



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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|---------------|------------|
| RESERVED ON   | 31.08.2021 |
| PRONOUNCED ON | 09.09.2021 |

CORAM

THE HON'BLE MS.JUSTICE R.N.MANJULA

S.A.NO.1302 OF 2008

AND

M.P.NO.1 OF 2008

Thirunavukkarasu

... Appellant/Plaintiff  
in Trial Court

.Vs.

Karuppathal

... Respondent/Defendant  
in Trial Court

PRAYER:-

This Second Appeal is filed under Section 100 of Code of Civil Procedure against the judgement and decree dated 13.03.2008 made in A.S.No.4 of 2008 on the file of the Sub-ordinate Judge, Pollachi, modifying the judgement and decree dated 24.08.2007 made in O.S.No.395 of 2001 on the file of the District Munsif Court, Pollachi.

For Petitioner : Mr.G.Vivekanand

For Respondent : Mr.M.Shankar

JUDGEMENT

(Heard through video conferencing)

This Second Appeal is directed against the Judgement and Decree dated 13.03.2008 passed in A.S.No.4 of 2008 by the Sub-ordinate Judge, Pollachi, modifying the Judgement and Decree dated 24.08.2007 passed in O.S.No.395 of 2001 by the District Munsif Court, Pollachi.

2. The Plaintiff is the Appellant herein.



3. The averments made by the parties in brief:-

The suit property is situated at V.Kaliyapuram Village, Pollachi Taluk; it is the absolute property of the plaintiff and he is in peaceful possession and enjoyment of the suit property; the defendant, who has his property on the eastern side had tried to encroach the suit property and remove the survey stones; hence, the plaintiff has filed the suit for permanent injunction.

3.1 The defendant has filed his written statement by stating that he has purchased his portion in S.F.No.518/C by virtue of a sale deed; since the plaintiff approached the defendant to sell away his property and for which, the defendant refused; enraged over this, the plaintiff has made false allegations and filed this suit; it is further alleged that the lands of the plaintiff and the defendant is irrigated through a common water channel running in the lands of the plaintiff and the defendant; taking advantage of the same, the plaintiff had started to make boundary disputes and hence, the suit has to be dismissed.

4. Basing on the pleadings, the trial Court has framed the following issues:-

1. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
2. To what other relief?

5. During the course of the trial, on the side of the plaintiff, four witnesses were examined as P.W.1 to P.W.4 and Exs.A1 to A8 were marked. On the side of the defendant, one witness was examined as D.W.1 and Exs.B1 to B7 were marked. Commissioner's report and plan were marked as Exs.C1 to C5.

6. At the conclusion of the trial, the trial Court decreed the suit in favour of the plaintiff. Hence, the defendant preferred the First Appeal before the Subordinate Court, Pollachi. The First Appeal was partly allowed and the decree was modified to the extent of 1 acre 31 cents in S.F.No.518/C and as shown in Ex.C5 Surveyor's sketch. Aggrieved over that, the plaintiff has filed this Second Appeal and the Second Appeal has been admitted on the following questions of law:-

- “(i) Whether the Lower Appellate Court was right in exceeding the frame of the suit and deciding the right of the parties and their entitlement on the basis of report of an Advocate Commissioner without adjudicating the question of possession when the suit is for bare injunction?



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(ii) Whether the Lower Court can grant injunction based on the Advocate Commissioner's report is silent as to possession and enjoyment of the property and also possession cannot be established by the Advocate Commissioner's report?"

7. The appellant and respondent are close relatives. The appellant is the sister's son of the defendant and they have their properties adjacent to each other. Both the appellant and the respondent have purchased their lands from the descendants of common ancestors, who owned the entire extent of the land in S.F.No.518/C. By virtue of a partition deed effected on 21.10.1978 between the three brothers viz., Subburaya Mudaliyar, Lakshmana Mudaliyar and Palanivel Mudaliyar (who were the original owners of the suit property), the suit property was allotted to the share of Palanivel Mudaliyar and from whom the appellant had purchased 1 acre 31 cents in S.F.No.518/C through Ex.A1 - sale deed. The partition deed has been marked as Ex.A6 on the side of the appellant/plaintiff and Ex.B1 on the side of the respondent/defendant.

8. In the above partition, an extent of 1 acre 38 cents in S.F.No.518/C fell to the share of Subburayan Mudaliyar under 'A' Schedule. The respondent has purchased the said share of 1 acre 38 cents in S.F.No.518/C from Hamsa Subburayan, who is the wife and legal heir of Subburayan Mudaliyar through Ex.B3 - sale deed dated 29.09.1989.

9. These facts were not denied by both the parties. Though it appears from the plaint that the appellant has got his cause of action because the respondent had disturbed his possession, in reality, the appellant has got a claim on the bit of land which lies on the immediate west of a common cart track. Though the said cart-track is common, it runs amidst the lands of the respondent. Even at the time of partition between the brothers of the predecessors of the appellant and respondent, an understanding was arrived between them in order to allot an excess share to Subburayan. This is because, the common cart track is running in his share. As a result of the said understanding, Subburayan Mudaliyar was allotted with an extent of 1 acre 38 cents in S.F.No.518/C and the other two brothers have been allotted with 1 acre 31 cents each in S.F.No.518/C. Since the parties derive their respective title from the parent document namely the partition deed - Ex.A6, the allotment of shares in the manner aforesaid also cannot be disputed.

10. When the Commissioner was first appointed in this case to inspect the physical features of the suit property, he could not locate any boundary stones. In the sale deed of the



appellant - Ex.A1, his eastern boundary is shown as the lands belonging to Hamsa Subburayan. This is because the appellant has purchased the property prior to the defendant's purchase from Hamsa Subburayan.

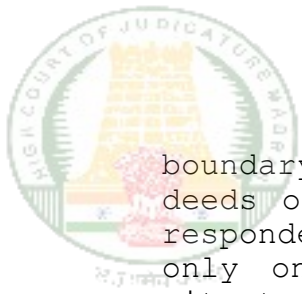
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11. According to the submission made by the respondent, the cart track runs in his lands by dividing it into two bits and a small bit lies on the western side of the cart-track. This is evidenced from the boundary shown in Ex.A1 itself. It is also pertinent to note that in the sale deed of the respondent-Ex.B3, the western boundary is shown as the property belonging to Marappa Nadar. Despite Marappa Nadar has no right or interest in the properties lying in Survey No.518/C, his name is shown as the owner of the property lying on the eastern side. This is because the said Marappa Nadar is none other than the father of the appellant.

12. Since the appellant is the close relative and he owns property on the western side, he attested the sale deed of the respondent - Ex.B3. So, he cannot deny his knowledge and acceptance of its contents. Hence, what has been conveyed to the appellant and the respondent vide Ex.A1 and Ex.B3 sale deeds respectively, can be accepted as correct and true. Since the parties accept their entitlement to the lands purchased by them and their enjoyment over the same, there cannot be any cause of action for this suit.

13. But it seems that the actual dispute is with regard to the bit of the land which is lying on the western side of the cart-track and adjacent to the appellant's land. It is the claim of the appellant that his eastern boundary is the cart-track and the respondent does not have any lands on the western side of the cart-track. But his own sale deed and the sale deed of the respondent which was attested by the appellant would falsify his above claim.

14. When the Commissioner was appointed exparte for the first time in this case to study the physical features, a report has been submitted by the Commissioner. He has stated in his report that the cart-track is lying just adjacent to the property of the appellant on the eastern side. After the appearance of the respondent, once again another Commissioner was appointed and this time, he visited the suit property with the help of field map given by Surveyor and in the presence of the Government Surveyor. After inspecting the properties with the help of the above said relevant records and in the presence of the surveyor, the Commissioner has prepared a sketch - Ex.C5 and filed his report along with that. That would confirm that the respondent has got his portion of the lands on the western side of the cart-track also and so it serves as the eastern



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boundary for the appellant. The boundaries mentioned in the sale deeds of the parties would make it clear that the lands of the respondent lies on the western side of the cart-track also and only on the further west, the property of the appellant is situated. These features confirm the boundary recitals of the respective sale deeds of the parties.

15. While that being so, the appellant/plaintiff has filed a suit for bare injunction without any details as to what exactly he wanted to achieve by seeking a relief of bare injunction. Admittedly, he has no grievance as to the usage of the cart-track. If the appellant's claim is over the bit of lands lying on the immediate western side of the cart-track, that should have been defined by the appellant with the extent and boundaries and he should have sought a prayer for declaration. Despite the appellant has not claimed any relief as to title, the Lower Appellate Court has ventured into the said fact incidentally, in order to find out the real facts.

16. So, it is wrong on the part of the appellant to state that the Lower Appellate Court had exceeded the frame of the suit and decided the right of the parties. The Lower Appellate Court did not grant any relief of declaration but it has just made it clear that on the disguise of getting the suit decreed as prayed, the appellant cannot create a new right over the lands adjacent to the suit property. Though the appellant has moulded his suit for the relief of permanent injunction, the actual dispute and the interest of the appellant was found out through scanning the evidence and documents. In fact, the appellant himself has described extent in the particulars of property in the plaint as 1 acre 31 cents in S.F.No.518/C. Since the First Appellate Court has granted the relief by specifying the above extent, he ought not to have got any grievance. Only because the appellant wanted to fulfil some other purpose by getting a decree for injunction, he has filed this appeal. The learned First Appellate Judge has passed the decree by specifying the extent by smelling his above intention.

17. As there is no dispute as to the possession and enjoyment of the appellant with regard to his 1 acre 31 cents in S.F.No.518/C, which he has purchased vide Ex.A1, the Lower Appellate Court has granted the relief of injunction to that extent. The Commissioner's report and plan just aided the Court to demonstrate the physical features adjoining the cart-track which runs in the lands of the respondent/defendant. The entitlement of the respective parties has already been set in their respective sale deeds and about which there is no dispute. Hence, it cannot be now submitted that the Lower Court has exceeded the frame of the suit and decided the title and possession with the help of the Commissioner's report. Thus,



the substantial questions of law 1 & 2 are answered against the appellant.

In the result, this Second Appeal is dismissed and the Judgement and Decree passed by the Subordinate Judge, Pollachi dated 13.03.2008 in A.S.No.4 of 2008 is confirmed. No costs. Connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sni

To

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

+1cc to Mr.M.Shankar, Advocate, S.R.No.46263

S.A.NO.1302 OF 2008

PMK (CO)  
PBS/24/11/2021