

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.994 of 2019

Mala

.. Appellant/Appellant/Defendant

Vs.

Baskaran

..Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned District Judge, District Court No.II, Kancheepuram, dated 15.02.2019 in A.S.No.5 of 2017, confirming the judgment and decree of the learned Subordinate Judge, Kancheepuram, dated 28.03.2017 in O.S.No.146 of 2007.

For Appellant : Mr.V.Manoharan

J U D G M E N T

The defendant who suffered a decree for declaration of title and permanent injunction in O.S.No.146 of 2007, upon its confirmation by the lower appellate Court in A.S.No.5 of 2017, has come forward with the second appeal.

2. The case of the plaintiff is that he is the owner of plaint A and B schedule properties. The suit 'A' Schedule Property devolved upon the plaintiff under the Will of his uncle Sundaramoorthy Mudaliar dated 05.04.1995. The said Sundaramoorthy Mudaliar namely the testator died on 28.10.2003. After his death, the plaintiff being legatee, has been in enjoyment of the suit 'A' Schedule Property and on 20.08.2007, the plaintiff purchased the suit 'B' Schedule Property from one Abdhul Kadhar son of K.M.Asan Ali Sahib. Ever since, the date of purchase, the plaintiff is in possession and enjoyment of the suit 'B' Schedule Property. The suit 'B' Schedule Property is situated immediate Northern side of 'A' Schedule Property. It is also claimed that the vendor of the plaintiff purchased the 'B' Schedule Property under the Sale Deed dated 01.08.1984. When the defendant who had purchased the property on the northern side of the 'B' schedule property under a sale Deed dated 03.05.2006, attempted to interfere with the possession of the plaintiff in respect of 'A' and 'B' Schedule Properties and

started putting up construction, the plaintiff has come forward with the above suit.

3. The defendant resisted the suit contending that the suit 'B' Schedule Property never existed. Relying upon the sale deed, executed in her favour, the defendant would contend that the suit 'B' Schedule Property never existed and there was no occasion for the plaintiff to purchase the plaint 'B' Schedule Property.

4. The Courts below on a consideration of the evidence on record concluded that prior sale Deeds namely Exs.A 4, 5 and 6 which are of the years from 1968 to 1990, disclose the existence of the suit 'B' Schedule Property which was described as a common pathway, as the southern boundaries of the defendant's property. The sale Deed dated 01.08.1984 under which the vendor of the plaintiff K.A.Abdul Kadar son of K.M.Asan Ali Sahib purchased the the suit 'B' Schedule Property was also produced as Ex.A3, relying upon the recitals in the above documents, the Courts below concluded that the existence and location of the suit 'B' Schedule Property has been established beyond doubt by the plaintiff and he has proved his title and possession of the same. The Courts below disbelieved the version of the defendant that she is entitled to something more on the southern side of the suit 'B' Schedule Property as per the recitals in the sale Deed. The lower appellate Court found that the defendant is in possession of 582 sq.ft of land purchased by the plaintiff under the Sale Deed dated 03.05.2006 which is marked as Ex.A7. In the absence of any evidence as to the availability of a lesser extent for the defendant, the defendant cannot take advantage of the wrong description of the property in her sale Deed for claiming the right over the the suit 'B' Schedule Property also. On the above finding, the Courts below decreed the suit. Aggrieved, the defendant has come up with the appeal.

5. I have heard Mr.V.Manoharan, learned counsel appearing for the appellant.

6. Mr.V.Manoharan would draw my attention to the boundaries sale Deed Exs.A 4, 5, 6 and 7 and vehemently contend that boundaries itself shows the defendant's predecessor in interest had purchased some property on the southern side of the common pathway. He would also draw my attention to the description of the item 2 in Exs.A4 and A5 and contend that the defendant's vendor was entitled to some land on the southern side of the common path way and therefore the claim of the plaintiff that he has purchased the 3 feet Narasam which is on the southern side of the defendant's property cannot be correct.

7. No doubt, the description, on the superficial reading appears, as if the defendant's vendors have some land on the southern side of the suit 'B' Schedule Property, but a comprehensive analysis of the documents as made by the lower appellate Court would demonstrate that the southern boundaries was the suit 'B' Schedule Property and it is not as if the suit 'B' Schedule Property lies between the two sub items of item 2 that were purchased by the vendors of the defendant under Ex.A4,5 and 6. The lower appellate Court has also on facts found that the defendant is in possession of the extent of property namely 582 sq. ft purchased by her under the Sale Deed Ex.A7. Therefore, the claim of the defendant that she is entitled to some property on the southern side of the suit 'B' Schedule Property has been rejected by the Courts below, based on valid evidence. The conclusions of the Courts below are factual in nature and in the absence of perversity, I do not find any valid reason to interfere with the same, sitting in second appeal.

8. Therefore, I do not find any question of law, much less substantial question of law, to enable me to entertain the second appeal. Hence, the second appeal is dismissed without being admitted. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The District Court No.II,
Kancheepuram
2. The Subordinate Court,
Kancheepuram.

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GP(CO)
SP(03/03/2020)