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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	14.09.2021
Pronounced on	06/10/21

CORAM

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

S.A.No.1198 of 2009
and M.P.No.1 of 2009

Kaliyaperumal

...Appellant/1st Respondent/
1st Defendant

Vs.

1.Sivaperumal
2.Rathinavalli
3.Sundaram
4.Rajendran
5.Lakshmi

... Respondent/Appellant/Plaintiff

...Respondents/ Respondents 3 to 6/
Defendants 3 to 6

Prayer: This Second Appeal is filed under Section 100 of Code of Civil Procedure to set aside the judgement and decree in A.S.No.145 of 2007 dated 31.08.2009 passed by the Principal Sub-Court, Virudhachalam, in reversing the judgement and decree in O.S.No414 of 1998 dated 27.10.2006 passed by the Principal District Munsif, Virudhachalam.

For Appellant : Mr.V.Raghavachari
For Respondents: No appearance

JUDGEMENT

(Heard through video conferencing)

This Second Appeal has been preferred against the judgement and decree dated 31.08.2009 passed in A.S.No.145 of 2007 by the learned Principal Sub Judge, Virudhachalam.

2. The appellant was the first defendant, 1st respondent was the plaintiff and the respondents 2 to 5 were the defendants 3 to 6 in the suit.

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

The plaintiff has filed the suit for bare injunction. He has claimed that he has purchased the suit property from one Duraisamy Padayachi by virtue of a sale deed dated 04.07.1977. From the date of purchase, he has been in enjoyment of the suit property for storing hay sticks and to dispose the garbage as it



lies adjacent to his house on a vacant site and he was in enjoyment of the same without paying any kist. The defendants attempted to purchase the suit properties but failed in their attempts. Enraged over that, they tried to trespass into the property on 31.07.1988 and they started to disturb the peaceful possession and enjoyment of the plaintiff. Hence, the plaintiff has filed the suit for declaration and permanent injunction.

3.1 The first defendant has filed his written statement by alleging that the original owner Duraisamy Padayachi did not execute any sale deed in respect of his property. He alone was in enjoyment of his suit property till his death and after his death, his wife Kullammal has inherited the same and she executed a Will in favour of the first defendant on 15.10.1980 by virtue of a registered Will. After the death of Kullammal, the Will came into effect and subsequently, the revenue records got mutated in the name of the first and second defendants. They inherited the suit property and took possession of the property and are in enjoyment of the same.

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

1. மேல்முறையீட்டாளர் அவர் கோரும் பரிகாரம் பெற உரியவரா?
2. இம்மேல்முறையீடு அனுமதிக்கதக்கதா?

5. During the course of the trial, on the side of the plaintiff, three witnesses were examined as P.W.1 to P.W.3 and Exs.A1 to A4 were marked. On the side of the defendants, four witnesses were examined as D.W.1 to D.W.4 and Exs.B1 to B8 were marked. One document was marked through a witness as Ex.X1. The Commissioner's report and plan was marked as Exs.C1 & C2.

6. After the conclusion of the trial, the learned trial Judge has decreed the suit only to the extent of the portion shown between X & Y of the Commissioner's plan on the east-west and 55 ft on the north-south. Aggrieved over that, the plaintiff has preferred the First Appeal and the First Appeal was allowed. So the appellant/1st defendant has filed this Second Appeal challenging the judgement and decree of the learned First Appellate Judge and this Second Appeal has been admitted on the following substantial questions of law 1 and 2:-

1. Whether the First Appellate Court is right in decreeing the suit entirely when there is no sufficient proof for same by the plaintiff?
2. Whether the suit is bad for non-joinder of necessary party?

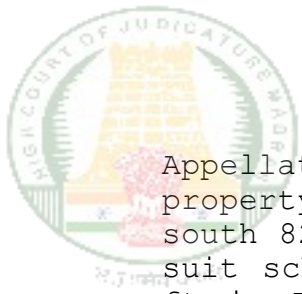


7. Heard Mr.V.Raghavachari, learned counsel for the appellant.

8. The learned counsel for the appellant submitted that the sole legal heir of the original owner Duraisamy Padayachi has executed a Will dated 15.10.1980 in favour of the appellant and his brother; after his lifetime, the Will came into effect and the appellant and his brother became entitled to the property; the suit property being grama natham, thoraya patta was granted in the name of Duraisamy Padayachi; the plaintiff without impleading the revenue authorities has filed this suit and hence, it is bad for non-joinder of necessary parties; the survey number in the plaintiff's sale deed dated 04.07.1977 is different from that of the suit schedule property and it has no relevance; on the basis of thoraya patta, the first respondent/plaintiff cannot claim title and the above position of law has been well settled in Rangammal and others Vs. Nallappa Reddiar reported in (2018) 8 MLJ 482; the plaintiff himself has stated that the boundaries shown in his documents will not relate to the suit property and hence, the First Appeal filed by the plaintiff ought to have been dismissed.

9. The suit filed by the first respondent/plaintiff is on the basis of his sale deed dated 04.07.1977. Even according to the appellant, the suit property was originally owned by one Duraisamy Padayachi. The appellant claims title by virtue of a registered Will dated 15.10.1980 executed by one Kullammal. It is claimed by the appellant that the said Kullammal is the wife of the original owner Duraisamy Padayachi. Despite Duraisamy Padayachi was said to have got a son by name Thillai, he died subsequent to his marriage and hence, Kullammal alone was entitled to the property. This has been falsified by Ex.A3 - birth certificate produced by the first respondent/plaintiff. In Ex.A3, the parents for the child are shown as Duraisamy and Neelawati. Both the Courts below did not accept the contention of the appellant that Kullammal was the wife of Duraisamy Padayachi. Admittedly, the sale deed was executed prior to the Will dated 15.10.1980. After executing the sale deed in favour of the first respondent/plaintiff, Duraisamy Padayachi himself had lost his title and hence, any of his successor could not have inherited any right in the suit property.

10. The first respondent/plaintiff himself has conceded that there is one mistake in describing the eastern boundary. Instead of showing it as the house belonging to Anjaliammal, it is mentioned as the house of the executant. Admittedly, the rest of the three boundaries mentioned in Ex.A1 - sale deed tally with the description. A commissioner has been appointed in this case and he has filed a report after visiting the suit property. However, it is observed by the learned First



Appellate Judge that the Commissioner has shown the suit property as the one which measures east-west 18 ft and north-south 82 ft. But in reality, the suit property as seen from the suit schedule, would measure east-west 35 ft and north-south 55 ft in R.S.No.209/4 and new S.No.209/5. Though the New Survey numbers in which the patta was granted to the first respondent/plaintiff relates to S.Nos.209/5 and 209/6, the plaintiff was able to produce documents showing new S.No.209/5 only. However, at the time of filing the First Appeal, he produced the patta relating to S.No.209/6 also and filed a petition to receive that as an additional document and that has been received by the Court as Ex.A5. There is no confusion in the extent of the property described in Ex.A1 - sale deed. In the said sale deed also, the measurement of the suit property is shown as east-west 35 ft and north-south 55 ft (4 ½ cents). The property which was claimed by the appellant through the Will is said to be situated in S.No.209/1 and its measurement is shown as east-west 18 ft and north-south 42 ft. The property shown in Ex.B1 - Will has no relevance to the suit property either in terms of the survey number or in terms of its measurements.

11. The learned trial Judge had extensively relied on the plan of the Commissioner and arrived at a conclusion that the first respondent/plaintiff is entitled only to the portion lies between X & Y of the Commissioner's plan on east-west and 55 ft on the north-south. The learned First Appellate Judge has correctly applied the legal principles and held that only when there is any confusion as to the measurement, the boundaries will prevail. When there is no confusion about the measurement stated in the sale deed, that will stand good. If there is any wrong description of the boundary, that has to be corrected by way of a rectification deed. As the plaintiff's vendor did not have any confusion as to the extent of the property that was sold to the plaintiff, the learned trial Judge need not have made fuss on that. Since Duraisamy Padayachi was not alive, it was not possible for the first respondent/plaintiff to get a rectification deed to rectify the description of the eastern boundary. However, he could successfully show that the rest of the three boundaries tallied the suit property and the appellant/1st defendant did not have any iota of right in the same. In fact, the appellant has not established satisfactorily that Kullammal was the wife of the deceased Duraisamy Padayachi. Even if it is taken to be true, she had no right to execute a Will in respect of the property which has been already sold by Duraisamy Padayachi himself during his lifetime.

12. It was not the case of the appellant that the sale deed itself was not executed by Duraisamy Padayachi. Hence, the Courts cannot outrightly reject Ex.A1 just because there is a mistake in describing the eastern boundary. Since the suit



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1.The Principal Sub Judge,
Virudhachalam.

2.The Principal District Munsif,
Virudhachalam.

3.The Section Officer,
V.R.Section,
High Court, Madras.

+1 CC to Mr.V.Raghavachari, Advocate sr 52207.

S.A.No.1198 of 2009

RSV(CO)
SP(19/11/2021)