the south of R.S.No.1369/1. He further submitted that in the plaint schedule, the plaintiff has shown a 40 feet east-west road as southern boundary for his property, but actually there is no such road in existence and by giving such wrong description, the plaintiff is attempting to claim a road in the property of the defendant's mother. But no such defence has been taken either in the written statement or in evidence. Without pleading and evidence, argument cannot be advanced.

15. It is true that in the plaint schedule, the plaintiff has not stated that his property falls either in R.S.No.1369/1-A or 1-B. However, he has mentioned the original Survey No.i.e., R.S.No.1369/1 and also boundaries on all four sides of his property. Merely because the plaintiff has not mentioned the said sub-division numbers, it cannot be said that the property purchased by him is situated just on the north of the property of the defendant's mother (R.S.No.1369/2). If the plaintiff had purchased his property just adjacent to the property of the defendant's mother, in Ex.A3 sale deed, he would have mentioned the southern boundary as either R.S.No.1369/2 or the property of the defendant's mother. The description of the property given in Ex.A3 and plaint schedule would show that the plaintiff had purchased his property only in R.S.No.1369/1 and the said R.S.No. contains the extent of 5.41 acres and out of 5.41 acres, the plaintiff had purchased only 3050 feet with specific boundaries. The description of the property which is given in the plaint schedule would clearly show that the boundaries mentioned in the plaint schedule also come within R.S.No.1369/1 and therefore, the contention of the learned counsel for the respondent/defendant that in Ex.A3 sale deed and also in the plaint schedule, the plaintiff has given wrong boundaries with a view to claim a road from the property of the defendant's mother cannot be accepted.

16. It is also relevant to refer to the decision in Chumar Vs. Narayanan Nair, AIR 1986 Kerala 236, wherein, the High Court of Kerala observed as follows:-

"Where on a construction of a document transferring title to hold a property, it is clear that the intention of the parties was to transfer a parcel of land within well defined boundaries, any erroneous statement of survey number or omission to state it should be rejected as false demonstratis."

17. It is also relevant to refer to the decision in Devan Krishnan Kartha Vs. Kochu Mohammed Pariathu, 1955 K.L.T. 647, wherein, a question came as to how to identify a property when there is a misdescription, the Kerala High Court held as follows:-

"....The evidence supplied by boundaries, extent, survey numbers and lekhoms* forms the determining factors when the identity of the property is put in issue. If all these factors harmonise there is little difficulty to identify the property in dispute. But when some of them are in conflict with the rest as when the extent and survey numbers do not agree with the boundaries usually the boundaries predominate, and the rest is regarded as erroneous or inaccurate description."

18. From the aforesaid decisions, it is clear that when the extent and survey numbers do not agree with the boundaries usually the boundaries predominate, and the rest is regarded as erroneous or inaccurate description.

19. The trial Court, considering the fact that the suit property is a vacant site and the title deed stands in the name of the plaintiff, came to the conclusion that the principle of possession follows title will apply and accordingly it has held that the plaintiff is in possession of the suit property. Further, taking into consideration the admission made by the defendant during his cross examination that he is not having any right in R.S.No.1369/1, the trial court has granted permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The first Appellate Court also concurred with the findings of the trial Court with regard to the title and possession of the suit property. However, it allowed the appeal on the ground that the plaintiff failed to prove the alleged cause of action.

20. It is to be pointed out that the plaintiff had issued a pre-suit notice vide Ex.A1 on 19.11.2009 stating that the defendant is attempting to trespass into the suit property. EX.A2 (postal acknowledgement) shows that the defendant had received the said notice but he did not send any reply denying the allegations made in Ex.A1 notice. Further, the term cause of action does not mean any single act and it is a bundle of facts. The very fact that the defendant is contesting the suit by saying that the plaintiff has not mentioned the correct Sub-division number and is trying to grab the property of the defendant's mother by giving wrong description itself would show that there is a cause of action for filing the suit against the defendant. Further, not sending a reply to the pre-suit notice also would lead to an inference that the defendant made attempts to trespass into the suit property. The trial Court has properly appreciated the aforesaid facts and granted a decree as prayed for in favour of the plaintiff, but the first Appellate Court without appreciating the aforesaid facts in proper perspective had reversed the judgment and decree of the trial Court and dismissed the suit. Therefore, the second appeal has to be allowed. Accordingly, the substantial questions of law are answered in favour of the appellant/plaintiff.

21. In the result, the Second Appeal is allowed. No costs. The judgment and decree passed by the Principal Sub Court, Erode in A.S.No.35 of 2012 dated 28.09.2012 are set aside and the judgment and decree passed by the trial Court in O.S.No.18 of 2010 dated 29.11.2011 are restored. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sub Judge,
Erode.

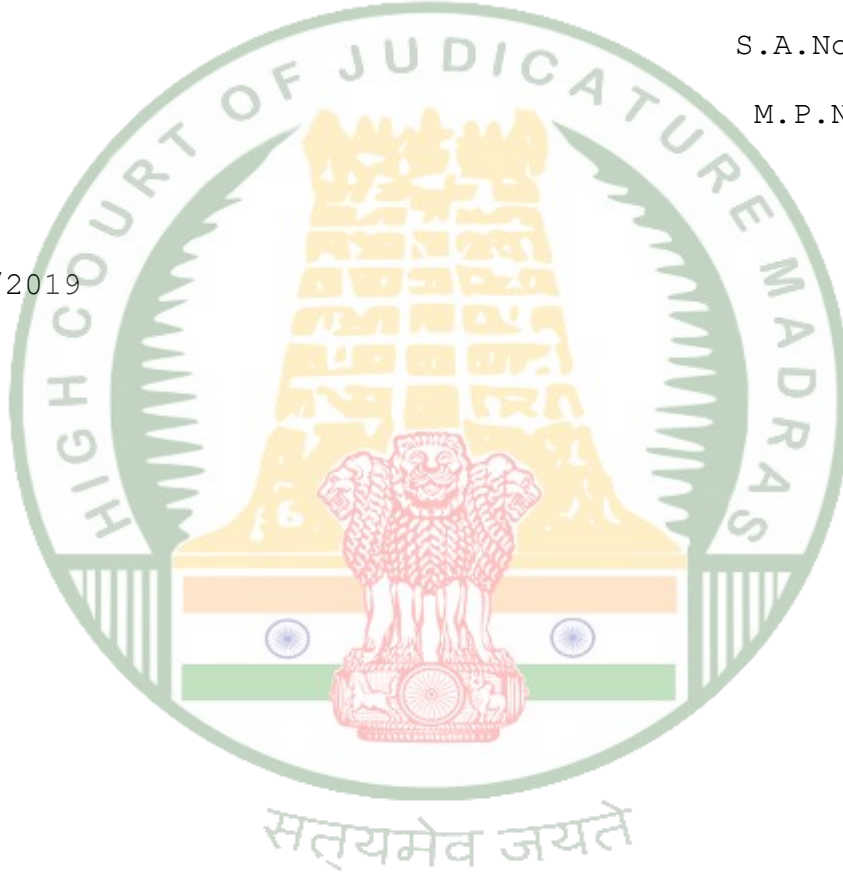
2.The First Additional District Munsif,
Erode.

3.The Section Officer,
VR section, High Court, Madras.(+2 Copies)

+1cc to Mr.M.Guruprasad, Advocate Sr.17836
+1cc t Mr.N.Manokaran, Advocate Sr.17902

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