

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :09.07.2019

PRONOUNCED ON: 07.08.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.39 of 2016

and

C.M.P.No.8468 of 2019

1. Karpagam

2. Sekar ... Appellants/ Appellants/Plaintiffs

Vs.

1. Padmanabhan ..1st Defendant/1st respondent/1st Defendant

Banumathy (Decd.)

2. Prem Raj

3. Pratap Raj ... Respondents2&3/ Respondents3&4

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree made in A.S.No.82 of 2011 dated 15.04.2015 on the file of the VII Additional Judge, City Civil Court at Chennai confirming the judgment and decree made in O.S.No.5584 of 2003 dated 29.11.2010 on the file of the XV Assistant Judge, City Civil Court at Chennai.

For Appellants : Mr.A.K.Sriram
for M/s. A.S.Kailasam Associates

For Respondents : Mr.GR.M.Palaniappan

J U D G M E N T

In this Second Appeal, challenge is made to the judgment and decree dated 15.04.2015 passed in A.S.No.82 of 2011 on the file of the VII Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 29.11.2010 passed in O.S.No.5584 of 2003 on the file of the XV Assistant Judge, City Civil Court at Chennai.

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

3. Suit for permanent injunction and mandatory injunction.

4. The plaintiffs had laid the suit against the defendants on the footing that they had acquired the suit property as described in the plaint by way of a sale deed dated 09.03.1988 from one Mrs.V.Chandra and enjoying the same and according to the plaintiffs, taking advantage of their absence, the defendants had encroached into the suit property during the 3rd week of October 2003 and put up the construction over the same and hence according to the plaintiffs, they need for the suit by them against the defendants for appropriate reliefs.

5. In the plaint, the plaintiff has described the suit property as the land bearing No.65, old Paimash number 754/2, new survey No.7/1 and 2 in plot No.6, Kolathur village, Perambur, Purasaivakkam taluk, Chennai, bounded on the north by plot No.1,2, survey No.7/1, south by 200 ft road, east by the plot No.7, survey No.7/2 and west by plot No.5, Survey No.7/2 and also given the linear measurements as described in the plaint schedule ad-measuring to the total extent of 2747 sq.ft within the registration district of north Madras and sub registration of district of Sembium, Perambur, Purasaivakkam Taluk, Chennai.

6. The defendants resisted the plaintiffs' suit contending that the plaintiffs without knowing the nature and lie of the property acquired by them has come forward with the false suit and according to the defendants, survey Nos.7/1 and 2 is a larger extent and the same has been subdivided into various plots and further according to them, their property is in Jayanthi Nagar with plot No.15-A and 29 and it has no connection with the suit property and therefore according to them, it is for the plaintiffs to look after as to where the suit property exists and lie and according to the defendants, they enjoyed the property with an extent of 5647 sq.ft acquired by way of the sale deed dated 29.08.1981 and disputed the case of the plaintiff that they had encroached into the suit property as false and put forth the case that they had applied for building sanction and based on the same, put up the construction and the plaintiffs have no title over the property belonging to the defendants and the defendants have been in the possession and enjoyment of the property and according to the defendants, their property is lying in Paimash No.749 and the area of their property is 5647 sq.ft bounded on the north by Tmt.Sivagamiammal plot 14A and 28, south by 200ft road, west by Mrs.Thara Bai plot and east by plot No.15 and their property is a layout in Jayanthi Nagar and accordingly prayed for the dismissal of the plaintiff's suit.

7. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A7 were marked. On the side of the defendants, D.Ws.1 and 2 were examined. Exs.B1 to B11 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the plaintiff's suit. Aggrieved over the same, the present second appeal has been preferred by the plaintiff.

9. The plaintiffs had come forward with the suit seeking the reliefs of permanent injunction and mandatory injunction. The plaintiffs claim title to the suit property based on the sale deed dated 19.03.1988 marked as Ex.A1. The suit property is stated to be bearing No.65, old Paimash No.754/2, new survey No.7/1 and 2 in plot No.6, Kolathur village, Perambur, Purasavakkam Taluk, Chennai bounded within the specific boundaries as setout in the plaint ad-measuring to the total extent of 2747 sq.ft, whereas the property belonging to the defendant acquired by way of Ex.B1 sale deed describes the same as bearing old Paimash No.749, survey No.7/1 and 2, plot No.15 A and 29 Jayanthi Nagar, Kolathur village, Perambur, Purusaiwalkam Taluk, Chennai within the specific boundaries ad-measuring total extent of 5647 sq.ft. Therefore on the face of it, it is found that the property belonging to the defendants is lying in Paimash No.749 whereas the property belonging to the plaintiff is stated to be lying Paimash No.754/2. Now, according to the plaintiff, Paimash No.754/2 corresponds to new survey No.7/1 and 2 whereas it is putforth by the defendants that Paimash No.749 corresponds to survey No.7/1 and 2. Accordingly, as determined by the Courts below, considering the description of the plaint schedule property and the property belonging to the defendants acquired under Ex.B1, when the Paimash numbers and extents are totally different and despite the same, the plaintiff having not endeavoured to seek out the surveyor's commission to identify the plaint schedule property and also endeavor to seek the declaration of title to the suit property for sustaining the ownership over the suit property one way or the other and when it is seen that in the layout plan marked as Ex.A7, the plot purchased by the defendants are identifiable and as could be seen from the building plan, marked as Ex.B10, the entire Jayanthi Nagar consists of survey No.7/1 and 7/2 and 8/4, in such view of the matter, when the defendants have also come forward with the parent title deed marked as Ex.B2, though Paimash numbers differ in Exs.B1 and B2, however, as rightly determined by the Courts below, when the duty is cast upon the plaintiff to establish the existence and lie of the suit property as described in the plaint and when the plaintiff has not come forward to fix the lie of the suit property and also

not established as to how he had traced the title to the suit property which has been acquired under Ex.A1 sale deed, in such view of the matter, the Courts below are found to be justified in not accepting the plaintiff's case in toto and furthermore considering the boundary recitals contained in Ex.A1 with the boundaries recitals contained in the Ex.B1 and when the plaintiff as the suitor has to establish his claim of title, the existence and lie of the suit property on ground and when the abovesaid factors had been not established by the plaintiff by taking out the proper Commission application and also not endeavored to seek the relief of declaration, in such view of the matter, the Courts below are found to be wholly justified in non-suiting the plaintiffs and I do not find any reason to interfere with the abovesaid determination of the Courts below. The plaintiff having failed to establish the existence and lie of the suit property on ground as described in the plaint and when the second appeal is to be adjudicated only on the pure question of law and not on the factual matrix and when the reasonings and conclusions of the Courts below for non-suiting the plaintiffs are found to be on the proper appreciation of the materials available on record and not suffering from any perversity or irrationality, in such view of the matter, the endeavor made by the plaintiff to take out the survey commission in the second appeal, as such, cannot be countenanced and therefore the said application deserves non acceptance.

10. For the reasons aforestated, no substantial question of law is involved in the second appeal. Resultantly, the second appeal is dismissed with costs. C.M.P.No.8486 of 2019 is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mfa
To

1. The VII Additional Judge,
City Civil Court,
Chennai.
- 2.The XV Assistant Judge,
City Civil Court,
Chennai.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.A.K.Sriram , Advocate SR.No. 68300

+1cc to Mr.GR.M.Palaniappan , Advocate SR.No. 67312

S.A.No.39 of 2016

and

C.M.P.No.8468 of 2019

A.SK(17/12/2019)

A.SK(17/02/2020)