

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.07.2019

PRONOUNCED ON : 24.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.16 & 17 of 2016

G.Gunasekaran ..Appellant in both SAs. /
1st Respondent /
Plaintiff

Vs.

1.Logu @ Muthaiayan ..1st respondent in S.A.
No.16/2016 & 2nd
respondent in S.A.
No.17/2016./Appellant /
1st Defendant.

2.P.Thamizhvani ..2nd respondent in S.A.
No.16/2016 & 1st
respondent in S.A.No.17/2016 /
Appellant / 2nd Defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 31.10.2014 passed in A.S.Nos.5 & 6 of 2013 on the file of the Subordinate Court, Udumalpet, reversing the Judgment and Decree dated 05.06.2013 passed in O.S.No.405 of 2006 on the file of the District Munsiff Court, Udumalpet.

For Appellant : Mr.N.Thiagarajan
in both SAs

For Respondent : Mr.S.Gunalan
No.1 in S.A.No.16/2016
& No.2 in S.A.No.17/2016

For Respondent : Mr.S.Thirumavalavan
No.2 in S.A.No.16/2016
& No.1 in S.A.No.17/2016

COMMON JUDGMENT

Challenge in these second appeals are made to the Judgement and Decree dated 31.10.2014 passed in A.S.Nos.5 & 6 of 2013 on

the file of the Subordinate Court, Udumalpet, reversing the Judgment and Decree dated 05.06.2013 passed in O.S.No.405 of 2006 on the file of the District Munsiff Court, Udumalpet.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

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

4.Suffice to state that the plaintiff has levied the suit against the defendants simplicitor for the relief of permanent injunction.

5.As regards the properties acquired by the respective parties from their vendors, there is no dispute, as such, with reference to the same. The only dispute between the parties is, as regards where actually the properties said to have been acquired by them lie. It is not in dispute between the parties that Seshasala Naidu, Bashiyakara Naidu and Subbarayalu Naidu and Pattabiram Naidu had divided the properties belonging to them by way of a partition deed dated 30.09.1961 and the certified copy of the abovesaid partition deed has been marked as Ex.A6, whereunder, it is found that the abovesaid four sharers had been allotted the properties described as ABCD schedules in the partition deed and it is also noted that the properties described in "E" schedule had been commonly allotted to the abovesaid four sharers. Furthermore, it is also noted that Seshasala Naidu had been allotted the extent of 96 cents in the suit survey number within the specific boundaries as described in the partition deed and it is also noted that Bashiyakara Naidu had been allotted the extent of 96 cents and Subbarayalu Naidu had been allotted the extent of 96 cents and the extent of 96 cents allotted to Bashiyakara Naidu and Subbarayalu Naidu are found to be lying to the west and east of the extent of 96 cents allotted to Seshasala Naidu, accordingly, it is found that the properties described in the "B" schedule, "A" schedule and "C" schedule in the abovesaid partition deed had been allotted to Seshasala Naidu, Bashiyakara Naidu and Subbarayalu Naidu respectively, as rightly found by the first appellate Court. On a perusal of the abovesaid partition deed, it is seen that there is no recital that the parties thereto had allotted any separate pathway in between the shares allotted to them in the abovesaid deed while effecting the division.

6.Following the abovesaid partition deed, it is noted that the plaintiff's father Gopalsamy Naidu had purchased an extent of 20 cents from Seshasala Naidu in the suit survey number by

way of a sale deed dated 07.12.1963 marked as Ex.A1 and from the recitals contained therein, it is found that the 20 cents of land conveyed under the abovesaid sale deed is shown to be lying to the east of 30' road and accordingly, it is noted that excluding the 30' road, Gopalsamy had acquired the extent of 20 cents by way of Ex.A1 sale deed. Thereafter, it is seen that Seshasala Naidu had alienated an extent of 10 cents in the suit survey number by way of a sale deed dated 26.08.1965 in favour of Deivanaiammal, the certified copy of which has been marked as Ex.B2 and the extent of 10 cents conveyed by way of Ex.B2 in favour of Deivanaiammal, it shown to be specifically lying to the south of 20 cents purchased by Gopalsamy, the plaintiff's father under Ex.A1 sale deed. Therefore, as per Ex.B2 Deivanaiammal had acquired only the extent of 10 cents of land in the suit survey number lying to the south of the property covered under Ex.A1 sale deed and subsequent thereto, it is seen that the plaintiff's father Gopalsamy had further acquired an extent of 30 cents of land in the suit survey number from Seshasala Naidu by way of a sale deed dated 18.11.1965, which has been marked as Ex.A2 and while describing the abovesaid 30 cents of land, it has been described that the same lies to the south of the property belonging to Gopalsamy, however, as rightly found and determined by the first appellate Court when Seshasala Naidu had already conveyed the 10 cents of land to Deivanaiammal under Ex.B2 sale deed lying to the south of the land acquired by Gopalsamy under Ex.A1, it does not stand to reason as to how by way of Ex.A2 sale deed, Gopalsamy would have acquired the extent of 30 cents of land lying to the south of the 20 cents of land already acquired by him under Ex.A1 sale deed and when as abovenoted, Deivanaiammal had already purchased 10 cents of land lying immediately to the south of 20 cents of land belonging to Gopalsamy purchased under Ex.A1 sale deed. Therefore, it is seen that the description and lie of the property conveyed under Ex.A2 sale deed has not been properly given in Ex.A2 sale deed. Thereafter, it is seen that Manickam had acquired the extent of 10 cents of land from Deivanaiammal purchased by her under Ex.B2 sale deed and in the said sale deed also marked as Ex.A7/B3, the 10 cents of land has been described only as lying to the south of the land belonging to Gopalsamy as described in Ex.B2 sale deed. Though the extent covered under Ex.B3 sale deed is shown as 10 cents, however, considering the linear measurement given in the same, it is found that the extent has not been properly given and subsequent thereto, it is noted that the first defendant had purchased the extent of 5 cents of land from Manickam by way of a sale deed dated 13.03.1987, the certified copy of which has been marked as Ex.B1 and it is also noted that on the same date, one Kanagalakshmi had acquired the remaining extent of 5 cents of land from Manickam by way of a sale deed, the certified copy of which has been marked as Ex.B11 and from the recitals contained in Exs.B1

and B11, it is noted that the first defendant had acquired the 5 cents of land on the northern side and Kanagalakshmi had acquired the 5 cents of land on the southern side and accordingly, while describing the 5 cent of land acquired by the first defendant under Ex.B1 sale deed, it has been recited as lying to the south of Gopalsamy's land and to the north of the land purchased by Kanagalakshmi and similarly, in Ex.B11, the extent of 5 cents of land is described as lying to the south of the land purchased by the first defendant Muthaiyan and to the north of the land belonging to Gopalsamy. Thereafter only it is seen that the partition had been effected in the family of Gopalsamy by way of partition deed dated 08.02.1995 which has been marked as Ex.A3 and according to the plaintiff, inter alia, in the abovesaid partition, he had been allotted 50 cents of land purchased by Gopalsamy from Seshasala Naidu by way of Exs.A1 & A2. Therefore, as rightly found by the first appellate Court, the lie of 30 cents of land acquired by Gopalsamy under Ex.A2 is itself not clear as above pointed out. Subsequent thereto, it is found that Kanagalakshmi, who had acquired 5 cents of land from Manickam by way of Ex.B11 sale deed, had settled the same in favour of her son Thamizhvani, the second defendant by way of deed of settlement dated 22.08.2005, the certified copy of which has been marked as Ex.B12 and in the said deed of settlement also, the same has been described as only lying to the south of the first defendant's land.

7. As regards the abovesaid acquisition of the properties by the respective parties under the various title deeds, there is no dispute, but the dispute is only with reference to as to where actually the said properties lie on ground and as could be seen from the various transactions effected abovenoted, it is found that after Ex.A6 partition, Bashiyakara Naidu and Seshasala Naidu, had respectively allotted 15' in their shares for the formation of 30' road in the area and therefore, when it is seen that Seshasala Naidu, in particular, had earmarked 15' of land out of 96 cents of land allotted to him in the suit survey number for the formation of road, Seshasala Naidu would not be entitled to convey the entire extent of 96 cents of land allotted to him by way of Ex.B6 partition deed. In addition to that, as could be seen from the materials available on record, it is not in dispute that Seshasala Naidu has also alienated the extent of 36 cents of land allotted to him by way of Ex.A6 partition deed to one Rajagopal.

8. At the time of effecting Ex.A6 partition, as abovenoted, neither Seshasala Naidu nor Bashiyakara Naidu had allotted any portion of their shares for the formation of road and only subsequent to the same, it is found that both had set apart 15' of their respective shares for the formation of the road and accordingly, it is evident as determined by the first appellate

Court, only after deducting the land earmarked for 15' pathway/road, Seshasala Naidu would be entitled to convey the remaining extent to others. On the other hand, when it is seen that Seshasala Naidu had endeavoured to convey the total extent 96 cents of land, in all, to the plaintiff's father (50 cents), Deivanaiammal (10 cents) and Rajagopal (36 cents), it is found that without deducting the land earmarked for the 15' pathway/road, Seshasala Naidu had proceeded to alienate 96 cents of land allotted to him by way of the partition and accordingly, it is found that the purchaser, who had acquired the properties from Seshasala Naidu, had only purchased lesser extent than recited in their respective sale deeds, therefore, it is put forth by the plaintiff that when the abovesaid truth had come their knowledge, there has been an understanding /arrangement between the purchasers of the properties from Seshasala Naidu i.e. between the plaintiff and the defendants and others and accordingly, considering the extent of 15' set apart for the pathway/road, it is stated by the plaintiff that he had agreed to take 41 cents of land and the defendants 1 & 2 had agreed to take each 4 cents of land and contrary to the abovesaid arrangement/understanding effected during 1994, according to the plaintiff, the defendants, without any authority, attempted to interfere with his possession and enjoyment of the suit property and hence, it is stated that he has been necessitated to lay the suit for the relief of permanent injunction.

9. However, the defendants had repudiated the case of the plaintiff, particularly, as regards the so called arrangement / understanding entered during 1994 and according to them, they are each entitled to 5 cents of land as purchased/settled in their favour and thereby, disputed in toto to the so called arrangement /understanding said to have been effected during 1994 and also contended that they had not endeavoured to encroach into the suit property as sought to be made out by the plaintiff and accordingly, prayed for the dismissal of the plaintiff's suit.

10. Based on the materials placed on record and the submissions made, it is found that the trial Court was pleased to decree the suit in favour of the plaintiff. However, the first appellate Court, on a consideration of the materials placed on record and the submissions made, set aside the judgment and decree of the trial Court and resultantly, dismissed the plaintiff's suit. Aggrieved over the same, the present second appeal had been laid.

11.As could be seen from the materials available on record, admittedly, it is seen that Seshasala Naidu would not be competent to convey 96 cents of land to others. However, he had purported to convey 96 cents of land to others as detailed above. On ground 96 cents of land is not available, particularly when it is seen that Seshasala Naidu had already set apart 15' pathway/road in the 96 cents of land allotted to him by way of Ex.A6 partition. Therefore, deducting the extent of land set apart for pathway/road and when the 30' road portion has been clearly spelt out in all the transactions abovenoted, as above seen 15' pathway had also been set apart from by the other sharer Bashiyakara Naidu, in such view of the matter, when the plaintiff has based his claim set out, only on the footing that the purchasers of the property from Seshasala Naidu had agreed for the enjoyment of lesser extent than recited in their respective title deeds and accordingly, it is put forth by him that the defendants had agreed to take only 4 cents of land out of 5 cents of land as described in their respective title deeds, however, the plaintiff's abovesaid case has been stoutly repudiated by the defendants, in particular, in such view of the matter, it is for the plaintiff to establish that the said arrangement had been agreed to between the parties as put forth by him. However, considering the materials placed on record, the plaintiff has miserably failed to establish that such an arrangement /understanding had been entered into between the parties during 1994. When it is seen that the plaintiff has only pleaded that in the partition effected in the family of Gopalsamy Naidu, he had been allotted 50 cents of land acquired by Gopalsamy Naidu from Seshasala Naidu and the abovesaid partition had been effected only on 08.02.1995 and furthermore, when it is further seen that Kanagalakshmi, one of the purchasers of the properties from Deivanaiaammal had settled the same in favour of the second defendant only on 22.08.2005, in such view of the matter, to say that the plaintiff and the defendants had agreed for the arrangement /understanding to take lesser extent of lands said to have been effected during 1994 cannot at all be believed. Furthermore, as rightly determined by the first appellate Court, if the parties had really proceeded to take lesser extent of land than recited in their respective title deeds, the parties would have embarked upon the written agreement with reference to the same and on the other hand, the case projected by the plaintiff that the parties had orally agreed for such an arrangement/understanding to take lesser extent of land than reflected in their title deeds cannot be believed and found to be highly improbable. Furthermore, if really the parties had agreed for such an arrangement/understanding as to where and how the parties had proceeded to take lesser extent of land and to establish the same, the plaintiff as the suitor should have proceeded to take

out a commission and endeavoured to sustain his case so as to fix the lie and extent of the lands said to have been agreed and be taken by the respective parties, pursuant to the so-called arrangement /understanding. In addition to that, the plaintiff should have also impleaded the other purchasers of the properties from Seshasala Naidu and furthermore, when the plaintiff, despite the abovesaid position, having not prayed for the relief of declaration of title to the lesser extent of land said to have been agreed to be taken by him during the 1994 arrangement/understanding and in particular failed to establish as to where actually the said property lies, in such view of the matter, as rightly determined by the first appellate Court, the dispute between the parties should have been resorted to only by way of mediation one way or the other and the plaintiff having failed to establish his possession and enjoyment of the suit property, particularly, as to where the same lies actually and as above noted, having miserably failed to establish the so-called 1994 arrangement/understanding, it is seen that the first appellate Court is justified in not granting the equitable and discretionary relief of permanent injunction in favour of the plaintiff. Furthermore, it is seen that even in these second appeals endeavours have made between the parties to settle the dispute by way of mediation, however, the efforts of mediation between the parties had ended in failure.

12. In the light of the abovesaid discussions, in my considered opinion, the first appellate Court had analysed and assessed the materials available on record in the proper perspective and considering the reasonings and conclusions of the first appellate Court for dismissing the plaintiff's suit, being founded on acceptable grounds and not calling for any interference as such, in such view of the matter, I do not find any merit in the second appeals.

For the reasons aforesaid, no substantial question of law is found to be involved in the second appeals and accordingly, both the second appeals are dismissed. Considering the facts and circumstances of the case, there is no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

sms

To

1.The Subordinate Court, Udumalpet.

2.The District Munsiff Court, Udumalpet.

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

+1 cc to M/s.N.Thiagarayan, Advocate, S.R.No.63030

+1 cc to M/s.S.Gunalan, Advocate, S.R.No.63045

in S.A.Nos.16 & 17 of 2016

SSV(CO)

SSM(26/09/2019)



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