



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2021

PRONOUNCED ON : 10.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.3 of 2008

1.Arumuga Gounder

2.Thangavel

...Appellants/Defendants

Vs.

Shanmugam

...Respondent/Plaintiff

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 30.11.2005 passed in A.S.No.10 of 2003 on the file of the Principal District Court, Namakkal, confirming the Judgment and Decree dated 22.03.2001 passed in O.S.No.486 of 1986 on the file of the District Munsif Court, Tiruchengode.

For Appellants : Mr.P.Jagadeesan

For Respondents : No appearance,
set exparte vide order
dated 01.03.2021.

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 30.11.2005 passed in A.S.No.10 of 2003 on the file of the Principal District Court, Namakkal, confirming the Judgment and Decree dated 22.03.2001 passed in O.S.No.486 of 1986 on the file of the District Munsif Court, Tiruchengode.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.The defendants in O.S.No.486 of 1986 are the appellants in the second appeal.

4.Suit for permanent injunction.

5.Briefly stated, the case of the plaintiff is that he is the absolute owner of the suit property by virtue of the sale



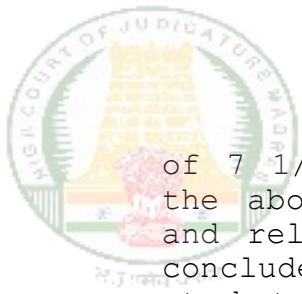
deed dated 30.05.1977 executed by Vaiyapuri Gounder and his sons viz., the defendants 1 & 2 and pursuant to the abovesaid sale, the plaintiff has constructed a tiled residential building bearing door No.3/95 and put up the three asbestos sheet shops and enjoying the same and the defendants, without any manner of right, title or interest over the suit property, endeavoured to disturb his possession and hence, according to the plaintiff, the suit has come to be laid by him for the relief of permanent injunction.

6.The defendants resisted the plaintiff's suit contending that it is true that they had sold 15 cents of land in survey No.62/6 to the plaintiff on 30.05.1977 and further, according to them, in survey No.62/6, the defendants are entitled to 22 1/2 cents ancestrally and after the sale of 15 cents, the remaining 7 1/2 cents is with the defendants and enjoyed by them and survey No.62/6 had been resurveyed and taking advantage of the absence of the pucca boundaries in between the plaintiff's land and the defendants' land, the plaintiff attempted to trespass into the defendants' land and hence, the defendants preferred the suit against the plaintiff in O.S.No.389 of 1986 on the file of the District Munsif Court, Tiruchengode. Suppressing the same, the present suit has been laid by the plaintiff and that the plaintiff put up a tiled house and disputed the case of the plaintiff that he has put up the three asbestos sheet shops and contended that the suit property has not been properly described and hence, the suit is liable to be dismissed.

7.In support of the plaintiff's case, PW1 was examined and Exs.A1 to A6 were marked. On the side of the defendants' DWs1 & 2 were examined and Exs.B1 to B5 were marked. Exs.C1 to C3 were also marked.

8.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions put forth, the Courts below were pleased to decree the suit in favour of the plaintiff as prayed for. Impugning the same, the second appeal has been preferred by the defendants.

9.Considering the pleas and the materials placed on record put forth by the respective parties, it is seen that the issues involved between the parties are lying in a narrow compass. It is the case of the plaintiff that he had purchased the suit property by virtue of the sale deed dated 30.05.1977 marked as Ex.A1 from Vaiyapurai Gounder and his sons viz., the defendants. The defendants have not disputed the execution of the Ex.A1 sale deed in favour of the plaintiff. Now, according to the plaintiff, the suit property is lying in survey No.62/6 measuring 15 cents within the specific boundaries. Though the defendants would claim that they are still retaining the extent



of 7 1/2 cents in the suit survey number however, pointing to the abovesaid claim of the defendants, there is no acceptable and reliable materials forthcoming on their part. As rightly concluded by the Courts below, the problem seems to have erupted at between the parties during the resurvey/Updating Registry Scheme. From the Commissioner's report and plan marked in the proceedings, it is evident that though the plaintiff is found to have acquired the extent of 15 cents in the survey No.62/6, on ground, it is found that the portion in the occupation of the plaintiff is lying in survey Nos.62/6 C, 62/6B, 62/6A and 90/1 and on that basis, it is found that, as held by the Courts below, the defendants are claiming that the plaintiff is endeavouring to encroach into their remaining portion in the survey No.62/6. A suit is also found to have been laid by the defendants against the plaintiff in O.S.No.389/1986 on the file of the District Munsif Court, Tiruchengode. Considering the plaint copy of the abovesaid suit marked as Ex.A6, it has been mentioned by the defendants that the extent of 7 1/2 cents over which they claim title is lying to the west of 15 cents alienated by them to the plaintiff. However, it is seen that the abovesaid suit had come to be dismissed for non prosecution. As above pointed out, when as at present the plaintiff's suit is lying in four survey numbers as depicted by the Commissioner in his report and plan, when the defendants have failed to establish that the extent of 7 1/2 cents claimed by them is lying in the abovesaid survey numbers and on the other hand, as held by the Courts below, the defendants having admitted that as per the description of their property in O.S.No.389 of 1986, the extent of 7 1/2 cents is lying only in survey 62/6 B, in such view of the matter, the defendants cannot be allowed to disturb the plaintiff's possession and enjoyment of the 15 cents in the abovesaid survey numbers, which had been admittedly alienated to him by the defendants and their father.

10.However, to explain that a larger portion is available in his enjoyment, the plaintiff had also endeavoured to obtain a sale deed from Pachaiammal and others on 30.06.1995 marked as Ex.B5 during the pendency of the proceedings. However, when the plaintiff has miserably failed to establish that the alleged vendors of Ex.B5 had the entitlement to alienate the extent of 1677 sq.ft by way of Ex.B5 and on the other hand, when it is seen that the property lying on the southern side of 15 cents had already been alienated in favour of one Gurusamy, in such view of the matter, the claim of the plaintiff that he had acquired more extent by way of Ex.B5 has been rightly disbelieved and rejected by the Courts below. As regards the said findings, no challenge has been made by the plaintiff either before the first appellate Court or in the present second appeal. In fact, the plaintiff has remained exparte in the second appeal proceedings.



11.Considering the materials available on record, when it is seen that the defendants have miserably failed to establish that they are still retaining 7 1/2 cents of land in the suit survey number, after alienating 15 cents of land to the plaintiff under Ex.A1 sale deed and when the plaintiff has established his claim of possession and enjoyment of the 15 cents of land alienated to him under Ex.A1 and as on ground, by way of resurvey proceedings, the plaintiff is found to be in the occupation of survey Nos.62/6A, 66/6B, 66/6C and 90/1, which could be gathered from Exs.C1 to C3 and the defendants having failed to establish that they have title to an extent of 7 1/2 cents in the abovesaid survey numbers and when the documents projected by them marked as Exs.B1 to B4 do not point to the same in any manner, in such view of the matter, the Courts below are found to be justified in holding that the plaintiff is in the possession and enjoyment of the 15 cents of land as described in the plaint and the defendants have not established their valid title and possession to any of the portion in the occupation of the plaintiff and hence the plaintiff is entitled to seek the relief of permanent injunction against the defendants from interfering with his possession and enjoyment of the suit property.

12.In view of the abovesaid factors, the defendants having failed to establish that they still continue to retain the extent of 7 1/2 cents in the suit survey number by placing the acceptable and reliable documents and when they have admitted the alienation of 15 cents to the plaintiff under Ex.A1 and when it is noted that it is only the plaintiff, who is in the possession and enjoyment of the suit property based on Ex.A1 sale deed and when the lie of the suit property in four survey numbers as depicted in the Commissioner's report and plain is not in dispute, in such view of the matter, the endeavour of the defendants to seek the appointment of advocate commissioner in the appeal proceedings for the purpose of identifying the suit property, as such, cannot be countenanced. When the Commissioner had already inspected the suit property and filed his report and plan and accordingly, identified the location of the suit property as available in four survey numbers, in such view of the matter, the reasonings and conclusions of the Courts below for upholding the plaintiff's case and granting the relief of permanent injunction being founded on the proper appreciation of the oral and documentary evidence and centring on factual matrix and when they are not show to be in any manner perverse, illogical and irrational, I do not find any valid reason to interfere with the same. The substantial questions of law formulated in the second appeal are accordingly, answered in favour of the plaintiff and against the defendants.



In conclusion, the the Judgement and Decree dated 30.11.2005 passed in A.S.No.10 of 2003 on the file of the Principal District Court, Namakkal, confirming the Judgment and Decree dated 22.03.2001 passed in O.S.No.486 of 1986 on the file of the District Munsif Court, Tiruchengode, are confirmed. Resultantly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS I)
//True Copy//

Sub Assistant Registrar

sms

To:

1. The Principal District Court,
Namakkal.
2. The District Munsif Court,
Tiruchengode.
3. The Section Officer,
V.R.Section, High Court, Madras.

S.A.No.3 of 2008

CP (CO)
K.RK. (14.09.2021)