

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 20.07.2020	Delivered on 17.08.2020
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CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

SA. No.358 of 2015
and MP No.1 of 2015

V.C.Chinnasamy

..Appellant

Vs.

1 Palanisamy

2 Dhanapalsamy

Rasu @ Jaganatharasu (died)

3 V.J.Manickasundaram

4 Mohanasundaram

5 State of Tamilnadu rep. by its
District Collector, Collectorate
Erode, Erode District.

6 The Revenue Divisional Officer
Erode.

7 The Tahsildar
Taluk Office,
Erode.

Pavayammal (died)

8 Saraswathi

9 Baby @ Thilagavathy

10 Madhankumar

11 Nisanth

..Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 23.01.2013 made in A.S.No.72 of 2009 on the file of the First Additional Sub Court, Erode confirming the judgment and decree dated 30.10.2009 made in O.S.No.385 of 2002 on the file of the Second Additional District Munsif Court, Erode.

For Appellant : Mr. N.Manokaran

For Respondents: Mr.R.Guruprasad, for RR 1 to 3 and 9 to 11

Mr.N.Manikandan,
Govt. Advocate for RR 5 to 7

J U D G M E N T

This matter is taken up for hearing through Video-Conferencing.

The plaintiff in OS No. 385 of 2002 whose suit for bare injunction was dismissed by the Trial Court, upon the confirmation of the said judgment and decree by the Lower Appellate Court in AS No.72 of 2009, has come with this Second Appeal.

2. The plaintiff sought for a permanent injunction restraining the respondents/defendants from interfering with his possession of an extent of 2 acres 60 cents of land in Survey No.239 of Erode village and taluk. The description in the plaint reads as follows:

"Erode Taluk, Erode Village, outside the Municipal limit, SF No.239 Punja acre 5.20 kist Rs.5.14.0, in which 2 acres 60 cents on the northern half situated within the following boundaries."

It is therefore clear that the plaintiff sought for an injunction in respect of an extent of 2 acres and 60 cents of land situate within specific boundaries. The plaintiff would trace his title through a Will said to have been executed by his mother Kuppayammal, on 06.03.1973. It is also seen that the said Kuppayammal died some time in 1991. The said Kuppayammal had in turn purchased the property under a Sale Deed Ex.A1 dated 09.11.1948, the property purchased by Kuppayammal measures an extent of 2 acres 60 cents on the northern side. Therefore, according to the plaintiff, the property that was purchased by Kuppayammal has been bequeathed to him under Will dated 06.03.1973 and therefore, he is in possession of the entire extent of 2 acres 60 cents within satisfied boundaries.

3. The suit was resisted by the defendants contending that the predecessor in interest of the defendants purchased an extent of 2 acres 60 cents on the Southern side in Survey No.239, under a Sale Deed dated 01.10.1915 and at a partition that took place on 25.04.1918, the western 1 acre 30 cents of the Southern 2 acres 60 cents in Survey No.239 was allotted to Sengoda Gounder, the great grandfather of the defendants 4 to 6. The Eastern 1 acre 30 cents was allotted to Muthu Gounder, who is the father of D1 and grandfather D2 and D3. The defendants would further plead that an extent of 1 acre 60 cents out of the total extent of 2 acres 60 cents on the

Southern side was acquired by the Government for the Lower Bhavani Canal Project. Out of the remaining 1 acre, 31 cents is situate on the North of the Canal and 69 cents is situate on the South of the Canal.

4. The defendants would contend that they are in possession of the said 1 acre which is in 2 bits. The defendants would also plead that a portion of the plaintiff's land measuring about 22 cents was also acquired for the same project and the plaintiff has title only to 2 acres 38 cents. Therefore, according to the defendants, the plaintiff is not entitled to 2 acres 60 cents as claimed by him in the plaint. The claim of possession was also disputed.

5. At trial, the plaintiff was examined as P.W.1 and two other witnesses were examined on the side of the plaintiff. Exhibits A1 to A28 were marked. The fifth defendant was examined as D.W.1 and two other witnesses were examined as D.Ws.2 and 3. Exhibits D1 to D14 were marked. A Commissioner was appointed pending suit and his Report and Plan were also marked as Exhibits C1 and C2.

6. The learned II Additional District Munsif, Erode, who tried the suit, upon a consideration of the evidence on record, accepted the defence plea and found that the plaintiff is not in possession of entire extent of 2 acres 60 cents as claimed. Hence the suit was dismissed. Aggrieved the plaintiff preferred an Appeal on the file of the Ist Additional Sub Court, Erode. The learned Additional Subordinate Judge on a reconsideration of the evidence concurred with the findings of the Trial Court. However, the learned Additional Subordinate Judge found that the plaintiff is in possession of 2 acres and 38 cents of land and the defendants are actually in possession of 31 cents of land on the north of the L.B.P. Canal shown as "A B C D" in the Commissioner's Plan. The Lower Appellate Court also took note of the fact that there was a live Kiluvai fence along the "BC" line as shown in Ex.C2 Plan. The learned Subordinate Judge dismissed the Appeal concluding that the dispute being only with regard to 31 cents of land, situate on the south of "BC" line and north of the L.B.P. Canal and the plaintiff having failed to establish his possession of the said 31 cents of land is not entitled to a decree for permanent injunction. Challenging the said judgment and decree, the plaintiff has come up with the Second Appeal.

7. I have heard Mr.N.Manokaran, learned counsel appearing for the appellant, Mr.R.Guruprasad, leaned Counsel appearing for respondents 1 to 3 and 9 to 11 and Mr.N.Manikandan, learned Government Advocate appearing for the respondents 5 to 7. Notice of motion was ordered on 05.06.2015.

8. Mr. N.Manokaran, learned counsel appearing for the appellant would contend that the Courts below were not right in dismissing the suit in its entirety and having found that the plaintiff is entitled to 2 acres 38 cents of land out of the 2 acres 60 cents shown as the suit property. He would also further contend that the Courts below were not right in dismissing the suit, more so, when the fact that his predecessor has purchased 2 acres 60 cents, out of 5 acres 20

cents is admitted. He would also point out that the defendants 1 to 3 and 9 to 11 are also claiming title only in respect of 2 acres 60 cents and acquisition of land of both the parties for the purpose of the L B Canal project is admitted.

9. As regards the contention of the learned counsel for the appellant with reference to the entire extent of 2 acres 60 cents, I am of the considered opinion, the same will have to be rejected for the following reasons.

10. Though the predecessor in interest of the plaintiff had purchased an extent of 2 acres 60 cents of land, an extent of 22 cents out of the said 2 acres 60 cents was acquired for the purposes of laying a link Canal under the L.B Canal project. The plaintiff is actually guilty of suppression of facts as he had not chosen to disclose the acquisition of 22 cents of his land. Though the defendants' predecessor had purchased an extent of 2 acres 60 cents, an extent of about 1 acre 60 cents was acquired by the Government, the remaining 1 acre also got split into two leaving 31 cents of land on the north of the Canal and 69 cents of the land on the south of the Canal.

11. These physical features as noted by the Advocate Commissioner have not been objected to by either of the parties. Therefore, it is clear that the plaintiff cannot claim title to the extent of 2 acres 60 cents purchased by his predecessor in interest. Therefore, the claim of the plaintiff to the entire extent of 2 acres 60 cents was rightly rejected by the Courts below. Despite his best efforts, Mr.N.Manokaran is unable to demonstrate that the concurrent findings of the Courts below can be said to be perverse or that the judgment of the Lower Appellate Court suffers for want of non consideration of any material evidence on record.

12. Mr.N.Manokaran, learned counsel would however contend that having found that the appellant is entitled to 2 acres and 38 cents on the northern side, the Courts below should have at least granted a decree to that extent, more particularly, when the property itself has been identified by the Commissioner in Ex.C2. Exhibits C1 and C2 read together would show that the plaintiff is in possession of the northern 2 acres 38 cents, which is shown as BCEF in C2 plan and the defendants are in possession of the portion shown as ABCD. The Report also shows the existence of live fence along the line BC.

13. Mr.M.Guruprasad, learned counsel appearing for the contesting respondents, viz. respondents 1 to 3 and 9 to 11 does not have any serious objection for granting a decree in favour of the plaintiff in respect of the northern 2 acres 38 cents, shown as BCEF in the Commissioner's Plan marked as Ex.C2.

In the light of the above, the Second Appeal is partly allowed modifying the judgment and decree of the Lower Appellate Court. The suit in OS No.385 of 2002 will stand decreed for an

extent of 2 acres 38 cents of land situate on the north of the live fence along "BC" line in Ex.C2 Plan. In other respects the suit will stand dismissed. Parties shall bear their own costs. The Commissioner's Plan viz. Ex.C2 will form part of the decree.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

jv

To

1. The First Additional Sub Judge, Erode
2. The Second Additional District Munsif, Erode
3. The Section Officer,
V.R.Section,
High Court of Madras.

+1cc to Mr.N.Manokaran , Advocate SR.No. 26914

+1cc to Mr.M.Guruprasad , Advocate SR.No. 26809

+1 cc to Spl Government Pleader Sr.No. 26865

SA. No.358 of 2015
and MP No.1 of 2015

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A.SK(11.03.2021)

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