

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

SA. No.264 of 2014

Jecintha .. Appellant/Appellant/Plaintiff
Vs.

1. Kaliyamoorthy
2. Dhamayanthi
3. Vijayalakshmi @ Vijaya .. Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree passed in A.S.No.25 of of 2012 on 19.06.2013 by the learned Principal Subordinate Judge, Mayiladuthurai confirming the decree and judgment passed in O.S.No.196 of 2009 on 19.01.2012 by the learned Principal District Munsif/ in full additional charge of Additional District Munsif, Mayiladuthurai.

For Appellant : Mr. S.Vijaya Anand
for M/s.S.Balasubramanian

For Respondents: Ms.H.Kavitha
for M/s.S.Sounthar

J U D G M E N T

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

The plaintiff in OS No.196 of 2009 aggrieved by the dismissal of her suit, for declaration and permanent injunction or in the alternative for recovery of possession, by the Trial Court and its affirmation by the Lower Appellate Court has come up with this Second Appeal.

2. The plaintiff sued for declaration and injunction claiming that she has purchased an extent of 16 cents from one

Rahamathunnisha under a Sale deed dated 28.05.2003. The said Rahamathunnisha had purchased the said property from one Kaliyaperumal under a Sale Deed dated 03.09.1990. Claiming that the defendants had encroached upon her property to an extent of 10 cents, the plaintiff sued for declaration and recovery of possession.

3. The suit was resisted by the defendants contending that the defendants have purchased the lands in question under the Sale Deeds Exs.A4 and B1. They have been in possession of the property on the east of the AD ridge in the plaint plan. It is also claimed that the description of the property is not correct. It is further contention that AD ridge is an old permanent ridge and the plaintiff or her vendor Rahamathunnisha have no right on the east of the said ridge. The permanent ridge is an existence even prior to 1990 viz., the date of purchase by Rahamathunnisha. The Physical features prevailing viz., the presence of an electricity pole as well as trees in the AD ridge was also pointed out by the defendants to claim that the plaintiff is not possession of any land on the east of the said ridge.

4. At trial one Panneerselvam, the husband of the plaintiff, was examined as P.W.1 and two other witnesses viz., Antoniselvam and Kaliyaperumal were examined as P.Ws. 2 & 3. The second defendant was examined as D.W.1 and one Govindarajan was examined as D.W.2.

5. The Trial Court upon a consideration of the evidence on record found that neither the plaintiff nor her vendor was in possession of any land on the east of the AD ridge. The Trial Court further found that the plaintiff has not proved that her vendor was in possession of any portion of land on the east of the permanent ridge. The Trial Court also took note of the evidence of P.W.1, wherein, she had admitted that she was never put in possession of any land on the east of the ridge. The Trial Court also took note of the fact that there was shortage in the extent of land of the plaintiff as well as the defendants 1 and 3.

6. On the above findings, the learned Trial Judge dismissed the suit concluding that the plaintiff has not established her title and possession. Aggrieved the plaintiff preferred an Appeal in AS No.25 of 2012 and Application in IA Nos. 14 and 16 of 2013 were also filed seeking to let in additional evidence. The Lower Appellate Court found that there was no dispute regarding the execution of the Sale Deed of the year 1990 in favour of the Rahamathunnisha and therefore the said document will not advance the cause of the plaintiff. On the said finding the application for additional evidence was dismissed.

As regards the Appeal, the learned Appellate Judge concurred with the findings of the Trial Court and dismissed the same. Hence the Second Appeal.

7. I have heard Mr.S.Vijaya Anand, learned counsel appearing for the appellant and Ms.H.Kavitha, learned counsel appearing for Mr.Sounther for the respondents. Notice of motion was ordered on 02.04.2014.

8. Mr.S.Vijaya Anand, learned counsel appearing for the appellant would vehemently contend that the Courts below were not right in dismissing the suit based on the actual enjoyment on ground. Having purchased 16 cents of land once it is found that the plaintiff is in possession of a lesser extent, the Court must have granted a declaration as prayed for. He would also further contend that the dismissal of the application filed under Order 41 Rule 27 is in proper.

9. I have considered the submissions of the learned counsel for the appellant. I am unable to countenance both his submissions.

10. As regards the purchase of 16 cents of land by the plaintiff there is no dispute. The dispute is only with regard to the enjoyment of the property. The plaintiff as P.W.1 has admitted that she was never put in possession of any portion of the land on the east of the permanent ridge AD. She has also deposed that her vendor was also not in possession of any portion of land on the east. This evidence was taken into account by the Lower Appellate Court to come to the conclusion that neither the plaintiff nor her vendor were in possession of any land on the east of the AD ridge. The existing physical features and the presence of an electricity pole as well as the very old trees in the AD ridge was also taken into account by the Appellate Court to buttress its conclusion that the AD ridge formed a permanent boundary between the property of Rahamathunnisha and the defendants vendor. Therefore the Appellate Court concluded that the plaintiff was never put in possession of any portion of the land.

12. No doubt that there was some shortage of land in the plaintiff's holdings. It is also seen that the defendants are also not in possession of the extent of land purchased by them. As far as the first defendant is concerned there is a shortage of 3 cents of land and as far as the third defendant is concerned there is a shortage of 1 cent of land. Therefore it cannot be said that the defendants have encroached upon the plaintiff's land. Despite his best efforts, the learned counsel appearing for the appellant is unable to make out a question of law. much less substantial question of law arising for

consideration in this Appeal. A reading of the judgments of Courts below also shows that there is no perversity in the appreciation of the evidence by the Courts below.

13. I therefore find that there is no question of law to enable me to entertain the Appeal under Section 100 of the Code of Civil Procedure. The Second Appeal therefore fails and it is accordingly dismissed without being admitted. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Principal Subordinate Judge,
Mayiladuthurai.
2. The Principal District Munsif/ in full additional charge
of Additional District Munsif,
Mayiladuthurai.
3. The Section Officer,
V.R. Section, High Court of Madras.

+lcc to Mr.S.Sounthar, Advocate, S.R.No.34070

SA. No.264 of 2014

AD(CO)
CB(29/04/2021)