



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED :30.08.2019  
CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**  
**S.A.(MD)No.678 of 2011**

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.. Appellant/Respondent/Defendant

Vs.

David Chandra Bose

.. Respondent/Appellant/Plaintiff

**Prayer :**Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree passed in A.S.No.39 of 2010 dated 25.10.2010 on the file of the I Additional Sub Court, Nagercoil reversing the Judgment and Decree dated 27.03.2010 passed in O.S.No.157 of 2008 on the file of the II Additional District Munsif, Nagercoil.

For Appellant : Mr.C.Godwin  
For Respondent : Mr.K.P.Narayana Kumar

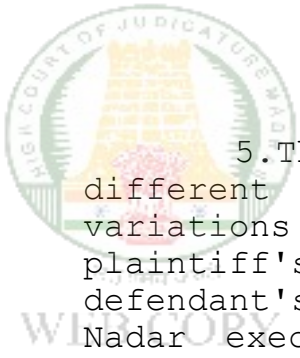
**JUDGMENT**

Heard the learned counsel on both the side.

2.This appeal is filed against the judgment and decree passed in A.S.No.39 of 2010 dated 25.10.2010 on the file of the I Additional Sub Court, Nagercoil reversing the Judgment and Decree dated 27.03.2010 passed in O.S.No.157 of 2008 on the file of the learned II Additional District Munsif, Nagercoil.

3.The appellant herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent herein filed a suit in O.S.No.157 of 2008 before the learned District Munsif, Palani for a prayer of injunction and the suit was dismissed by the trial Court. Against which, the respondent herein filed an appeal in A.S.No.39 of 2010 before the I Additional Sub Judge, Nagercoil. The appeal was allowed by the first appellate Court. Against the judgment and decree, the appellant herein has filed this second appeal.

4.The case of the plaintiff is that the suit property in survey no.422/2, 10 cents was purchased by the father of the plaintiff in the year 1978 for the benefit of the minor plaintiff. The suit property was subsequently sub divided as 422/2A and was in the enjoyment of the plaintiff and the first defendant was trying to encroach upon the property on 02.02.2008 and the suit was filed for a prayer of injunction.



5.The case of the defendant is that the suit property is different from the land purchased by the plaintiff. There are variations in the survey number, extent and the boundaries. The plaintiff's father Ayyapalam purchased the property from the defendant's father-in-law Thangalingamani Nadar. Thangalingamani Nadar executed a settlement deed in favour of his three sons regarding survey No.1647 with a total extent of 51 cents. In the family partition, the husband of the defendant was allotted the western portion. The defendant's husband executed a settlement deed in favour of the defendant on 14.07.2004.The plaintiff is having no right over the suit property and the suit is to be dismissed.

6.On the above said pleadings, the following issues were framed:

- “(i)வாதி கோரியுள்ள நிரந்தர உறுத்துக்கட்டளை பரிகாரம் கிடைக்கத்தக்கதா ?  
(ii)வேறு என்ன பரிகாரங்கள் வாதிக்கு கிடைக்கத்தக்கது ?”

7.Three witnesses were examined as P.W.1 to P.W.3 and 16 documents were marked as Exs.A1 to A16 on the side of the plaintiff and one witness was examined as D.W.1 and five documents were marked as Exs.B1 to B5 on the side of the defendant. After considering the evidences and arguments, the trial Court dismissed the suit. Against which, the respondent herein preferred an appeal in A.S.No.39 of 2010.

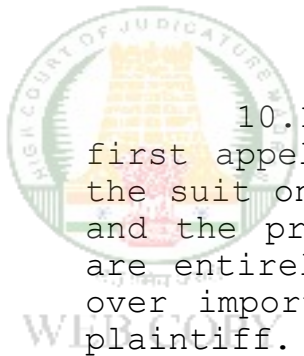
8.In the grounds of appeal in A.S.No.39 of 2010, it is stated that the trial Court failed to consider Exs.A1 and A2, sale deeds and tax receipts. The trial Court failed to consider that the defendant admitted in her evidence that her predecessor in title executed a sale deed in favour of the plaintiff. The trial Court failed to consider that the plaintiff was in possession from the year 1978 onwards. Though Ex.A3 is a joint patta, the trial Court failed to consider that the plaintiff had filed tax receipt for the land. Exs.A5 to A10 were not considered by the trial Court. The trial Court failed to consider the evidence of P.W.3 who has admitted that survey number 422/2A, B, C, D were originally within the survey No.422/1. On the aforesaid pleadings, the following issues were framed:

- “(i)வழக்குச் சொத்து வாதியின் சுவாதீன அனுபவத்தில் உள்ளதா ?

(ii)வாதி அசல் வழக்கில் கோரியுள்ளவாறு நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா ?

- (iii)இம்மேல் முறையீடு அனுமதிக்கத்தக்கதா ?”

9.The first appellate Court allowed the appeal filed by the appellant. Aggrieved by the judgment and decree, the appellant herein has preferred this second appeal.



10. In the grounds of second appeal, it is stated that the first appellate Court failed to see that the trial Court dismissed the suit on the ground that the description of the schedule property and the property purchased by the plaintiff under Ex.A1 sale deed are entirely different. The first Appellate Court erred in giving, over importance to the sub division 422/2A made in favour of the plaintiff. The Courts below failed to see that the sub division was made without notice to the appellant and hence, the same will not affect the interest of the appellant. In Ex.A1 the northern boundary is described as the property of Thangalingamani Nadar but the suit property describes the northern boundary as road. Mere patta and payment of tax will not confer any right over an immovable property. The Court below failed to consider that the property purchased under Ex.A1 and the suit schedule property are not one and the same.

11. This Court by its order dated 05.09.2011, has admitted the second appeal and has framed the following substantial questions of law, which are as follows:

*"(a) Whether the Court below is justified in law in allowing the appeal without adverting to the boundary description in the plaint schedule and Ex.A1 sale deed since the trial Court has dismissed the suit on the ground that the plaint schedule boundary description and Ex.A1 boundary description are entirely different ? and*

*(b) Whether the lower appellate Court is justified in law in allowing the appeal since the plaintiff has failed to correlate the plaint schedule boundaries with the boundaries in Ex.A1 sale deed ?"*

Issue No.(a) and (b):

12. On the side of the appellant, it is stated that in the plaint schedule property, eastern boundary is mentioned as the defendant's property whereas the eastern boundary in Ex.A1 is the property of one Rajarathinam. The southern boundary is mentioned as the property of the plaintiff, both in the schedule of property and in the sale deed Ex.A1. The western boundary is the land of Anisonthurai and the western boundary stated in Ex.A1 is a channel and road. The northern boundary is mentioned as road in the schedule property and the northern boundary is mentioned as the property of Thangalingamani Nadar in Ex.A1. All the boundaries except the southern boundary are different. The properties in Ex.A1 and the suit properties are different. Ex.A3 is joint patta wherein R.S.No.422/2 is sub divided into 2A and 2D. No notice was issued to the appellant while sub dividing 422/2.

13. The learned counsel appearing for the appellant relied on the judgment passed by this Court in the case of **Lingappa Gounder v. Palanisamy Gounder and others** reported in **(2006) 1 M.L.J. 423**, which reads as follows:

*"Re-survey conducted under the Act- No notice issued -whether there has been a completion of the*



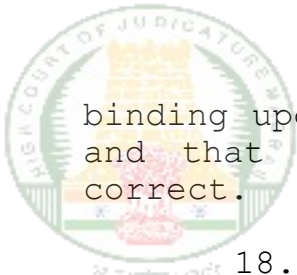
*survey in accordance with the Act-Any order passed without issuance of notice regarding survey, will not bind the party on whom no notice was served - non mentioning of existence of the common track in the re-survey-will not in any way affect the rights of the party, when no notice of survey is issued-suit cart tract is a common cart tract."*

14.On the side of the appellant, it is stated that tax receipt Ex.A11 and other receipts produced by the plaintiff were in respect of R.S.No.422/2 and the plaintiff cannot claim possession on the basis of kist receipts. Ex.A2 is a tax receipt dated 21.01.2008. All the documents Ex.A1, A3, A5 to A10 are relating to survey No.422/2 except Ex.A11 which is after the filing of the suit and that the plaintiff has no title or possession over the suit properties. It is stated that only based on the tax receipt, the first appellate Court allowed the appeal.

15.On the side of the appellant, it is further stated that the appellant purchased the property under Exs.B3 and B5. The husband of the defendant obtained the suit properties under Ex.B3 settlement deed and subsequently executed the deed in Ex.B5 for an extent of 17 cents.

16.On the side of the respondent, it is stated that 10 cents in survey No.422/2 was purchased for the minor plaintiff by his father through Ex.A1. 40½ cents in the same survey number was purchased from the same vendor by the father of the plaintiff under Ex.A12. After sub dividing the property, the plaintiff is entitled to Survey Nos.422/2A and 422/2C. In survey No.422/2A, the plaintiff is claiming only 5 cents. The defendant is having the eastern portion of the property. The plaintiff has admitted in her evidence that the defendant was having land in survey No.422/2 on the eastern side and she has admitted that the defendant is having the same extent of land in same survey number. Per contra, the defendant is claiming the entire survey no.422/2A. The settlement deed executed in favour of the defendant is marked as Ex.B5. Ex.A14 is the chitta extract for survey no.422/2A.

17.On the side of the respondent, it is stated that in Ex.A15, 'A' register marked through Village Administrative Officer, it is stated that the land was in the name of the father of the defendant, namely Thagalingamani Nadar and after sub division, the name of Davidson Chandra Bose was included in survey No.422/2A. D.W.1 has admitted that the respondent purchased the property from her father in law and that she has also admitted that 58 ½ cents was sold out to the plaintiff and that she also admitted Exs.A7 to A10 and she has also admitted that the western portion of survey No.422/2 was enjoyed by the plaintiff and that she has also admitted that if at all her father-in-law has executed the deed, it would be



binding upon her also and that she has also admitted Exs.A1 and A12 and that the road is created subsequently and the boundary is correct.

18.On the side of the appellant, it is stated that the plaint properties are different from the properties purchased under Ex.A1 and that all the boundaries are different and that the plaintiff purchased another property from the appellant's father-in-law and not the suit property and that all the kist receipts are pertaining to Survey no.422/2 and not pertaining to the suit property and that the date in Ex.A2 is 21.01.2008 and the same was altered as 21.02.2003 after the suit and that the trial Court has failed to consider the joint patta and prayed the appeal to be allowed.

19.It is seen that Exs.A2 and A11 were issued after the filing of the suit. Ex.A3 is a joint patta. A register contain the name of the plaintiff. Survey No.422/2A sub division was after the execution of Exs.B1, B2 and B4.

20.It is seen that there is dispute regarding the southern boundary of the suit properties. On the side of the appellant, it is stated that northern side road was subsequently formed by the Government. The defendant has admitted that her father-in-law sold some properties to the plaintiff's father. But disputed that the suit properties and the properties described in Ex.A1 are different which is the property purchased by the plaintiff and how the sold out properties are different from the suit properties were not stated in the written statement filed by the appellant. When the clear case of the appellant is that the plaintiff's purchased properties from her father-in-law, the minor discrepancies in the plaint will not be sufficient enough for dismissing the suit. The respondent has filed various documents to prove possession.

21.The questions raised by the appellant are only questions of facts and not questions of law. There is nothing sufficient enough to interfere in the judgment and decree of the first appellate Court. Hence, this **second appeal** is **dismissed** by confirming the judgment and decree passed in A.S.No.39 of 2010 dated 25.10.2010 on the file of the I Additional Sub Court, Nagercoil. No Costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS )



Mrn

To

1.The I Additional Sub Judge, Nagercoil.

2.The II Additional District Munsif, Nagercoil.

3.The V.R.Section,(2 copies)  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to Mr.C.GODWIN, Advocate ( SR-84722[F] dated 30/08/2019 )  
+1 CC to Mr.K.P. NARAYANAKUMAR, Advocate ( SR-85078[F] dated  
04/09/2019 )

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