

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 15.11.2019

JUDGMENT DELIVERED ON : 19.05.2020

CORAM :

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

SECOND APPEAL NO.483 OF 2002

1.Vimala ... Plaintiff/Respondent/Appellant

Versus

1.Gnaneswaran

2.Usha Rani

3.P.V.Dhanapal

... Defendants/Appellants/Respondents

Prayer:-

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.108 of 1999 on the file of the II-Additional District Judge Court, Krishnagiri, dated 19.12.2000 reversing the judgment and decree in O.S.No.372 of 1996 on the file of the District Munsif Court, Krishnagiri, dated 30.09.1999.

For Appellant : Mr.S.Parathasathy,  
Senior Counsel for  
M/s.Sarvabhauman Associates

For Respondents: Mrs.Chitra Sampath, Senior Counsel  
for Mr.V.Nicholas for R1 & R2  
: Ex-parte - R3

WEB COPY  
JUDGMENT

This Second Appeal has been filed by the plaintiff against the judgment and decree passed by the II Additional District Judge, Krishnagiri in A.S.No.108 of 1999 dated 19.12.2000 reversing the judgment and decree passed by the District Munsif, Krishnagiri in O.S.No.372 of 1996 dated 30.09.1999.

2.The appellant herein had filed a suit in O.S.No.372 of 1996 on the file of the District Munsif, Krishnagiri for the relief of declaration of her title over the suit property; for delivery of vacant possession of the suit property; for mandatory injunction directing the defendants to remove the construction/superstructure put up in the suit property and for mesne profits.

3.The learned District Munsif, by judgment dated 30.09.1999 had decreed the suit as prayed for with costs. Aggrieved by the same, the defendants had filed an appeal in A.S.No.108 of 1999 on the file of the II-Additional District Judge, Krishnagiri. The II-Additional District Judge, by the judgment and decree dated 19.12.2000 had allowed the said appeal and set aside the judgment and decree passed by the Trial Court and dismissed the suit. However, he directed the parties to bear their respective costs. Feeling aggrieved, the plaintiff has filed the present Second Appeal.

4. For the sake of convenience, the parties are referred to as described before the Trial Court.

5.The averments made in the plaint are in brief as follows:-

a) The suit property and the adjacent lands originally belonged to one A.L.Ramanathan, who got the same from one A.L.Lakshmipathy and A.L.Saminathan under a registered settlement deed dated 13.03.1977. The said A.L.Ramanathan had sold the suit property to the plaintiff under a registered sale deed dated 29.09.1979 for a valuable consideration of Rs.1,000/- and delivered the possession of the same. In the said sale deed, the boundaries given in respect of the eastern and western directions were mistakenly interchanged as on the western side, plot No.5 is situated and on the eastern side the common pathway measuring 12 feet is situated, but the correct boundaries of the suit properties are given in the plaint schedule. The intention of the vendor A.L.Ramanathan was only to convey the suit property and accordingly, he sold the suit property and delivered possession of the same. After purchase, Patta was granted in favour of the plaintiff in respect of the suit property under updating registry scheme. The said A.L.Ramanathan, who became owner of the survey number in S.No.530/2 with an extent of 1.16 acres formed several plots and gave plot numbers to the plots. The suit property was designated as plot No.4. On the eastern side of the suit property, three plots were formed and numbered as 5, 6 & 7. The said A.L.Ramanathan, subsequent to the sale in favour of the plaintiff, sold two plots (plot nos.5 & 6) situated on the East of the suit property in favour of one Chinnasami and Palani under a registered sale deed dated 21.11.1979. The said Chinnasami and Palani constructed a Saw Mill in plot Nos.5 & 6.

Subsequently, by giving wrong description of the boundaries, under a registered sale deed dated 15.09.1982, the said Palani sold his 1/4<sup>th</sup> share in the said saw mill and the land in Plot Nos.5 and 6 to the first defendant. Thereafter, the said Chinnasamy sold his ½ share in the Saw Mill in plot Nos.5 & 6 under the registered deed dated 17.02.1983 in favour of the first defendant. In the said sale deed the suit property is shown as western boundary for the plot Nos.5 & 6. The second defendant has also purchased a plot on southern side of the suit property from the said A.L.Ramanathan under a registered sale deed dated 15.02.1985. The second defendant appears to have taken a sale deed with boundaries interchanged by mistake, however, the suit property is shown as one of the boundaries and the plaintiff husband's name given as owner of the suit property under the impression that the plaintiff's husband, who was managing the affairs of the suit property was the owner of the same. The said A.L.Ramanathan sold the plot situated on the western side of the suit property and common pathway in favour of one Gluab under a registered sale deed dated 01.03.1980. Thus the plaintiff's ownership and identity of the suit property belonging to the plaintiff was also acknowledged by the defendants 1 & 2 and they are estopped from contending otherwise.

b) Under the updating registry scheme, the suit property was measured and likewise the portions occupied by the defendants were also measured and accordingly patta was granted in favour of the plaintiff and as well as the defendants even in the year 1984. The defendants did not dispute title of the plaintiff in the suit property up to the November 1989, however, the defendants started claiming title to the suit property since the first week of the December 1989 on false grounds and began to disturb the possession and enjoyment of the plaintiff. On 30.12.1989, the defendants trespassed into the suit property and taken possession of the same and made an illegal construction. Hence, the plaintiff was constrained to file the suit for the relief of declaration, for mandatory injunction and for mesne profits.

6.The averments made in the written statement filed by the first defendant and adopted by the defendants 2 & 3 are in brief as follows:-

It is not correct to allege that the boundaries on the western and eastern directions were mistakenly interchanged in the sale deed of the plaintiff. It is false to allege that the plaintiff had purchased the suit property under a registered sale deed dated 29.09.1979 and from that date onwards, she has been in possession and enjoyment of the suit property. The boundaries given in the plaintiff's sale deed are correct. The defendants have no objection to take the property by the

plaintiff for the measurements of the boundaries mentioned in the sale deed of the plaintiff. No evidence is given to the effect that the boundaries on the east and west are given by mistake. The suit property is quite different from the property which she purchased in her sale deed. The first defendant is the rightful and absolute owner of the suit property and the property on the eastern side totally 10 cents, but without knowledge of the defendants, the plaintiff obtained UDR Patta for which an appeal was filed by the first defendant, before the Revenue Divisional Officer, Krishnagiri and it is pending. Only the first defendant is in continuous possession and enjoyment of the suit property. The plaintiff has no right title or interest in the suit property or she was in possession in it. It is false to allege that the defendants trespassed into the suit property and put up construction illegally. Therefore, the defendants prayed to dismiss the suit.

7.The averments made in the additional written statement filed by the first defendant and adopted by the defendants 2 & 3 are in brief as follows:-

It is false to state that the defendants started putting up compound wall on the western side of the boundary line of the suit property. The plaintiff has claimed title and possession over the plot No.4 of the said property belonged to one Gluabjaan. The said Gluabjaan has constructed a house over the suit property i.e., plot No.4. So, the plaintiff has to work out her remedy against the said Gulabjaan. Therefore, the defendants prayed to dismiss the suit.

8.Based on the aforesaid pleadings, the learned District Munsif had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff's husband was examined as PW.1 and two more witnesses were examined as PW.2 & PW.3 and 13 documents were marked as Exs.A1 to A13. On the side of the defendants, the first defendant examined himself as DW.1 and one more witness was examined as DW.2 and Exs.B1 to B12 were marked. The Advocate Commissioner appointed by the trial court was examined as CW.1 and his reports and plans were marked as Exs.C1 to C4 respectively.

9.The learned District Munsif, after considering the materials placed before her found that the plaintiff had purchased the suit property under Ex.A1-Sale deed, but in the said sale deed the boundaries on the east and west were interchanged mistakenly. She also found that the defendants trespassed into the suit property and put up construction and accordingly, decreed the suit as prayed for.

10. Aggrieved by the same, the defendants had filed an appeal in A.S.No.108 of 1999 on the file of the II-Additional District Judge, Krishnagiri. The learned District Judge, had allowed the said appeal and set aside the judgment and decree passed by the Trial Court and dismissed the suit.

11. Feeling aggrieved, the plaintiff has filed the present Second Appeal.

12. This Court at the time of admission of the Second Appeal has formulated the following substantial questions of law:-

' i) When the Lower Appellate Court is reversing the judgment of the Trial Court, is it not incumbent upon it to give reason for not agreeing with the finding of the fact and whether in law judgment of the Lower Appellate Court which has been rendered without following the correct procedure while reversing the judgment of the Trial Court is sustainable in law?

ii) Whether the judgment and decree of the Lower Appellate Court is sustainable in law when it has entitled to consider the evidence of PW.3 who is the original owner and who has given evidence to show the description of the plots sold by him to the respective parties and whose evidence clearly prove the case of the plaintiff ?

iii) When the suit property has been clearly described by survey number and the extent thereof whether the Lower Appellate Court is correct in law in not applying the principles 'Falsa demonstratio non nocet' (vide 1996 i Lw 443)?'

13. Heard Mr.S.Parthasarathy, learned Senior counsel for M/s.Sarvabhauman Associates, learned counsel for the appellant/plaintiff and Mrs. Chitra Sampath, learned Senior counsel for Mr.V.Nicholas, learned counsel for the first respondent.

14. Substantial questions of law 1 to 3:

The learned Senior counsel for the appellant-plaintiff has submitted that the First Appellate Court erred in reversing the Judgment and Decree of the trial court, without considering the reasons assigned by the trial court. He further submitted that the First Appellate Court failed to see that in Ex.A1-Sale deed, the boundaries on east and west were interchanged mistakenly. He further submitted that the sale deed of the vendors of the first defendant (Ex.A2/Ex.B4, dated 21.11.1979) would clearly show that on the western side of the their plots, the plaintiff's property (suit property) is situated. He further submitted that the First Appellate Court failed to consider the

Advocate Commissioner's report and plan (Exs.C1 & C2), which would clearly show that the suit property is situated just abutting the property of the first defendant on the western side and the common path way is situated on the west of the suit property. He further submitted that the First Appellate Court, being the last Court to appreciate the facts and law, failed to appreciate the same and erroneously reversed the findings of the Trial Court and therefore, he prayed to allow the Second Appeal and remit the matter back to the First Appellate Court for fresh consideration.

15. The learned Senior counsel for the appellant-plaintiff in support of his contentions, relied upon the following decisions:-

i) Mahalingam Vs. A.S.Narayanswamy Iyer and others reported in 1996 - 1 LW - 443;

ii) Santhosh Hazari Vs Purushotham Tiwari (deceased) by Lrs (2001) 3 SCC 179;

(iii) Madhukar and others Vs. Sangram and others (2001) 4 SCC 756;

iv) Laliteshwar prasad singh and others Vs. S.P.Srivastava (dead) through legal representatives (2017) 2 SCC 415.

16. On the contrary, the learned Senior counsel for the first and second respondent-first and second defendants has submitted that admittedly, the description given in Ex.A1-Sale deed do not tally with the description given in the plaint schedule. She further submitted that the description given in Ex.A1 would show that the said property is now in possession and enjoyment of one Gulab and that being so, the plaintiff has to workout her remedy against the said Gulabjaan. She further submitted that the description given in the sale deeds of the defendants 1 & 2 would clearly show that they are in possession of the properties what they have purchased and they are not in possession of any other property. She further submitted that the Trial Court without considering the aforesaid facts had erroneously decreed the suit and hence, the First Appellate Court has rightly interfered with the findings of the Trial Court and set aside the same and in such factual findings, this Court need not interfere and therefore, prayed to dismiss the Second Appeal.

17. In the case of Mahalingam Vs. A.S.Narayanswamy Iyer and others (cited supra) in paragraph Nos.5 and 6, this Court held as follows:-

"5. My attention is drawn by the senior Counsel for the appellant to the following passages in Halsbury's Laws of England, Fourth Edition, Vol. 50.

"455. *Falsa demonstratio non nocet*: It is a rule of construction, which applies to all written instruments and not to Wills alone, that if, of various terms used to describe a subject matter (whether a person or property), some are sufficient to ascertain the subject matter with certainty but others add a description which is not true, these other terms are not allowed to vitiate the gift. The rule in full is *falsa demonstratio non nocet cum de corpore constat* and the second part of this maxim is an essential part of it. The false description must merely be added into that which is otherwise clear, although it need not come at the end of the sentence. The characteristic of cases within the rule is that the description so far as it is false applies to no subject at all and so far as it is true applies to one only.

457. Limits of the rule: The rule of *falsa demonstratio* is limited by a second rule of no less importance, namely that additional words are not rejected as a false description if they are capable of being read as accurate words of restriction. If, therefore, it is doubtful whether the words of the will import a false reference or description, or whether they are words of restriction that limit the generality of former words, the court never presumes error or falsehood and the latter construction is preferred. Accordingly, where there exists some subject as to which all the descriptions are true, and some subject as to which part is true and part false, the words are considered to be words of true restriction, so that they refer to that subject only as to which all the descriptions are true."

6. Reference is made to the judgment in *Anderson v.*

Berkley (1902 1 Chancery Division 936) and the following passage therein.

"....It is not a rule, however, that, where the description is made up of more than one part, and one part is true but the other is false, then, if the part which is true describes the subject or object of the gift with sufficient certainty, the untrue part will be rejected, and will not vitiate the gifts."

18. From the aforesaid decision, it is clear that construction of document must be in such manner that it give its real construction in one part to describe the subject matter, even though the description of the other part is not true, the portion of the document which describes the object with certainty can be taken and the other terms are not allowed to vitiate the document. In this case in Ex.A1-Sale deed, while describing the boundaries, it is mentioned as that on the northern side there is a common path way and on the southern side, the other portions of the vendor's property is mentioned, over which there is no dispute. On the eastern side a common pathway has been shown. Admittedly, the vendors of the first defendant namely Chinnasamy and Palani had purchased the plot Nos.5 & 6 from the same vendor-A.L.Ramanathan under Exs.A2/ B4, dated 21.11.1979. In the said sale deed the western boundary for plot Nos.5 & 6 has been shown as property of the plaintiff's husband-Krishnan. According to the plaintiff, since her husband was managing her property, in Ex.A2 his name has been mentioned as owner of the western side of the property. The said fact has not been disputed by the defendants. The First Appellate Court failed to consider the said facts. Further, in Exs.C1 & C2, it is clearly stated that the plaintiff's property is situated just abutting the first defendant's property on the west and a common pathway runs, further west of the plaintiff's property. In Ex.C1, Advocate Commissioner has clearly stated that he measured the properties with the help of the FMB register and other registers, but these facts have not been considered by the First Appellate Court. It is also to be pointed out that the properties of both the parties were subdivided as per Ex.C2-plan and this fact also has not been considered by the First Appellate Court.

19. In Sathosh Hazari Vs. Purushotham Tiwari (deceased) by LRs 2001 3SCC 179, the Hon'ble Supreme Court in Paragraph No.15 has held as follows:

" The appellate Court has jurisdiction to reverse or affirm the findings of the trial court.

First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court.

..... While reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it.'

20. The said principles reiterated in Madhukar and Others Vs. Sangram and Others (2001) 4 SCC 756 and also in Laliteshwar Prasad Singh and Other Vs.S.P.Srivastava (dead) through Legal Representatives (2017) 2 SCC 415.

21. From the aforesaid decisions, it is clear that the Court of First Appeal must record its finding only after dealing with the all issues of law as well as the fact and with the evidence, oral as well as documentary, led by parties. It is also clear that First Appellate Court must give reasons in respect of its findings, but in this case, as stated above, the First Appellate Court failed to consider the evidence on record and therefore, the Judgment and Decree of the First Appellate Court are set aside and the matter is remitted back to the First Appellate Court for fresh consideration, on the line of the aforesaid decisions of the Hon'ble Supreme Court. Accordingly, these substantial questions of law are answered.

22 .In the result, the Second Appeal is allowed. The judgment and decree passed by the First Appellate Court are set aside. The matter is remitted back to the First Appellate Court to appreciate the facts and law, in the line of the aforesaid decisions of the Hon'ble Supreme Court and dispose of the same in accordance with law as early as possible. Considering the facts and circumstances of the case the parties are directed to bear their respective costs.

Sd/-

Assistant Registrar()

//True Copy//

Sub Assistant Registrar

klt

To

1. The II-Additional District Judge Court, Kirshnagiri.
2. The District Munsif Court, Krishnagiri.
3. The Section Officer, VR Section,  
High Court of Madras.

Second Appeal No.483 of 2002

PVS (CO)  
CS/19/12/2020



WEB COPY