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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.840 of 2008

W.A. Wahab

... Appellant/Appellant/1st Defendant

Vs

1. K. Rajagopal ... 1st Respondent/1st Respondent/Plaintiff

2. Santhi

3. Raja

4. Balamurugan

5. Santhimathi

6. Minor Shobana
Rep.by guardian, the 2nd Respondent

7. Ramasamy

8. Vellaiyan

9. Kamatchi ... Respondents 2 to 9 / Respondents 2 to 9 /
Defendants 4 to 11

Prayer : Appeal filed under Section 100 of the Civil Procedure Code against the judgement and decree dated 22.12.2005 in A.S.No.55 of 2005 on the file of the Principal Subordinate Court, Salem confirming the judgement and decree dated 25.01.2005 in O.S.No.2127 of 2004 on the file of the Principal District Munsif Court, Salem (O.S.No.1 of 1994, Sub-Court, Salem)



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For appellant : Mr. D. Shivakumaran

For Respondents : Mr. S. Kaithamalai Kumaran for R1
R2 to R5 - Not ready in notice
R6- Minor represented by R2
R9- No appearance
R7 and R8- Given up.

J U D G M E N T

The first defendant is the appellant before this Court challenging the concurrent judgment and decree of the Courts below.

2. The first respondent herein had filed the suit O.S.No. 1 of 1994 on the file of the Subordinate Judge, Salem, which was subsequently transferred to the file of the Principal District Munsif Court, Salem, on account of the enhancement of the pecuniary jurisdiction and renumbered as O.S.No.2127 of 2004, seeking a declaration of his title to the suit property and consequently to restrain the first defendant, and his men by means of a permanent injunction from interfering with the peaceful possession and enjoyment of the suit properties.

3. The suit schedule property consists of two items of properties, the first item of property are lands comprised in Survey No.9/3A measuring 0.02.5 hectares and Survey No.9/1B1 measuring 0.49.5 hectares, which are bounded:

On the west by :remaining properties in S.No.9/1B1, which is described in item 2;

On the east by : the lands comprised in Survey Nos.9/1B2 and 9/3A

On the south by: lands in Survey Nos.10 and 11 and North by lands in Survey No.9.

4. The first item also included 0.09.0 hectares in Survey No.9/1A which is bounded:

On the East and North by :the lands in S.No.9/1B1,
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On the South by	:lands in Survey No.10
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On the West by	:remaining lands in S.No.9/1A.
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5. Item No.2 comprised of lands in Survey No.9/1A measuring 0.64.0 hectares, Survey No.9/2 measuring 0.03.0 hectares and Survey No.9/1B1 measuring 0.13.0 hectares bounded:

On the East by:	the lands described in Item I
On the West and south by :	the lands of N.Sathiya Pillai
On the North by :	lands of Chinnammal together with the attached house constructed in Survey No.9 /1A.

6. The case of the plaintiffs was that he had purchased the 1st item of the suit property under a registered Sale Deed dated 09.07.1992 and from the date of the sale, he has been in possession and enjoyment of the same. Under a Sale Deed dated 30.09.1992, the plaintiff had purchased the suit second item of the property in which also the plaintiff had been put in possession and continued to be in possession.

7. The first defendant appears to have obtained an ex parte decree for specific performance on 21.10.1991 in O.S.No.634 of 1991 on the file of the Subordinate Court, Salem, on the basis of an agreement of sale dated 06.01.1991, which was entered into between the first defendant and the second defendant with reference to property measuring two acres in S.No.9/1A1 in Muluvi Village, Yercaud Taluk.

8. The plaintiff also came to learn that the first defendant had filed execution proceedings to have the sale deed executed in REP.No.212 of 1992 and an ex parte order had also been passed in the said execution proceedings and sale deed was also registered in terms of the decree on 30.09.1993.

9. The plaintiff would submit that the first defendant, without having any right in the suit property, which is a different property, had attempted to disturb the peaceful possession and enjoyment of the plaintiff in the first week of November, 1993.

10. The plaintiff would submit that the property, subject matter of the suit O.S.No.634 of 1999 and the property subject matter of the instant suit, are different properties. Since the first defendant was attempting to trespass into the suit properties, without any semblance of a right in the suit



properties and trying to interfere in the plaintiff's peaceful possession and enjoyment of the suit property, the plaintiff was constrained to file the suit O.S.No.1 of 1994, on the file of the Subordinate Court, Salem, which was subsequently transferred to the file of the Principal District Munsif Court, Salem, on account of pecuniary jurisdiction and renumbered as O.S.No.2127 of 2004.

11. The first defendant had filed a written statement inter alia contending that the plaintiff had no right to the suit properties as the same had been settled on him by virtue of the agreement of sale dated 06.01.1991 entered into between himself and the second defendant and the decree dated 21.10.1991 in O.S.No.634 of 1991.

12. The defendant would submit that he has already got the sale deed executed in his favour pursuant to order in REP.No. 212 of 1992. The property measuring two acres belongs to the defendant and the plaintiff has come forward with an absolute false case and therefore the suit deserves to be dismissed.

13. The Trial Court after considering the evidence let in by the parties to the suit held that the dispute between the parties centered around description of the properties.

14. The first defendant has admitted to the fact that there is no Survey Number as 9/1A1 and the same has been mistakenly incorporated in the Sale Deed executed pursuant to the decree in O.S.No.634 of 1991 and the subsequent execution proceedings. The plaintiff has produced proof to show that he is the owner of the property comprised in S.No.9/1A namely the suit property. The defendant has failed to provide such proof.

15. The learned Principal District Munsif decreed the suit as prayed for and aggrieved by the said Judgment and decree the first defendant had filed A.S.No.55 of 2005 on the file of the Principal Subordinate Court, Salem. The learned Subordinate Judge has also confirmed the Judgement and decree dated 25.01.2005 in O.S.No.2127 of 2004 of the Principal District Munsif and aggrieved by this judgment and decree, the appellant has come forward with this Second Appeal.

16. This Court by order dated 10.07.2008, had framed the following substantial question of law.



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" Whether the judgment and decree of the Courts below is perverse on account of its misconstruction of the documents in Exs. A1 and A2 as well as Ex.A14 to A16 and documents in Ex.B3 produced on the side of the appellant ?"

17. Mr. D. Shivakumaran, learned counsel appearing on behalf of the appellant would reiterate the facts and submit that the Judgment and decree of the courts below are wrong since they have overlooked the fact that the sale deeds in favour of the plaintiff Exs.A1 and A2 are after the agreement of sale dated 06.01.1991 (Ex.B1) executed in favour of the first defendant/appellant by the deceased second defendant. The Courts below have also failed to appreciate the fact that as the claim petition filed by the plaintiff in REA No.129 of 2004 in REP.No.212 of 1992 was dismissed, the same operates as resjudicata and therefore the present suit is barred by the principles of res judicata. The Courts below, according to the learned counsel, have failed to consider the fact that the plaintiff has not proved his case of possession.

18. The learned counsel appearing on behalf of the respondent would submit that the appellant has not made out any case for interfering with the well considered judgement and decree of the Courts below.

19. A perusal of the documents submitted on behalf of the defendants would clearly show that the property in respect of which the defendant claims title is totally different from the properties in respect of which the suit has been instituted.

20. Heard the counsel and perused the records.

21. Both the Courts below have clearly held that the properties which are the subject matter of the suit are covered under Exs.A1 and A2 and are different from the property which is covered under Ex.B1 agreement of sale.

22. The Appellate court has observed as follows:

" As per the Agreement of sale under Ex.B1 the S.No.is shown as 9/1A1 and the plaint and decree in O.S.No.634/1991 under Exs.A8 and A10 are in the same i.e. S.No.9/1A1. But after the decree, the Court



has executed a Sale Deed as per directions of the decree and in pursuance of Draft Sale Deed the S.No. has been mentioned as 9/1A alone"

23. The records would clearly show that after the decree was passed, the first defendant has not taken any steps to correct the survey number and without taking out such an application, the sale deed executed pursuant to execution proceedings would show that survey number as 9/1A. The Courts below have also considered the evidence of the first defendant as D.W.1 wherein he has admitted that there is no land in existence in Survey Number 9/1A1 and the sale agreement entered into was with reference to a wrong survey number. However, it is seen that no steps have been taken by the first defendant to have this error corrected. The execution of the sale deed, is also on the basis of the decree, obtained by the first defendant and this property is clearly not the suit property.

24. This Court sitting in Second Appeal cannot re-appreciate the evidence which has been considered in detail by both the Courts below. Therefore, the substantial question of law is answered against the appellant and the Second Appeal is accordingly dismissed. No costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

mrn

To:

1. The Principal District Munsif,
Salem.
2. The Principal Subordinate Judge,
Salem.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.24375

S.A.No.840 of 2008

GMI(CO)
SB(22/09/2021)