



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 16.02.2021	Date of Pronouncing Judgment 05.07.2021
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

S.A.No.2129 of 2001

1.K. Palaniappan (Deceased)
2.T. Dhavamani Devi
3.P. Vasantha
4.P. Saraswathi
5.P. Nataraj
6.P. Punitha .. Appellants
(Appellants 2 to 6 brought on records as LR's of the deceased
sole appellant vide order of court dated.16.03.2018 made in
CMP.22724/2017 in S.A.2129/2001.)

Vs.

Jayammal

.. Respondent

Prayer: Second Appeal filed under Section 100 of C.P.C.,
against the judgment and decree dated 09.11.2001 made in
A.S.No.16 of 2000 on the file of the Sub-ordinate Court,
Sankagiri modifying the judgment and decree dated 25.11.1999
made in O.S.No.77 of 1999 on the file of District Munsif Court,
Tiruchengode.

For Appellants : Mr.V.P. Sengottuvel

For Respondent : Mr.G. Arul Murugan

J U D G M E N T

The 1st appellant herein is the plaintiff and appellants
2 to 6 are legalheirs of the 1st appellant/plaintiff. For the
sake of convenience, parties are referred to as per the
litigant's status before the trial Court.

2. The plaintiff filed a suit in O.S.No.77 of 1999 before
the District Munsif Court, Tiruchengode seeking relief of
declaration of title to the B schedule property and for
permanent injunction and for mandatory injunction. After trial,



the suit was decreed and the defendant preferred appeal in A.S.No.16/2000 before the Sub-ordinate Court, Sankagiri and the appeal was allowed. Hence, the second appeal by the appellants.

3. The original plaintiff Palaniappan filed the suit in O.S.No.77/99, before the District Munsif Court, Tiruchengode for the relief of declaration of title to the B schedule property and for mandatory injunction and for permanent injunction against the respondent/defendant alleging that the suit 'A' schedule property is plaintiff's house and in which he was residing with his wife and children ever since the date of which plaintiff purchased the same on 28.08.1972. The plaintiff's house is a north facing one, facing the east-west main road on the north. There is a vacant space adjacent to plaintiff's house on the eastern side for a width of 1 ½ feet to go to the back yard of plaintiff's house to whitewash the walls, to carry out repairs to the walls and roof and to drain the rain and gutter water and sewerage water for plaintiff's house.

4. The plaintiff's family members have got all right over the said 1½ feet vacant space for any other purposes. The house site to the east and south of the aforesaid 1½ feet width vacant space belonged to the respondent and that is the 'B' schedule property. The respondent on 16.03.1999 dug out the earth in the 'B' schedule property on the east of the aforesaid 1½ feet vacant site for the purpose of laying foundation to construct and underground hall for the purpose of constructing a complex she had dug out the earth for a depth of about 10 feet below the ground level with the help of the borklin machine.

5. On the above factual ground, the plaintiff filed the suit for declaration of title to the 1½ feet width vacant space forming part and lying immediately on the eastern side wall of plaintiff's house for a mandatory injunction directing the respondent, men and agents to restore the damaged walls of plaintiff's house to their original position and for the removal of the concrete column posts planted in a portion of the 1½ feet width vacant space lying immediately on the east of plaintiff's eastern side wall of plaintiff's house and also for a permanent injunction restraining the respondent from excavating the earth or plastering the rock on the southern side of the suit 'B' schedule property and from putting up any further construction or roof over the concrete columns adjacent to the 1½ feet width vacant space on the east of plaintiff's house.

6. During trial, the plaintiff has examined himself as P.W.1 and marked Exs.A1 to A16 and also examined P.W.2 and P.W.4 and he has filed the report Exs.A17 and A18. On behalf of the defendant she examined herself and marked Exs.B1 and B2.



7. In order to ascertain the physical feature of the damage caused to the A schedule property, Advocate Commissioner seeks to have been appointed by the Court and the same was marked as Exs.C1 and C2 sketch.

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8. As stated supra, the suit was decreed, appeal was allowed and the second appeal was admitted on the following substantial questions of law:-

(i) Whether the 1st appellate Court is right in dis-allowing the claim for the relief of mandatory injunction and permanent injunction when the appellant herein proved his right beyond doubt over the vacant space of 1 ½ feet on the easter side and southern side of the schedule 'A' mentioned property as contemplated under the provisions of Specific Relief Act?

(ii) Is not the 1st appellate Court wrong in modifying the judgment and decree of the trial Court without properly considering the documents in Ex.A1, Ex.A.15 and A16 under documents in Ex.A1, Ex.A15 and A16 under which the purchasers derived their title?

(iii) Is not the lower appellate Court erred in not considering the vital evidence of D.W.1 and documentary evidence of Ex.A15 and Ex.A16 regarding cause of action?

9. Heard the learned counsel for the appellants and the learned counsel for the respondent.

10. Ex.A1 sale deed dated 28.08.2017 is with regard to the title of the plaintiff's title over the A schedule property wherein, B schedule property has been kept vacant by the vendor has been clearly demonstrated therein. The said factum possession was admitted by the defendant in the cross examination assumes significance. With regard to the title of the defendant over the disputed title of the defendant over the B schedule property, the plaintiff also marked Exs.A15 and A17 sale deeds said to have been in favour of the defendant. The defendant had not filed the originals of Exs.A15 and A17. These sale deeds stand in favour of the defendant does not disclose the disputed property namely B schedule property over which the respondent is claiming right and making drilling to put the pillar.

11. On perusal of Ex.A1, the 1½ feet vacant space on the eastern and southern side of the 'A' schedule house absolutely



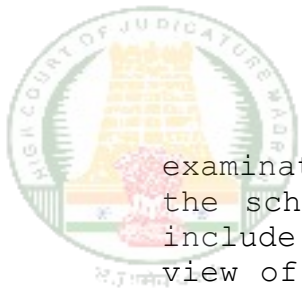
belong to the appellants herein as it has been very clearly mentioned in the documents in Ex.A1 dated 28.08.1972. Respondent herein willfully and wantonly failed to produce originals of the sale deeds in Ex.A15 dated 22.10.1997 and Ex.A16 dated 19.01.1999 under which she alleged to have purchased 'B' schedule property. In Ex.A15, it is clearly mentioned that the land in S.No.79/3B is measuring 15 feet on the eastern side along with the high ways portion and that the respondent in his evidence falsely claimed that he owns 16½ feet east west along with National High Ways. The document in Ex.A16 at the boundaries portion, it has been very clearly mentioned that on the south of the house belonging to Kandaswamy and Palaniammal and 1½ feet width east west lane, east of 1½ feet north south lane belong to Angammal.

12. On a combined reading of Exs.A1, A15 and A17, this Court finds that the plaintiff had purchased the A schedule property, on purchasing the 'A' schedule property, there was 1½ feet width of vacant space to the east and south of the house portion of the 'A' schedule property and the appellant has purchased the suit 'A' schedule property with a vacant space stated above. The property mentioned in schedule 'B' of the suit which belong to the respondent herein was purchased by her through Exs.A15 and A16, wherein the alienated property mentioned schedule of the property does not include the 1½ feet vacant space, which belongs to the appellants herein. Hence, the respondent herein did not have title or possession over the suit property namely the vacant space of 1½ feet width on the east and south of the house portion of the appellants herein.

13. At this juncture, in view of the schedule of the property in Exs.A15 and A17 under which the defendant purchased the property which does not include the B schedule property. It remains to be stated that the respondent herein has not produced any documentary evidence to prove that the vacant space of 1½ feet lying on the east and south of the house property mentioned in schedule 'A' of the suit properties belong to her.

14. On the other hand, the appellants herein proved beyond doubt that the space of 1½ feet on the east and south side of the house property absolutely belonged to the plaintiff and the respondent herein has encroached upon that portion by raising concrete columns. Thus, this Court finds that in respect of B schedule property, the respondent/defendant does not own any right or title to the B schedule property.

15. Furthermore, with regard to the schedule of the property contained in Exs.A15 and A17 in favour of the defendant, she had categorically admitted in the cross



examination that she did not purchase any property other than the schedule of the property in Exs.A15 and A16 which does not include B schedule property assumes significance and hence, in view of admission of D.W.1, as exhibited above, this Court finds that the averment made by P.W.1 to the effect that she has not left 1.5 metre on all 4 sides coupled with the admission made by D.W.1 in the witness box as to the schedule of the property in Exs.A15 and A16, this Court has no hesitation to hold that B schedule property does not belongs to the defendant, since she has not purchased the said property.

16. Moreover, under Ex.A1, the plaintiff has categorically demonstrated his right and title to the suit property along with schedule A and B and thus, this Court finds that the plaintiff is entitled for relief of declaration and for permanent injunction. Accordingly, all the substantial questions of law are answered in affirmation in favour of the appellants against the respondent.

17. On the point of relief of mandatory injunction and for recovery of possession, it is said from the oral evidence of P.W.2 coupled with documentary evidence of the Advocate Commissioner's Report Exs.C1 & C2, which clearly demonstrates that the defendant had overstretched out of her property and encroached upon the plaintiff's property which is more fully described as B schedule property.

18. Furthermore, the pillars have been put up by the defendant in the B schedule property in which, she has no right and title and accordingly, appellants are entitled for mandatory injunction as prayed for.

19. On the point of damages claim, after perusing the oral evidence of P.W.2/Civil Engineer and documentary evidence viz., his report and sketch Exs.A17 and A18 respectively, which are clearly supported to the case of the plaintiff and hence, the relief of recovery of possession, as approved by the trial Court, is hereby restored and the substantial questions of law are answered in favour of the appellants and against the defendant.

20. In the result,

[i] The Second Appeal is allowed and the judgment of the lower appellate Court is set aside and the judgment and decree of the trial Court is restored.

[ii] 30 days time is granted to the respondent/defendant to remove the unauthorised construction put up as per schedule B.



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[iii] There shall be no order as to costs.

Sd/-

Deputy Registrar (SPL.CELL CJ CONF)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Sub-ordinate Court,
Sankagiri.
2. The District Munsif Court,
Tiruchengode.

Copy to:

The Section Officer,
VR Section,
High Court,
Madras.

+1CC to Mr.V.P.Sengottuvel, Advocate, Sr.No.31353

+1CC to Mr.G.Arul Murugan, Advocate, Sr.No.31238

Pre-delivery Order in
S.A.No.2129 of 2001

SSN (CO)

K.RK. (21.10.2021)