



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.09.2020

Pronounced on: 22.09.2020

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CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.NO.794 OF 2010

AND

M.P.NO.1 OF 2010

1.C.Sambandam
2.Jayanthi
3.Sivasakthi
4.Sivapurani
5.Vetrivel

... Appellants/Defendant

/versus/

Banumathi

... Respondent/Plaintiff

(Name of the Power Agent viz.Panchanatha Naicker was deleted.
Amended vide order dated 26.08.2020 made in S.A.No.794/2010
as per Memo recorded on 18.08.2020 made in USR.No.10945/2020)

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, praying to set aside the judgment and decree passed in A.S.No.3 of 2009 dated 31.12.2009, on the file of the Court of Principal Subordinate Judge, Mayiladuthurai, confirming the judgment and decree passed in O.S.No.243 of 2003 dated 29.11.2008 on the file of the District Munsif, Sirkali.

For Appellants : Mr.A.Muthukumar

For Respondent : Mr.S.Sounthar

J U D G M E N T

(The case has been heard through video conference)

The appellants herein are the defendants in the suit for recovery of possession suffering the decree of the Courts below, the instant second appeal is filed.



2. The case of the plaintiff is that "A" schedule property, consist of two parts. One is 25 cents in S.No.174/3 and another 26 cents in S.No.174/3. It was purchased under two sale deeds dated 05/06/1975 marked as Ex.A-1 and Ex.A-2. Five years prior to the suit, the Power Agent of the plaintiff permitted the defendants to occupy the "B" schedule property, which is 432 sq.ft., with linear measurement of 12x36 ft. for paguthi of Rs 10/- per month. When the plaintiff sought back the property, the defendants refused to vacate. After issuance of termination notice, suit is filed for recovery of "B" schedule property with superstructure and recovery of arrears of paguthi and future profit from the date of suit till the date of delivery of possession.

3. The defendants contested the suit denying rental agreement. They claimed to be in possession and enjoyment of the "B" schedule property in 5½ cents for more than 100 years, much prior to the plaintiff purchased the property in the year 1975. The suit property belongs to the defendants under kudiyruppu Act and by long years of enjoyment. The standing trees in the suit property were raised by the father of the first defendant. They are living in the "B" schedule property paying the house tax. The tax receipts prior to 1983 got destroyed in fire. Ex.B-2 to Ex.B-9 are the house tax receipts. It has electricity connection for more than 20 years. Ex.B-15 to Ex.B-29 are the Electricity bills. Ex.B-10 is the voter identity card. The sale deeds Ex.A-1 and Ex.A-2 will not bind them. The defendants pegged their case on long occupation and protection under Kudiyeiruppu Act. Besides pleaded the mis-description of the suit property in the plaint.

4. Pending trial, at the instance of the defendants, Advocate Commissioner was appointed and he has submitted his report along with sketch, which were marked as Ex.C-1 and Ex.C-2 respectively. The Commissioner in his report stated that the portion in occupation of the defendants is 8½ cents. The plaintiffs filed application to amend their plaint in respect of the extend of "B" schedule property from 1 cent to 8 ½ cent, but that application was dismissed.

5. The trial Court granted the relief of recovery of vacant possession and dismissed the other reliefs. The defendants preferred appeal before the Principal Subordinate Court, Mayiladudurai in A.S.No.3/2009 and same was dismissed confirming the trial Court judgment and decree.



6. The learned counsel for the appellants submitted that, the Courts below erred in not considering the mis-description of the "B" schedule property is fatal to the plaintiff's case for recovery of possession. The Courts below failed to properly appreciate the documentary evidence to show the long and undisturbed possession of the property by the defendants. The power agent of the plaintiff alone entered the witness box and not the plaintiff. Therefore, the Courts below ought to have taken adverse notice. The Court fees for recovery of possession is valued and paid only for 1 cent, whereas the relief now granted to the plaintiff is for 8 ½ cents. The Courts below ought not to have granted relief more than what prayed. In this connection, the learned counsel for the appellant relies upon the following judgments of this Court to emphasis, the principle boundaries prevail over the extent is not applicable to cases when there is linear measurements.

1) Dina Malar Publications -vs- The Tiruchirapalli Municipality (1984(2) MLJ 206)

2) R.Thangam -vs- P.T.Ram Mohan (2019 (1) CTC 739.

7. The learned counsel appearing for the respondent herein submitted that the defendants documents such as tax receipts and electricity bills are all of recent creation and not proved to be related to the suit property. Further, to get protection under the Kudiyeruppu Act, 1971, the person must have proved the possession before 19.06.1971 and he was residing as cultivating tenant or engaged in cultivating the land in question with his labour. In the absence of evidence, the Courts below decreed the suit in favour of the plaintiff.

8. The "B" schedule property is part of "A" schedule property purchased under valid sale deeds. The suit is for recovery of the "B" schedule property, which is inclusive under "A" schedule property. The lesser extent mentioned in the "B" schedule property is not fatal to the case of the plaintiff, since the title over the entire "A" schedule property is vest with the plaintiff and "B" schedule property a portion of it. The Courts below have rightly held that whether "B" schedule property is one cent as mentioned in the plaint or 5 ½ cents as claimed by the defendants in the written statement or 8 ½ cents as found in the Commissioner's report, it forms part of "A" schedule property and "A" Schedule property is owned by the plaintiff.



9. Therefore, the learned counsel for the respondent/plaintiff submitted that the second appeal is to be dismissed.

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10. On facts the Courts below have held that the documents in "B" series does not show any indication that the defendants were in possession of the property before 1983. The claim of the defendants that they were in occupation of the property as kudiyeruppu before 1971 is not proved. The lesser extent mentioned in plaint schedule will not confer any right for the defendants to occupy the remaining extent, since the title of the entire "A" schedule property which includes "B" schedule property vest with the plaintiff under Ex.A-1 and Ex.A-2.

11. Regarding the discrepancies in the plaint "B" schedule, this Court doubts whether the judgments, which are relied by the appellant counsel will apply to the facts of the case. The two judgments cited supra by the appellant for considering the principle 'boundaries will prevail over the extent', had considered the discrepancy found in the description of the properties in the title deed and had given their findings based on the facts of the case under consideration.

12. In Dinamalar Publications -vs- Tiruchirapalli Municipality case, the learned judge after referring to a number of decisions set out the principles underlying the concept.

"(1) In case of doubtful or varying extents in the documents of title relating to the property, boundaries should be preferred to the extent;

(2) Only in the absence of definite material to show the actual extent intended to be sold the boundaries should outweigh the doubtful extent mentioned in the document;

(3) If the recitals in the documents and the circumstance of the case show that a lesser extent only was conveyed then the area covered by boundaries, and there is clear evidence as to the intention of the parties with reference to the extent conveyed, then the extent should prevail over the boundaries."



In R. Thangam -vs- P.T. Ram Mohan case, again it is a case in respect of discrepancy found in the title document.

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13. In Subramania Bathar -vs- Srinivasa Bathar and others reported in 2002 (1) LW 120, when there was mistake in the door number and extent, this Court has held that, mistake in mentioning the door number or the extent in a document would not matter when the identity of the property is established. To arrive at this conclusion, the learned judge has relied the following judgments -

Roohnisha Beevi Vs. A.M.M.Mahudu Mohamed, [1998 (1) LW 244]

Bhagavathy Vs. Savarimuthu [1976 AIR(Mad) 124, (1989 LW 72)]

Dina Malar Publications Vs.The Tiruchiappalli Municipality,
[1984 (2) MLJ 306, 1984 (97) LW 365]

Karuppana Gounder and others Vs. Kolandasami Gounder and Others, [1953 (66) LW 1055, 1953 (2) MLJ 717]

D.Akkamma and Others Vs. P.Kannamma and Others, [1989 LW 666]

14. In a recent judgment of this Court in R.Loganathan -vs- R.K.Daga and others reported in 2020 (4) LW 391, the Learned Judge has summed up saying,

"the applicability of the principle of law would depend on facts and circumstances of the each case, there cannot be a straight jacket formula for application of the principle that boundaries will prevail over extent. The court should endeavour to give effect to the intention of the parties and not substitute its own intention."

15. In the instant case, the validity of the sale deeds or the boundaries found in the sale deeds Ex.A-1 or Ex.A-2 is not disputed, though in the written statement, it was pleaded that the sale deed will not bind the defendants. The title over 51 cents of land with specific boundaries are not in dispute. It is not the case of the defendants that "B" schedule property is not part of "A" schedule property. Their case is that, they are in possession of the suit property for more than 100 years and they have acquired title under Kudiyerippu Act. The said claim for want of evidence had been negatived by the Courts below. Both the plaintiff as well as the defendants only after the



report of the Commissioner have come to know about the exact extent in dispute as 8 ½ cents. Prior to the Commissioner visit to disputed property, the plaintiff was under the impression that it is 1 cent, whereas the defendants were under the impression that it was 5 ½ cents.

16. The error is not in the title deeds relied by the plaintiff, but in the description of the property in the plaint schedule, due to mis description of the property in the plaint. If there was no consensus between the sparing parties regarding the identification of property for which they are agitating, then the error will be fatal to the plaintiff. Whereas, in the instant case the identity of the property was never in dispute. Both the plaintiff and the defendants knew for which property they were agitating. In such circumstances, defendant who had made a specific plea on the right to possess and enjoy the property as kudiyeruppu and failed, cannot have the advantage of error in the linear measurements and extent mentioned in the plaint and attempt to retain the possession. Particularly, when the defence was in respect of entire property in possession and not restricted to 1 cent or 5 ½ cents.

17. In this case, the Commissioner's report Ex.C-1 indicates the superstructure in the 8 ½ cents land is in 'L' shape. 25 feet on the south, 14 feet on the north, 38 feet on East and West. Besides there is a cattle shed and haystack. The trial Court has held that the plaintiff had not proved that the superstructure was build by them, hence they are entitled for recovery of possession without superstructure and two months granted to the defendants to remove the superstructure and hand over the vacant possession. The trial Court decree is confirmed by the First Appellate Court.

18. On examining the records in the light of the submissions made by the learned counsels on either side, this Court finds that there is no substantial question of law involved in this case for consideration, except the omission to collect the difference in Court fees based on the value of 8½ cents instead of Court fees paid for 1 cent in respect of "B" schedule property. Hence, the judgment and decree of the first appellate court confirming the trial court judgment is upheld.

19. In the result, Second Appeal No.794 of 2010 is dismissed. No order as to costs. Consequently, connected miscellaneous petition is also closed.



20. The Registry is directed to collect the difference in Court Fees under section 30 of the TNCFSV Act, at the rate of Rs 1500/- per cent for 8 ½ cents less Rs 113/- already paid.

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Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

rpl

To

1. The Principal Subordinate Judge,
Mayiladuthurai.
2. The District Munsif,
Sirkali.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1CC to Mr.A.Muthukumar, Advocate, Sr.No.31188
+1CC to Mr.S.Sounthar, Advocate, Sr.No.30934

Delivery Judgment in
S.A.No.794 of 2010
and M.P.No.1 of 2010

CNR (CO)
K.RK. (25.11.2021)