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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.168 of 2007

&

M.P.No.1 of 2007

Bhuvaneswari

...Appellant / 1st Respondent 1st Defendant

Vs

1.N.Anbalagan

2.N.Subash

3.N.Stalin

4.N.Kennedy

5.Vijaya

6.Usha

7.Sumathi

8.Indira

9.Anjalakshi

...Respondents / Appellants / Plaintiffs

10.Guha Namasivayam

...Respondent / 2nd Respondent / 2nd Defendant

(R10 is given as not necessary in this appeal)

PRAYER: Second Appeal filed under Section 100 C.P.C. against the Judgement and Decree dated 27.04.2006 made in A.S.No.79/2003 passed by the learned District Judge of Thiruvannamalai District at Thiruvannamalai reversing the Judgment and Decree dated 05.09.2003 made in O.S.No.292/2000 passed by Additional District Munsif at Thiruvannamalai.

For Appellant : Mr.M.Balasubramanian

For respondents

1 to 9

: No appearance

R10 - Given up



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JUDGMENT

This Second Appeal has been filed challenging the reversal findings of the lower Appellate Court in its judgment and decree dated 27.04.2006 passed in A.S.No.79 of 2003.

2. The Appellant is the first defendant in the suit. The suit O.S.No.292 of 2002 was filed by the respondents 1 to 9 along with one Gnanambal against the Appellant and the 10th respondent seeking for a declaration that they are the absolute owners of the passage measuring two feet between East-West at Pey Gopuram, 4th Street, Ward No.3, Block - 2 Town Survey No.38/1, hereinafter referred to as suit schedule property. They have also sought for a permanent injunction restraining the defendants from interfering with their exclusive possession of the suit schedule property.

3. For the sake of convenience, henceforth the parties are referred to as per their litigative status in the suit.

4. According to the plaintiffs, their vendors had sold the suit schedule property to them under the sale deeds dated 27.01.1981, 11.06.1981 and 18.05.1983 which were marked as Exs.A5-A7 before the Trial Court.

5. However, it is the case of the defendants, as seen from the written statement that the suit schedule property which is two feet passage belongs to her absolutely having purchased the same under the sale deed dated 18.05.1983 which has been marked as Ex.B3. It is also their case that in the previous suit filed by the plaintiffs in O.S.No.573 of 1985, the plaintiffs had declared that they are owners of only 30 feet in the East-West Direction and not 32 feet as alleged in the plaint in O.S.No.292 of 2000 which is the subject matter of this second appeal.

6. The Trial Court framed the following issues:

(a) Whether the Plaintiffs are the owners and are in possession of the suit schedule property?

(b) Whether the defendants were put in possession of the suit schedule property under the sale deed dated 19.07.1985?

(c) Whether the plaintiffs are entitled for the relief of declaration and permanent injunction?

(d) What relief are the plaintiffs entitled?

7. Before the Trial Court, 17 documents were filed on the side of the plaintiffs which were marked as Ex.A1 to Ex.A17 and on the side of the defendants, 13 documents were filed which



were marked as Ex.B1 to Ex.B13. On the side of the plaintiffs, one witness was examined namely, Stalin, the fourth plaintiff as PW1 and on the side of the defendants, one witness was examined namely Nataraj as DW1.

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8. During the pendency of the suit, an Advocate Commissioner was also appointed to note down the boundaries of the property and he had also filed a report before the Trial Court along with a sketch. The Advocate Commissioner's report was marked as Ex.C1 and sketch was marked as Ex.C2 before the Trial Court.

9. The Trial Court in its Judgment and Decree dated 05.09.2003 in O.S.No.292 of 2000, dismissed the suit, after giving due consideration to Ex.A2, Ex.A4, Ex.A5, Ex.A7 and Ex.A8 and the certified copy of the plaint in O.S.No.573 of 1985 as well as Ex.C1 and Ex.C2. Ex.A2, Ex.A4, Ex.A5, Ex.A7 & Ex.A8 are the sale deeds under which the plaintiffs purchased the property from their vendors. O.S.No.573 of 1995 was the previous suit filed by the plaintiffs wherein they have disclosed that they are the owners of only 30 feet in the East - West direction. Ex.C1 and Ex.C2 are the Advocate Commissioner's report and the annexed sketch which were filed by the Advocate Commissioner appointed by the Trial Court.

10. The Trial Court has given a finding that the plaintiffs under their sale deeds which have been marked as exhibits are only entitled for 30 feet in the East - West direction and not 32 feet as alleged by them and hence, two feet disputed passage does not belong to the plaintiffs. On this ground, the suit was dismissed. Aggrieved by the dismissal of O.S.No.292 of 2000 dated 05.03.2002, the plaintiffs preferred a first appeal before the District Court, Thiruvannamalai in A.S.No.79 of 2003.

11. The lower Appellate Court reversed the findings of the Trial Court by holding that the plaintiffs are entitled to 32 feet in the East - West direction, based on the boundaries mentioned in the sale deeds standing in the name of the plaintiffs. The lower Appellate Court held that the boundaries will prevail over the extent and hence, granted the relief in favour of the plaintiffs as sought for in the plaint and allowed the appeal A.S.No.79 of 2003 by its judgment and decree dated 27.04.2006. Aggrieved by the reversal findings of the lower appellate court in A.S.No.79 of 2003, this Second Appeal has been filed.

12. This Court while admitting the second appeal formulated the following substantial questions of law:

(a) Whether the First Appellate Court is correct in law in reversing the well-founded observations and conclusions of the trial court in O.S.No.292/2000?



(b) Whether the First Appellate Court is correct in law in ignoring the report and sketch submitted by the Advocate Commissioner in this case, which falsify the case of the plaintiffs, without assigning any reason, and granting the reliefs of declaration and permanent injunction?

(c) Whether the findings and conclusions of the First Appellate Court suffer from total misappreciation of the oral and documentary evidence that are overwhelmingly available to the naked eyes?

13. The Trial Court after framing necessary issues, proceeded with the trial of the suit.

14. In Ex.A4 sale deed dated 14.07.1973, the measurement of the property was given as 30 feet East - West and 57 feet on the North - South. In the Advocate Commissioner's report and sketch annexed with the report which were marked as Ex.C1 and Ex.C2, it is stated that the plaintiffs constructed the house including the compound wall on the 30 feet 8 inches on the East - West only. In the certified copy of the plaint filed by the plaintiffs in the previous suit O.S.No.573 of 1985 which has also been marked as Ex.A3 before the Trial Court, the plaintiffs have disclosed that their property measures only 30 feet in the East - West direction and 57 feet in the North - South direction. In the same plaint, there is also not even a whisper that Lalitha, their vendor was in possession and enjoyment of 32 feet on the East - West direction which is now claimed by the very same plaintiffs in the present suit O.S.No.292 of 2000 which is the subject matter of this Appeal. The Trial Court has rightly appreciated the evidence available on record and only thereafter has dismissed the suit filed by the plaintiffs.

15. Thereafter this Court perused and examined the Judgment and decree of the lower Appellate Court dated 27.04.2006 passed in A.S.No.79 of 2003. The lower appellate court has given a finding, contrary to the recitals in the registered sale deeds of the year 1973, 1981 and 1985 which stood in the name of the plaintiffs which clearly discloses that the plaintiffs are only entitled to 30 feet in the East-West direction and not 32 feet as claimed by them. The Advocate Commissioner's report and sketch which were marked as Ex.C1 & Ex.C2 respectively before the Trial Court also confirms that the plaintiffs are only entitled for 30 feet in the east west direction. Instead of giving due consideration to the sale deeds which stood in the name of the plaintiffs as well as Advocate Commissioner's report namely Ex.C1 & Ex.C2, the lower Appellate Court has completely ignored the same. The Lower Appellate Court instead has relied upon the boundaries mentioned in the schedule without any supporting documents for the purpose of granting reliefs to the plaintiffs. The vendors of the plaintiffs namely Lalithammal who



was alleged to be in possession of the disputed two feet, according to the plaintiffs, was also not examined as a witness before the Trial Court. Even without any documentary evidence to show that the plaintiffs are entitled for the disputed two feet passage, the Lower Appellate Court based on the boundaries mentioned in the schedule to the sale deeds erroneously reversed the findings of the Trial Court.

16. This Court is of the considered view that the Lower Appellate Court completely based on surmises and conjunctures contrary to the measurements given in the registered sale deeds as well as Advocate Commissioner's report has erred in holding that the boundaries will prevail over the survey number. On the face of the sale deeds which were marked as exhibits by the plaintiffs themselves before the Trial Court and as seen from the Advocate Commissioner's report marked as Ex.C1 and the attached sketch marked as Ex.C2, it is clear that the plaintiffs are not the owners of the disputed two feet passage in the East - West direction. By total non application of mind to the sale deeds of the year 1981, 1983, and 1985 and to the Advocate Commissioner's report Ex.C1 and Sketch Ex.C2, the lower appellate court has reversed the well considered findings of the Trial Court by allowing the appeal filed by the plaintiffs.

17. The lower Appellate Court by total misappreciation of the oral and documentary evidence that are overwhelmingly available to the naked eyes, as seen from the sale deeds of the year 1973, 1981 and 1985 has erroneously passed the Judgment and decree dated 27.04.2006 in A.S.No.79 of 2003 reversing the findings of the Trial Court. In view of the same, this court is of the considered view that the substantial questions of law which were formulated by this Court on 09.02.2007 at the time of admission of this Appeal are answered in favour of the first defendant/Appellant and the Second Appeal is allowed with costs and the judgment and decree of the lower appellate court dated 27.04.2006 in A.S.No.79 of 2003 are set aside and the findings of the Trial Court in the Judgment and Decree dated 05.09.2003 in O.S.No.292 of 2000 are confirmed. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The District Judge of Thiruvannamalai District at Thiruvannamalai.

2. The Additional District Munsif at Thiruvannamalai.

Copy to

The Section Officer,
VR Section,
High Court, Madras - 104.

+1cc to Mr.M.Balasubramanian, Advocate, S.R.No.30098

S.A. No.168 of 2007

PVS[co]
NSK/27/05/2022