

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.44 of 2013
and
M.P.Nos.1 and 2 of 2013

1.V.Maruthamuthu

2.M. Rajamanickam @ Mahesh

.... Appellants/Respondents/Defendants

Vs.

Murugesan

.... Respondent/Appellant/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 26.11.2012 passed in A.S.No.38 of 2012 on the file of the learned Subordinate Judge, Namakkal, reversing the Judgment and Decree dated 10.04.2012 passed in O.S.No.581 of 2010 on the file of the learned Principal District Munsif, Namakkal.

For Appellants : Mr.T.N. Rajagopalan
for Mr.G. Arumugaraja

For Respondent : Mr.T. Dhanyakumar

JUDGMENT

The above Second Appeal arises against the reversing Judgment in a suit O.S.No.581 of 2010 on the file of the learned Principal District Munsif, Namakkal, by the respondent herein for a bare injunction.

2.The plaintiff had claimed a right to the suit pathway on the basis of the Sale Deed in favour of his father dated 11.09.1969. It is the case of the plaintiff that from the date of purchase of the property, they have been in possession and enjoyment of the suit pathway. The suit schedule pathway has been described as a 15 links wide pathway situate in the extreme Eastern end of the property comprised in Survey No.176/3 running from North to South which the plaintiff has described as XY in

the Plan attached to the Plaint. It is the case of the plaintiff that the defendant's father after purchasing the properties, South of the plaintiff's property is attempting to disturb the possession and enjoyment of the plaintiff to the suit XY pathway. Therefore, the suit for bare injunction.

3.The defendant's case in a nutshell is that under the Sale Deed dated 11.09.1969, the plaintiff has not been given any right to the pathway and on the contrary, the property that has been sold to the plaintiff is the property measuring 2.61 acres excluding the pathway.

4.The parties had gone to trial on the issues that were framed by the learned District Munsif, Namakkal. The plaintiff had examined himself as P.W.1 and marked Ex.A.1 to Ex.A.4. On the side of the defendants, the 1st defendant had examined himself as D.W.1 and marked Ex.B.1 to Ex.B.7.

5.The trial Court on appreciating the evidence on record dismissed the suit stating that the plaintiff did not have a right to the pathway and also holding that the pathway has now been sub divided and allotted a separate Survey No.176/3B which clearly indicates that the same does not belong to the plaintiff.

6.The said Judgment and Decree was taken up on appeal by the plaintiff to the learned Subordinate Judge, Namakkal, in A.S.No.38 of 2012. The learned Subordinate Judge, Namakkal, by her Judgment and Decree dated 26.11.2012 has reversed the Judgment and Decree in O.S.No.581 of 2010 and held that the plaintiff has a right to use XY pathway to the extent of 15 links. The learned Judge while allowing the appeal has held as follows:

"14.In this case, Ex.A.1, B1 and B2 are the deeds in respect of title. In all these, Ex.A.1 is the ancient document that Ex.B.1 and Ex.B.2. The recitals of Ex.A.1 is made crystal clear that father of the plaintiff had purchased the land to an extent of 2.61 acre in S.No.176/3. In which it was stated that except the XY pathway right all the total land i.e., 2.61 acres was sold to the father of the plaintiff. Therefore, the soil right is only to the plaintiff. If the plaintiff has got soil right in the XY pathway, he can automatically entitled to the XY pathway. According to Ex.B.2, 0.12 cents was purchased by the 1st defendant ut of 2.61 acres in S.No.176/3. It was already sold 2.61 acres to the father of the plaintiff. Therefore, this Court do not deep into delve the genuineness of Ex.B.2, but decides that Ex.A.1 is the ancient document to all Ex.B.1 and B.2....."

Challenging the said Judgment and Decree, the defendants are before this Court.

7. At the time of admission, this Court had framed the following Substantial Questions of Law:

"1. Whether the first appellate Court is correct in not ignoring certain specific findings or the trial Court with regard to certain prime documents of title like patta, etc., while reversing the findings of the trial Court?

2. When the Patta Passbook Act prescribes that grant of patta would amount to conclusive proof of title, whether the first appellate Court is correct in ignoring the provisions of the statute and reversing the finding of the trial Court?

3. When the defendants have denied the title of the plaintiff's suit property, the plaintiff ought to have filed a suit for declaration rather than pursuing the bare injunction suit?

8. Heard Mr. T. R. Rajagopalan, learned counsel appearing for the appellants, who would argue that Ex.A.1 - Sale Deed in favour of the plaintiff would clearly show that the property that has been sold to the plaintiff is the property excluding the suit pathway and the same is expressly stated in the schedule to the Sale Deed. He would draw the attention of this Court to Ex.B.3 which is the patta issued to the defendant in which the suit pathway has been clearly sub divided as Survey No.176/3B measuring 5 cents. He would also draw the attention of this Court to Ex.B.4 - Adangal extract in which once again the suit pathway has been shown with a separate sub division in Survey No.176/3B.

9. That apart, Adangal Extract which has been marked as Ex.B.6 clearly described the property as pathway and is comprised in Survey No.176/3B and under column of ownership, the defendant's name has been described. He would further argue that the learned Judge has failed to consider the documents as well as the recitals in Ex.A.1 - Sale Deed.

10. Per contra, the learned counsel for the plaintiff would submit that the extent of 2.61 acres is inclusive of the suit pathway and not excluding it. It is also the case that considering the fact that it was a common ownership, the parties were enjoying the suit pathway and it is also the case that they were enjoying the pathway from the date of the purchase and it is only when the defendant's father purchased the property, the dispute arose between the parties.

11.Heard the learned counsel appearing on either side and perused the material available on record.

12.The entire case of the plaintiff rests on Ex.A.1 - Sale Deed dated 11.09.1969. The plaintiff would contend that it is on the basis of this document that he has a right to the pathway. A perusal of the schedule given in Ex A.1 - Sale Deed would clearly indicate that the pathway which is situate in the eastern extreme of Survey No.177/3 has not been conveyed to the plaintiff and what has been conveyed is only the remaining portion. Therefore, the document under which the plaintiff is claiming a right does not convey this right to the plaintiff. The Appellate Court fell into error in holding that the plaintiff is entitled to use the pathway. Under Ex.A.1 - Sale Deed, the usage of pathway has been given only to the vendor under the document and not to the purchaser. That apart, the other exhibits which are patta, chitta and adangal extract which have been filed on the side of the plaintiff clearly demonstrate that the pathway has been sub-divided and has given separate Survey No.176/3B. The Appellate Court has totally lost sight of the fact. Further, when the defendant has denied the right of the plaintiff over the suit pathway and claimed a right over the said pathway, a suit for bare injunction the prayer for declaration is not maintainable. I therefore answer all the Substantial Questions of Law in favour of the appellants/defendants.

This Second Appeal stands allowed. The Judgment and Decree of the lower Appellate Court in A.S.No.38 of 2012 on the file of the learned Subordinate Judge, Namakkal, is set aside and the Judgment and Decree dated 10.04.2012 passed in O.S.No.581 of 2010 on the file of the learned Principal District Munsif, Namakkal, stands restored. However, there is no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

mps

To

1.The Subordinate Judge,
Namakkal.

2.The Principal District Munsif,
Namakkal.

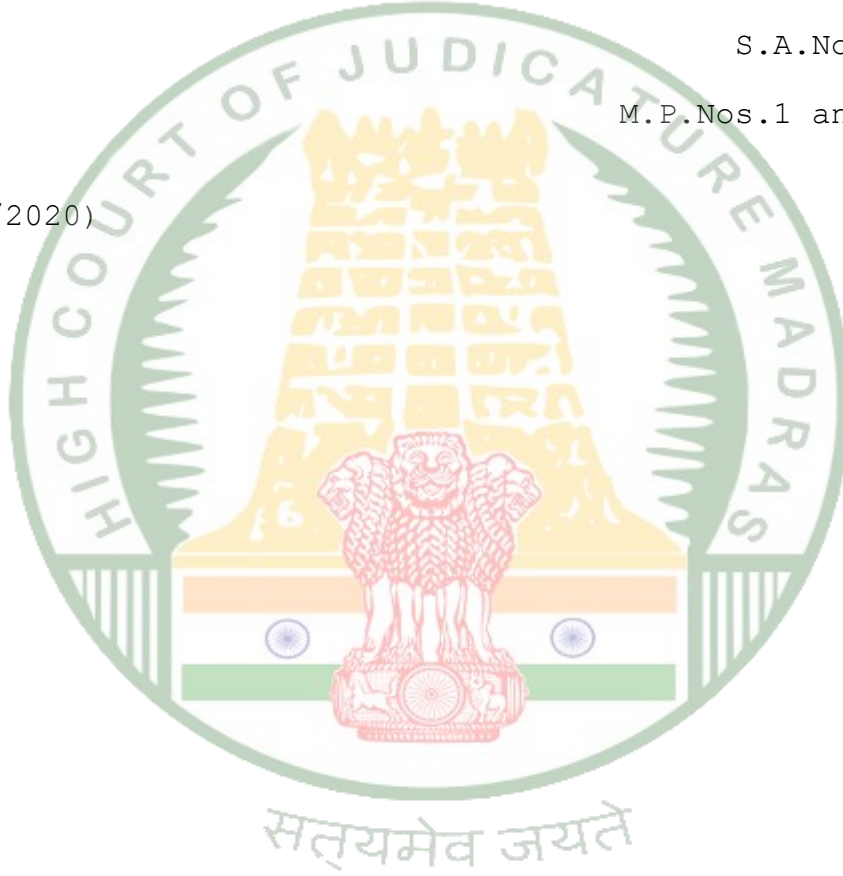
3. The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.G. Arumugaraja, Advocate SR.No.48349

+1cc to Mr.T. Dhanyakumar, Advocate SR.No.48835

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and
M.P.Nos.1 and 2 of 2013

RJI (CO)
GMY (10/02/2020)



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