

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

S.A.No.502 of 2010

1.Saroja
2.Jothimani
3.Krishnaveni
4.Rathakrishnan
5.Kumar

.. Appellants/Appellants/
Plaintiffs

Vs.

Subramania Udayar

.. Respondent/Respondents/
Defendants

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 09.12.2009 made in A.S.No.134 of 2008 on the file of the Sub-Court, Perambalur confirming the judgment and decree dated 23.07.2004 made in O.S.No.417 of 1996 on the file of the District Munsif Court, Perambalur.

For Appellants : Mr.Mukund

For Respondent : Mr.P.Valliappan

J U D G M E N T

(The case has been heard through video conference)

This second appeal is filed by the plaintiffs aggrieved by the dismissal of the suit for recovery of possession and demolition of super structure stands on the alleged encroached portion more fully described as " B" schedule in the plaint.

2. Before the Trial Court, the plaintiffs has examined two witnesses and marked 8 exhibits. The defendant has examined two witnesses and marked 4 exhibits. The Commissioner's report and sketch were marked as Ex.C-1 and Ex.C-2.

3. The case of the plaintiffs is that the property originally belongs to one Rukmaniammal. It was bequeathed to the plaintiffs under a Will dated 13.11.1994. While so, the defendants who purchased the land measuring 21 feet East to West and 20 feet North to South from Krishnasamy and Muthusamy who owned the property west of the "A" schedule property stealthily trespassed into "A" schedule property and put up construction.

4. Relying upon the Will marked as Ex.A-1 and the mortgage deed Ex.A3, the plaintiffs contended that the portion upon which the defendants put up the construction belongs to them. The said claim was contested by the defendants stating that the Will alleged to have been executed by Rukmaniammal is denied and the measurements shown in the Will are not correct. Measurements shown in the mortgage deed executed by Krishnasamy and Muthusamy in favour of one Govindammal on 19.03.1960 (Ex.A-3) is not the measurement of the entire property, but the smaller extend of property mortgaged for the money borrowed. When they purchased 20 feet East and West and 20 feet North to South, vide sale deed dated 03.12.1973, there was a terraced shed in the "B" schedule property and that terraced shed was removed and construction was put up by them in the year 1986 itself.

5. On considering the rival pleadings and the documents, besides the Commissioner's report, the Trial Court held that the plaintiffs failed to prove the Will of Rukmaniammal through which they claim title. The defendants have probabilized that he has purchased the property in the year 1973 and put up construction in the year 1986. In case of disputed title, without seeking relief for declaration of title, suit for bare injunction is not maintainable. When the title over the suit property have a cloud, without clearing the cloud possession cannot be given.

6. On appeal, the Appellate Court confirmed the judgment of the Trial Court after a detailed analysis of the evidence considering the discrepancy in the East-West measurement found in Ex.A-1 Will and Ex.B-3, the Appellate Court held that the plaintiffs have failed to establish that they are having title to the extend of 65 feet. Contrarily, the defendants had proved that they have constructed a house in the disputed area in the year 1986, whereas the suit was laid only in the year 1996. Besides, bare injunction without seeking declaration in the facts of the case is fatal to the plaintiffs. Holding so, the Appellate Court dismissed the appeal confirming the judgment of the Trial Court.

7. On hearing the learned counsel for the appellants

and the learned counsel for the respondent, this Court finds that the reason given by the Courts below for dismissing the plaint is based on facts and law. The measurement found in Ex.A-1 does not go with the measurement found in Ex.A-3 and Ex.B-3. Furthermore, the title of the plaintiffs traced through Will of Rukmaniammal marked as Ex.A-1, itself not proved in the manner prescribed under the statute. Therefore, for the said reasons, this Court finds no merit in this second appeal.

8. In the result, this Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpl

To

- 1.The Sub-Court, Perambalur.
- 2.The District Munsif Court, Perambalur.
- 3.The Section Officer, V.R.Section, High Court, Madras.

+1 cc to M/s.P.Valliappan, Advocate Sr.No. 28296

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RSV(CO)
RMP(18/01/2021)

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