

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

SA. No.590 of 2020

1. S.Swarnambal
2. Amudavalli
3. Geetha Lakshmi
4. V.Devi

..Appellants/Plaintiffs

Vs.

1. G.Annapoorani @ Annapoorani Ammal

2. Govindasamy

..Respondents/defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 13.02.2020 in A.S.No.44 of 2018 on the file of Additional Subordinate Judge, Tirupur confirming the judgment and decree of dated 04.06.2018 in O.S.No.153 of 2008 on the file of the District Munsif, Tirupur.

For Appellants : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.Karthik Lakshmanan

J U D G M E N T

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

The plaintiffs in OS No.153 of 2008, whose suit for declaration of title to the suit property and for delivery of vacant possession of suit item No.2 was dismissed by the Trial Court, upon its confirmation by the Appellate Court in AS No.44 of 2019, have come up with this Second Appeal.

2. The plaintiffs sought for the aforesaid reliefs of declaration and recovery of possession claiming that they had purchased the suit properties under two Sale Deeds, dated 24.08.1977 and 25.11.1981, from the heirs of one Kirshna Boyan, who had obtained the property under a Will executed by Kirshna Boyan on 27.05.1969. It is also pleaded that Kirshna Boyan purchased the properties under a Sale Deed dated 30.05.1955, marked as Ex.A8. The plaintiffs would further claim that though in the Sale Deed of the year 30.05.1955, the property is described as 3/8th share in Survey No.176/2 and 176/3, in fact the said description is a mistake and what was purchased by

Kirhna Boyan was 6/8th share in Survey No.176/2. In support of the said contention they had also claimed that the vendors of Kirhna Boyan had no title to Survey No.176/3 on 30.05.1955.

3. The plaintiffs would further claim that the schedule of property as found in the Sale Deed of the year 1955, which is marked as Ex.A8 was copied in the Will of Kirhna Boyan dated 27.05.1969, marked as Ex.A9. The Sale Deeds dated 24.08.1977 and 25.11.1981 in favour of the plaintiffs also contained the same mistake. Therefore, according to the plaintiffs, what was purchased by them was a 6/8th share in Survey No.176/2 and not 3/8th share in Survey No.176/2 and 176/3. Claiming that the defendants had encroached upon an extent of 58 cents, the plaintiffs came to Court seeking the reliefs as aforesaid.

4. The suit was resisted by the defendants contending that the plea of mistake, the Sale Deed of the year 1955, is a invention made by the plaintiffs, in order to claim title to extra extent of land in Survey No. 176/2. The defendants would also set up a claim under an unregistered Mortgage Deed in respect of 57½ cents of the property.

5. At trial, the first plaintiff was examined as P.W.1 and one Deivathaal was examined as P.W.2. Exhibits A1 to A25 were marked. The Aadhar Card of Deivathaal was marked as Ex.X1. The second defendant was examined as D.W.1 and Exhibits B1 to B17 were marked.

6. The Trial Court upon a consideration of the evidence on record rejected the defence projected by the defendants to the effect that they are entitled to 57½ cents in Survey No.176/2 by virtue of an unregistered Mortgage Deed, marked as Ex.B10. The Trial Court, however, concluded that the plaintiffs have also not established the case of mistake pleaded by them and found that the plaintiffs would be entitled to only 3/8th share in Survey No.176/2, which is equivalent to 43 ¼ cents. On the said conclusion, the learned Trial Judge dismissed the suit. Aggrieved, the plaintiffs preferred an Appeal in AS No.44 of 2019.

7. The learned Appellate Judge concurred with the findings of the Trial Court with reference to the title claimed by the defendants as well as the plaintiffs failure to establish their claim that there was a mistake in the schedule of property in the Sale Deed of the year 1955, marked as Ex.A8. Having rejected the said claim of the plaintiffs, the Appellate Court dismissed the Appeal, confirming the judgment and decree of the Trial Court. Aggrieved the plaintiffs have come up with this Second Appeal.

8. I have heard Mr.AR.L.Sunderasan, learned Senior Counsel appearing for the M/s. A.L.Ganthimathi, for the appellants.

9. Mr.AR.L.Sunderasan, learned Senior Counsel appearing for the appellants would vehemently contend that the Courts below were not right in dismissing the suit of the plaintiffs, after having held that the defendants have nothing to do with the property and they have not proved the claim made by them based on the unregistered Mortgage of the year 1940. The learned Senior Counsel would further contend that the Courts must have applied the principle that boundaries will prevail over extent when there is a doubt regarding the extent of property conveyed.

10. I have considered the submissions of the learned Senior Counsel.

11. I am unable to countenance both the submissions of the learned senior counsel. The suit is one for declaration of title and delivery of possession. It is for the plaintiffs to prove their title in order to succeed in the suit. The plaintiffs have come up with a specific case that there was a mistake in the recitals in the schedule of property in Ex.A8 dated 30.05.1955. Both the Courts below have found that the said plea of mistake has not been established by the plaintiffs.

The circumstances under which the documents came into existence have also been considered by the Courts below. Ex.A8 is dated 30.05.1955, it is followed by a Will dated 27.05.1969 which also contains the very same description. Then the legal heirs of Kirhna Boyan, the purchaser under Ex.A8, have conveyed the property to the plaintiffs under Exs.A11 and A12 dated 24.08.1977 and 25.11.1981 respectively. Those documents also contain the very same description.

12. While this being so, nearly after 27 years from the date of Ex.A12, the plaintiffs have chosen to come up with the present suit stating that there was a mistake in the schedule of property in a document of the year 1955. The Courts below have rightly rejected the said claim concluding that the plea of mistake is totally unsubstantiated and the plaintiffs have come up with the said claim only to claim title over extra extent of land. Even though the Courts have held that the defendants have failed to establish their claim, a decree for declaration of title can be granted only if the plaintiffs prove their case in a satisfactory manner. If the Court finds that the plaintiffs have not established the case pleaded by them, the result will have to be only a dismissal of the suit as it is settled law that the plaintiffs cannot seek to succeed on the weakness of the defence.

13. As regards the other contention that the boundaries would prevail over the extent, that principle itself can be applied only when there is a doubt or uncertainty regarding the boundaries. From the description of property in Ex.A8, it is very clear that there was no doubt as to the extent of property. It clearly conveys a 3/8th share in an extent of 1 acre 15 cents in Survey No.176/2. Therefore, in the absence of any doubt as to the extent the principle that boundaries will prevail over the extent cannot be applied.

14. Despite his best efforts, the learned Senior Counsel is unable to make out the question of law much less substantial question of law to enable me to entertain the Second Appeal. The Second Appeal therefore fails and it is accordingly dismissed without being admitted.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

jv
To

1. The Additional Subordinate Judge,
Tirupur.
2. The District Munsif,
Tirupur.
3. The Section Officer,
V.R.Section, High Court of Madras.

+1 cc to Mr.AL.Gandhimathi Advocate sr36547

SA. No.590 of 2020

aa26/02/2021