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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.628 of 2020

M.N.Sundararajan

... Petitioner/Plaintiff

Vs

1. K.Soundar

2. Krishnamachari

... Respondents/Defendants

Prayer: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgment and decree, dated 29.11.2019 passed by the learned I Additional Subordinate Judge, Salem in A.s.No.42 of 2019 confirming the Decree and Judgment, dated 27.02.2019 made in O.S.No.184 of 2018 on the file of the learned I Additional District Munsif, Salem.

For Appellant : Mr.T.S.Vijaya Raghavan

For Respondents : Mr.P.Jagadeesan

J U D G M E N T

The plaintiff in O.S.No.184 of 2018 whose suit for declaration, mandatory injunction and permanent injunction was dismissed by the trial Court, on confirmation of the said Judgment and decree by the lower appellate Court, has come up with this second appeal.

2. The plaintiff sought for the aforesaid reliefs on the ground that the suit properties measuring about 262 ½ Square feet and 420 feet in two thakkus was purchased by him under a registered Sale deed, dated 21.11.1996 from one N.Ranganathan, son of Narayanasamy. According to the plaintiff, the northern wall of the second block namely western block of a thickness of 1 ½ feet belonged to him. The first defendant who had purchased



the property on the north of the suit property, had demolished the existing house and started construction with the help of the second defendant. While doing so, the defendants had removed 1 ½ feet wall and encroached upon land of an extent of 24 feet by 1 ½ feet on the North western side of the suit property. Therefore, the plaintiff sought for declaration of his title, mandatory injunction for removal of the super structure and recovery of possession of 36 square feet of land.

3. The suit was resisted by the defendants contending that the property that is now in possession of the first defendant originally belonged to one Shesaiyya Bhagavathar who had purchased the same from one Ponnammal under the registered Sale Deed, dated 20.06.1957. Subsequently, at a partition, that took place on 28.08.1986, between the sons of Sehesaiyya Bhagavathar namely T.S.Seenivasan and T.S.Thulasiram Bhagavather, the suit property was allotted to T.S.Thulasiram Bhagavather. The 1st defendant who is a grandson of T.S.Thulasiram Bhagavather, son of one of his daughters, purchased the property from T.S.Thulasiram Bhagavather and his daughters under the registered Sale deed dated 09.12.2010. According to the 1st defendant, the property that was purchased by Shesaiyya Bhagavathar in the year 1957, measuring 12'x50' feet and the 1st defendant is also in possession of only that extent of land namely 12'X50' feet. Therefore, he has not encroached upon the land of the plaintiff.

4. At trial, the plaintiff was examined as PW1 and the 1st defendant was examined as DW1. While Exs.A1 to A7 were marked on the side of the plaintiff, Exs.B1 to B3 were marked on the side of the defendants. A Commissioner was appointed pending suit, his report and plan were marked as Exs.C1 and C2.

5. The Commissioner who was appointed by the trial Court took measurements as per the Revenue records and found that the plaintiff is in possession of lesser extent than what is found in the Revenue records. It was also found that the defendants' property was much lesser than the extent of 12' X 50' feet as claimed by the defendants. Though the plaintiff had pleaded title on the basis of the Sale Deeds in his favour, he had after the filing of the Commissioner's report and plan attempted to rely upon the same to justify his claim that the defendants had encroached upon his property. But the Commissioner has found that if the measurements are taken as per sale deeds, there is no encroachment and the defendant is only in possession of 12' X 50' feet which has been purchased by his great grand father in the year 1957. The Commissioner also found that the plaintiff is in possession of the extent of land that was purchased by him under the Sale deed of the year 1996.



6. The trial Court on appreciation of the evidence on record found that the plaintiff had not pleaded that he has been in possession of the property as per the Revenue records. The trial Court having found that the claim of the plaintiff is only based on the Title Deeds and the plaintiff is in possession of the extent of land conveyed to him as per the Title deeds and hence, the plaintiff is not entitled to the reliefs of declaration, mandatory injunction and recovery of possession. On the above findings, the learned trial Judge dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No.42 of 2019.

7. The appellate Court upon a re-appreciation of evidence on record, concurred with the findings of the trial Court and dismissed the appeal. Aggrieved, the plaintiff has come up with this second appeal. Heard Mr.T.S.Vijaya Raghavan, learned counsel for the appellant.

8. Mr.T.S.Vijaya Raghavan, learned counsel appearing for the plaintiff/appellant stoutly contended that the Courts were wrong in ignoring the evidence, justifying the claim of the plaintiff that there was an encroachment of 11/2 feet by 24 feet by the 1st defendant. The learned counsel would also further contend that the Courts have gone an assumption that the plaintiff has not based his claim on the Revenue Records. I have considered the submissions of the learned counsel for the appellant.

9. I am unable to persuade myself to agree with the contentions of the learned counsel for the appellant. The categorical case that was projected by the plaintiff is to the effect that he is entitled to certain extent of property under the Sale Deed, dated 21.11.1996 and that the defendants had encroached upon a certain extent of property covered by that Sale Deed. The defence was also very clear to the effect that the defendants ancestor has purchased an extent of 12'X50' feet and it is that extent which is in possession of the 1st defendant and the 1st defendant has not encroached upon the land of the plaintiff. The parties went to trial with these pleadings. Unfortunately the Commissioner exceeded the scope of the warrant and measured the property with the help of the revenue records which led to the plaintiff giving up the case pleaded by him and rely upon the report of the Advocate Commissioner in support of his claim of encroachment. Both the Courts below have held that the plaintiff has not established his case as projected by him. I do not see any perversity in the aforesaid findings of the Courts to enables interference under Section 100 of the Code. I do not see any question of law much less a substantial question of law, in order to enable me



to entertain the Second appeal. The appeal therefore fails and it is accordingly dismissed without being admitted.

Sd/-

Assistant Registrar(CS-V)

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Sub Assistant Registrar

vum

To

1. The I Additional Subordinate Judge,
Salem.
2. The I Additional District Munsif,
Salem.

+1cc to Mr.T.S.Vijayaraghavan, Advocate, S.R.No.39392

+1cc to Mr.P.Jagadeesan, Advocate, S.R.No.39258

S.A.No.628 of 2020

NRJK(CO)

CB(19/08/2021)