

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 05.08.2020	Delivered on 20.08.2020
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CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
SA. No.770 of 2017

R.Loganathan

..Appellant/2nd defendant

Vs.

1. R.K.Daga

2. Radha Daga

V.V.Venkata Subramanian (died)

3. M.V.V.Anadanarayanan

4. Rajeshwari ..Respondents/Plaintiffs &
1 & 2 & Ist Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree made in A.S.No.38 of 2012 dated 07.10.2016 on the file of the Principal District Judge, Kancheepuram District at Chengalpattu, reversing the judgment and decree in O.S.No.123 of 2010 dated 24.04.2012 by the Subordinate Judge, Tambaram.

For Appellant : Mr. K.V.Babu

For Respondents: Mr. T.Murugamanickam, Senior Counsel
for M/s. Zeenath Begum.

J U D G M E N T

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

The defendant in OS No.587 of 2004 on the file of the Sub Court, Chengalpattu, renumbered as OS No.123 of 2010 on the file of the Sub Court, Tambaram, who was able to convince the Trial Court to dismiss the suit upon its reversal by the Appellate Court in AS No.38 of 2012, has come up with this Second Appeal.

2. The suit was laid by the plaintiffs/respondents 1 and 2 herein, seeking declaration of their title to the suit property and for permanent injunction. According to the plaintiffs, the suit 'A' Schedule property was purchased by them under a Sale Deed dated 22.10.1986 from the first defendant. It is specifically alleged that the property purchased was described by boundaries and was delivered as per the boundaries. The plaintiffs have upon their purchase had put up a fence and a gate on the south western extremity. During the year 1998, the plaintiffs came to know of an attempt made by the first defendant to sell a portion of the property on the southern side making use of the wrong measurements in the patta and the Sale Deed dated 22.10.1986. When they confronted the first defendant about the said proposal, the first defendant agreed not to sell any portion of the property that was already sold to the plaintiffs and executed a letter of undertaking stating that he has sold the property within the specific boundaries and he does not own any other land in the vicinity. The said letter was given on 06.01.1998. However, subsequently when the second defendant/appellant herein, attempted to interfere with the possession of the plaintiffs, they came to know that the first defendant had sold an extent of about 12 cents on the Southern most extremity of the 'A' Schedule property described as 'B' Schedule property in the suit to the second defendant under the Sale Deed dated 25.05.2001. Since the said Sale Deed had created a cloud on their title, the plaintiffs sought for declaration of their title to the suit 'B' Schedule property and for a consequential permanent injunction.

3. The suit was resisted by the first defendant contending that he had sold only an extent of 77 cents within specific boundaries under the Sale Deed dated 22.10.1986. Therefore, when the extent has been specifically mentioned in the Sale Deed, the plaintiffs cannot claim any land over and above the said 77 cents. It was the further contention of the first defendant that he owned an extent of 90 cents in Survey Nos.2/1 and 2/2A. Out of the said 90 cents, he sold only an extent of 77 cents to the plaintiffs and retained the remaining 13 cents. Out of the remaining 13 cents he had sold an extent of 12 cents to the second defendant. The first defendant was, however, very evasive in his reply to the claim of the plaintiffs with reference to the letter dated 06.01.1998. It is stated that he is unable to recollect the alleged letter dated 06.01.1998. He would also contend that the words south by Access provided by the vendor would show that there was no road on the southern side of the property.

4. Though the second defendant filed a separate written statement he as the purchaser of the property from the first defendant had to fall in line with the defence taken by the first defendant. The second defendant would contend that there was no necessity for him to attempt to trespass into the property, since the possession was delivered to him upon the execution of the Sale Deed in his favour on 25.05.2001.

5. At trial, the first plaintiff was examined as P.W.1 and one Sundaramoorthi was examined as P.W.2. Exhibits A1 to A9 were marked. The first defendant was examined as D.W.1 and the second defendant was examined as D.W.2. Exhibits B1 to B3 were marked. An Advocate Commissioner was appointed by the Trial Court to note down the physical features of the property. His Report and Plan were marked as Exhibits C1 and C2.

6. Upon the above pleadings, the Trial Court framed the relevant issues. The learned Subordinate Judge upon a consideration of the evidence on record concluded that the plaintiffs cannot claim title to anything more than 77 cents under Ex.A1 Sale Deed. The learned Trial Judge also faulted the plaintiffs for not producing the original of Ex.A2 and for not putting the said document to the first defendant when he was examined as D.W.1. The learned Trial Judge concluded that when the measurement of the property viz., 77 cents has been specifically given the plaintiffs cannot claim title to something more on the ground that the boundaries cover a larger extent of the property. The learned Trial Judge also took note of the fact that there was an access provided to the plaintiffs on the western side of the property through another road that was in existence and therefore, the claim of the plaintiffs that their property will be without access, if the 12 cents of land, that has now been sold to the second defendant is excluded from the Sale Deed Ex.A1. On the above conclusions, the learned Subordinate Judge dismissed the suit.

7. Aggrieved the plaintiffs preferred an appeal in AS No.38 of 2012 on the file of the Principal District Judge, Kancheepuram at Chengalpattu. The learned Principal District Judge upon a re-appreciation of the evidence on record came to the conclusion that what was sold under Ex.A1 was the entire extent of property situate within the four boundaries and the first defendant did not retain any property within those four boundaries to enable him to sell the same to the second defendant on 25.05.2001. The learned Appellate Judge also took note of the absence of denial of Ex.A2 in the written statement as well as the evidence of the first defendant and the fact that

the first defendant had admitted the plan that forms part of Ex.A2 to come to the conclusion that what was sold under Ex.A1 was the entire 90 cents of land situate within the four boundaries.

8. The claim of the first defendant that he had retained an extent of 13 cents was negatived by the learned Principal District Judge on the basis of Ex.A2, the original of which was produced before the Appellate Court. The learned Appellate Judge also took note of the fact that the land on the western side which is now in the form of road was sold by the first defendant himself to one Balagangadaran and Vijaya, under the Sale Deed dated 03.07.1982. This fact was relied upon by the Appellate Court to buttress its conclusion that the southern boundary shown as access provided by the vendor cannot refer to this road on the western side. On the above conclusions, the learned Appellate Judge reversed the judgment and decree of the Trial Court and decreed the suit as prayed for. Aggrieved the second defendant has come up with this Second Appeal.

9. It is also on record that the first defendant died pending the Appeal before the Principal District Judge and his legal representatives were brought on record as respondents 3 to 5. His wife viz. the third respondent also died pending Appeal.

10. Notice of motion was ordered on 07.12.2017 and this Appeal has been posted before me as per the directions of the Hon'ble the Chief Justice, dated 11.05.2020, at the request of the parties for an earlier hearing.

11. I have heard Mr.K.V.Babu, learned counsel appearing for the appellant and Mr.T.Murugamanickam, learned Senior Counsel, appearing for Ms.Zeenath Begum, learned counsel appearing for the respondents 1 and 2. The other respondents though served are not appearing either in person or through counsel duly instructed.

12. Mr.K.V.Babu, learned counsel appearing for the appellant would vehemently contend that the learned Principal District Judge was not right in applying the principal that boundaries will prevail over extent to a case where the extent has been specifically mentioned in the Sale Deed. He would also rely upon the judgment of the this Court in The Church of South India Trust Association v. Raja Ambrose, reported in (1979) ILR 1 Mad 344, wherein this Court had held that when the deed or document sets out the measurements of the property correctly there can be no difficulty in determining the subject matter of the grant and therefore, the principal of law that boundaries would prevail

over extent cannot be applied in such a case. He would also rely upon another judgment of this Court in Dina Malar Publications, a Tamil daily v. The Triuchirapalli Municipality and Ors., reported in (1984) 2 MLJ 306, in support of the very same proposition. He would also draw my attention to the judgment of mine in Panneerselvam v. M.Natesa Mudaliar, reported in (2020) 4 CTC 783. Mr.K.V.Babu, learned counsel would also point out that the plaintiffs have claimed title by adverse possession and therefore the plaintiffs cannot claim title by grant as well as adverse possession.

13. Contending contra Mr.T.Murugamanickam, learned Senior Counsel appearing for the respondents 1 and 2 would submit that the Lower Appellate Court as a final court of fact found that what was conveyed under the Ex.A1 Sale Deed was the property situate within the four boundaries and the linear measurements were not given and therefore, the principle that boundaries will prevail over extent can be applied to the case on hand. He would also seek to distinguish the judgments referred to by Mr.K.V.Babu, pointing out that in both The Church of South India Trust Association and Dina Malar Publications, a Tamil daily, the linear measurements of the property were available and therefore, this Court held that once linear measurements are given and the subject matter of grant could be ascertained with certainty the principle that boundaries will prevail over extent need not be applied. Pointing out that in the case on hand though the total extent is given as 77 cents, the boundaries covered a larger extent of property. According to Mr.T.Murugamanickam, learned Senior Counsel, Ex.A2 would clarify that the intention of the parties to the grant viz., the Sale Deed dated 22.10.1986 was to convey the entire extent of land within the four boundaries viz., north by Sholinganallur Village, South by Access provided by the vendor, east by Vijayalakshmi Rohra's Land and on the west by Savithri's land.

14. Mr.Murugamanickam, learned Senior Counsel would also point out that the southern boundary viz., the access provided by the vendor has now become a road. In support of the said submission, the learned counsel would draw my attention to Ex.A9 Sale Deed which also shows the southern boundary as a road. Drawing support from the Commissioner's Report and Plan, Mr.Murugamanickam, learned Senior Counsel, would contend that the entire extent of property was in one block and covered by compound wall on four sides. Therefore, the claim of the defendants that what was sold was only 77 cents cannot be countenanced.

15. I have considered the rival submissions.

16. The plaintiffs sought for a declaration of their title in respect of the suit 'B' Schedule property primarily contending that though Ex.A1 Sale Deed refers to the extent as 77 cents, what was actually sold was 90 cents of land within the four boundaries. The description of property under Ex.A1 Sale Deed dated 22.10.1986, reads as follows:

SCHEDULE: All that piece and par of agricultural land situated in Uthandi Village No.191, Chitalapakkam, Panchayat Union, Saidapet Taluk Chindleput District comprised in Survey No.2-1 (40), 2-2A1(41) (part) named as R.R.Niketan within the Registration District of Madras South and Registration Sub District of Adyar bounded on the east by: Deepak Batia's sister's land; west by land owned by Mrs.Savithiri; North by Sholinganallur Village; South by Access provided by Vendor, measuring 77 cents.

17. This is followed by execution of Ex.A2 letter by the first defendant which affirms that the property sold as detailed under the Sale Deed and shown in the Plan attached to Ex.A2 marked as 13 for identification. The plan attached to Ex.A2 shows the southern boundary as road. The western boundary under Ex.A1 Sale Deed is shown as Savithri's land. The report of the Advocate Commissioner shows that there is a road on the western side of the property sold under Ex.A1. The revenue records reflect the title as per the documents. While, the plaintiffs would contend that what was sold under Ex.A1 was the land within the four boundaries, the defendants would claim that what was sold was only 77 cents within the said boundaries.

18. One important fact that would militate against the defendants in the case on hand is the southern boundary of the property. Ex.A1 Sale Deed shows the Southern boundary as Access provided by the vendor. Therefore, the Southern boundary is an access provided to the property sold under Ex.A1 by the vendor therein viz., the first defendant.

19. Mr.K.V.Babu, learned counsel appearing for the appellant would vehemently contend that the road on the western side shown in the plan attached to Ex.A2 is the access provided by the vendor, the said contention of the learned counsel over looks two important aspects.

(i) The western boundary of the property cannot become the southern boundary.

(ii) The road on the western side measuring about 30 feet in width and 290 feet in length has been sold by the first defendant to one Balagangadaran and Vijaya, even in the year 1982 and therefore, it cannot be the access provided by the vendor under Ex.A1 on 22.10.1986.

20. Mr.K.V.Babu, learned counsel appearing for the appellant was at pains to impress upon the court that the western side road is the Access provided by the vendor shown Ex.A1 Sale Deed. As already pointed out the said contention of the learned counsel cannot be accepted. The physical features shown in the Commissioner's Report also militate against the contention of the defendants. The Commissioner has pointed out that the suit property lies in one block and is enclosed by compound wall on three sides, except north, with a gate on the western side.

21. The Commissioner's Report reads as follows:

"I found that on all three sides the entire property was fenced compound wall built with stones. The entire property was fenced on all three sides, except the northern side."

"The walls on all the three sides are 6 feet in height with old cement plastering and that they are built about 5 or 6 years before."

"The entire property seems to be in one block."

Apart from the above physical features, under Ex.A2, the vendor of the plaintiffs/the first defendant has accepted that he has sold the property within four boundaries to the plaintiffs 1 and 2. The boundaries are also given in Ex.A2 as follows:

"It is a corner plot with Sholinganallur on the North, Road by South, Road by west and plot no.14 in the plan owned by Mr.Ishwarlal Chand on the East."

This description coupled with the lay out plan annexed with Ex.A2 would show that the first defendant had not retained any land between the road on the south and the property sold by him to the plaintiffs under Ex.A1 dated 22.10.1986. The decisions referred to by Mr.K.V.Babu may not be helpful, inasmuch as, they only reiterate the settled position of law that if the linear measurements are available and the property that is subject matter of the conveyance or grant could be ascertained with certainty then the principle of law that boundaries will prevail

over extent cannot be applied. There is no quarrel over the said proposition.

22. 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 Courts have repeatedly pointed out that the endeavor of the Courts must be to give effect to the intention of the parties and not to substitute a contract of its own in the place of the actual contract between the parties.

23. Even in Panneerselvan's case, there was no dispute regarding the extent mentioned in the documents, the revenue record showed a lesser extent and the sale deeds showed a larger extent and the subject matter of conveyance was one and the same in both the sale deeds, it is under those circumstances, I had concluded that the Courts below were not right in applying the principle that boundaries will prevail over extent. But the facts in the case on hand are different. Ex.A1 Sale Deed does not give the linear measurements. It only states 77 cents of land within specific boundaries and when it was found that the boundaries cover a larger extent of land, the first defendant had come forward and executed Ex.A2 letter acknowledging that he had sold the entire extent of land within the four boundaries mentioned under Ex.A1.

24. Ex.A2 cannot be simply brushed aside. As I already pointed out the first defendant had not denied the execution of Ex.A2. In the written statement, the first defendant had said that he is unable to recollect the contents of Ex.A2 due to old age and paucity of time. From the evidence, it is seen that Ex.A2 was specifically put to the first defendant, he has acknowledged that the lay out plan annexed Ex.A2, was the plan prepared by him and to a suggestion that the plaintiff is in possession of the entire suit property by constructing a compound wall, the first defendant had also given an evasive reply that he does not know.

25. As regards the existence of the road on the south viz., the Access provided by the vendor, the first defendant has deposed that the land in between the suit property and the southern property is called as "Samduradwar Road" and he handed it over to the local authority as a road. In his oral evidence, D.W.1 had specifically stated that the plaintiffs are not entitled to a way from the western side plot No.12. Therefore, from the evidence on record, it is very clear that the first defendant had sold the entire extent of 90 cents, which includes

both 'A & B' schedule properties, under Ex.A1 Sale Deed. An attempt is made by the first defendant, after expiry of about 15 years in the year 2001, to make it appear that what was sold was a lesser extent and he is entitled to sell something more.

26. Apart from the above, the appellant/second defendant does not appear to be a bona fide purchaser. In his evidence he has accepted that the suit property is covered by a compound wall on all the four sides. Though he would admit that the compound wall was in existence when he visited the property in 2004, he would also say that he did not lodge any complaint. This evidence of D.W.2 would show that he is not a bona fide purchaser without notice of the possession of the plaintiff. The learned Principal District Judge had examined the evidence in detail and has reached factual conclusions to the effect that the intention of the parties under Ex.A1 was to convey the entire extent of 90 cents within specific boundaries. Unless it is shown that the findings are not based on any evidence or that some evidence has been overlooked so as to render the findings perverse, I do not think that sitting in Second Appeal, this Court could interfere with the said factual findings of the Appellate Court, which is the final Court of fact.

27. As regards the argument of Mr.K.V.Babu, learned counsel appearing for the appellant regarding two mutually contradicting pleas taken by the plaintiffs, it is for the plaintiffs to elect one among them at the time of trial. The plaintiffs have throughout the trial stuck to their title and they have not based their claim on the adverse possession. Hence I do not think that the mere fact that they have pleaded adverse possession would dis entitle them from establishing their title.

28. I therefore do not find any question of law much less substantial question of law in order to enable me to entertain the Second Appeal, though, I have heard the learned counsel for the respondent, since notice of motion was ordered earlier. For the foregoing reasons, the Second Appeal fails and it is dismissed without being admitted.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

jv

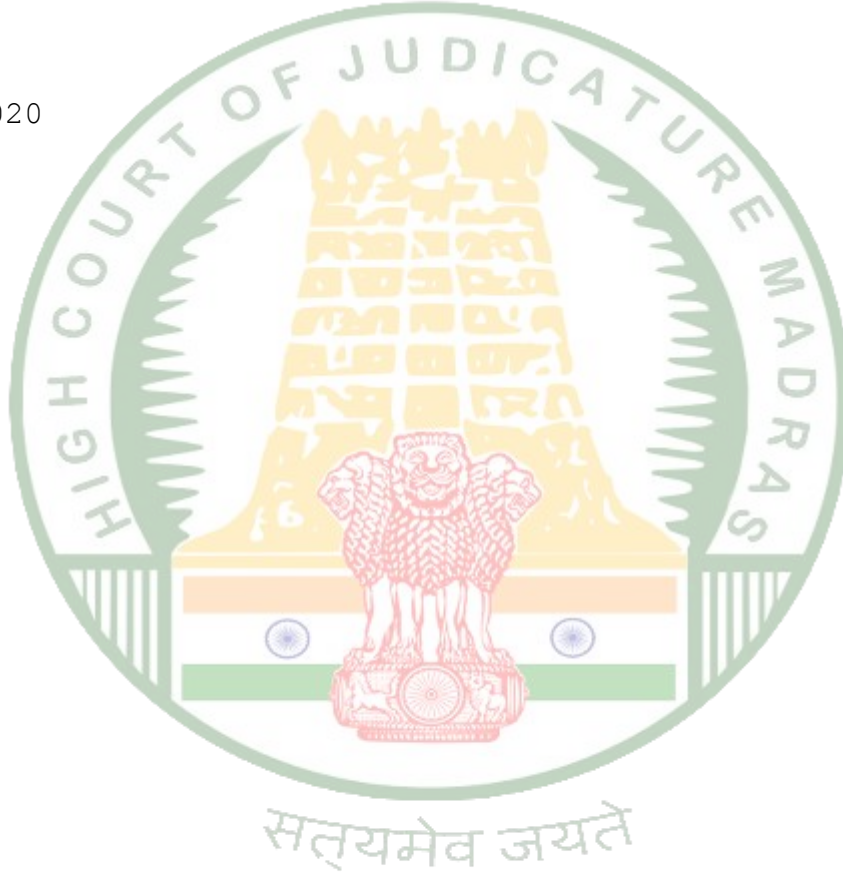
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To

1. The Principal District Judge,
Kancheepuram District at Chengalpat
2. The Subordinate Judge, Tambaram.
3. The Section Officer, V.R. Section,
High Court of Madras.

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