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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.03.2021

PRONOUNCED ON:15.04.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No. 366 of 2009

and

M.P.No.1 of 2009

Amirdham ammal,
Kandachipuram Village,
Tirukoilur Taluk.

... Appellant/Appellant/Defendant

Vs.

Thiagarajan,
S/o, Rajendran,
Kandachipuram Village,
Tirukoilur Taluk.

... Respondent/Respondent/Plaintiff

Prayer:Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the Court of Principal Subordinate Judge, Villupuram, in A.S.No.34 of 2006 dated 22.01.2007, confirming the judgment and decree of the Additional District Munsif No.I, Tirukoilur in O.S.No.372 of 2004 dated 30.06.2005.

For Appellant : Ms.Vijaya Kamala

For Respondent: Mr.M.Sriram

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 22.01.2007 passed in A.S.No.34 of 2006 on the file of the Principal Subordinate Court, Villupuram, confirming the judgment and decree dated 30.06.2005 passed in O.S.No.372 of 2004 on the file of the I Additional District Munsif Court, Tirukoilur.

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



Whether the present suit is barred by res judicata?

5. The suit has been laid by the plaintiff for declaration and permanent injunction.

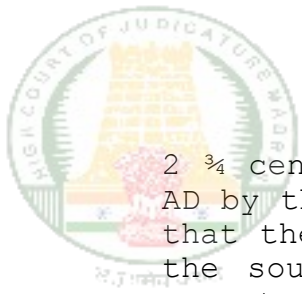
7. The Courts below on an appreciation of the materials placed on record, both oral and documentary and the submissions putforth by the respective parties, were pleased to grant the reliefs in favour of the plaintiff as prayed for. Impugning the same, the present second appeal has been laid by the defendant.

<https://hcservices.ecourts.gov.in/hcservices/>



9. The defendant owns the property to the north of the property belonging to the plaintiff and according to the defendant, Sivalinga Mudaliar had sold the property in favour of Arunachala Mudaliar under Ex.B1 sale deed and subsequently, Arunachala Mudaliar had alienated the same to Krishnan Mudaliar under Ex.B2 sale deed and Krishnan Mudaliar alienated the same to the defendant under Ex.B3 sale deed. Thus, according to the defendant, she claims title, possession and enjoyment of her property by virtue of Exs.B1 to B3.

10. Considering the pleas and the materials placed on record by the respective parties, it is found that the defendant in respect of her property, had earlier filed the suit against the plaintiff's grandfather and one Manickam seeking for declaration and permanent injunction in respect of her property in O.S.No.150 of 2000 and in the abovesaid suit, the defendant contended that she is entitled to 3 cents in S.No.127/4A. As above pointed out, the property belonging to the defendant is lying on the northern side of the plaintiff's property. In the abovesaid suit, the Court had appointed the Advocate Commissioner, who had inspected the suit property covered therein and filed his report and plan and accordingly, the Advocate Commissioner after inspecting the property concerned, had filed his report and plan and the same had been marked as Ex.A6 in the present suit. The judgment rendered in O.S.No.150 of 2000 has been marked as Ex.A5. Based on the materials placed on record and the submissions putforth by the respective parties, in the earlier suit ie., in O.S.No.150 of 2000, though the defendant in the said suit, had claimed that she is entitled to 3 cents by virtue of Exs.B1 to B3, the court finally concluded that the defendant is entitled to only $2\frac{3}{4}$ cents and accordingly granted the reliefs in favour of the defendant in the earlier suit. While basing the determination on the abovesaid aspect, the Court had taken into consideration the Commissioner's report and plan and noted that the defendant's property ends with AD line shown in the Commissioner's plan Ex.C2 in the earlier proceedings and also the defendant's counsel having acceded that the defendant is not having any property to the south of AD line and the plaintiff's grandfather Vadivelu Mudaliar also not claiming any right over the AD wall, accordingly determined that the defendant is having only title to the extent of $2\frac{3}{4}$ cents ending with AD line as given in the Commissioner's report and plan marked as Exs.C1 and C2 in the earlier proceedings and Ex.A6 in the present proceedings. The Court while basing its abovesaid decision, had noted that the Advocate Commissioner had properly measured the property belonging to the defendant by placing reliance upon the B and C stones and accordingly the Advocate Commissioner had noted that the defendant's property concurs with the FMB measurements and thereby proceeded to hold that the defendant is entitled to only



2 $\frac{3}{4}$ cents and her property extends up to the portion marked as AD by the Commissioner in his report and plan. Thus it is found that the defendant is not entitled to claim any portion lying to the south of AD as shown by the Advocate Commissioner in his report and plan marked as Ex.A6 in the present proceedings. In the present case also, the same Advocate Commissioner has been nominated to inspect the suit property belonging to the plaintiff and he has filed the report and plan which has been marked as Exs.C1 and C2 in the present proceedings. In Exs.C1 and C2, the Advocate Commissioner has described the plaintiff's schedule property as ABCD and the defendant's property as BXYC and noted that as per the revenue records, the defendant has the extent of 9.8 meters north-south on the eastern side and however noted that the defendant on the western side, is enjoying more than the measurement indicated in the revenue records i.e., on the western side, it is put forth that the defendant has put up the construction by exceeding the revenue limit to the margin of 0.6 meters. However, on the other sides, it is reported that the defendant's property concurs with the revenue records.

11. As above pointed out, in the earlier suit i.e., O.S.No.150 of 2000, the defendant had contended that she is entitled to 3 cents of property by virtue of Exs.B1 to B3 whereas, in the present suit, the defendant has put forth the case that she is entitled to 3 $\frac{1}{2}$ cents. When in the earlier proceedings, the defendant has been held to be entitled to the property measuring only to an extent of 2 $\frac{3}{4}$ cents, the case projected by the defendant in the present suit that she is entitled to 3 $\frac{1}{2}$ cents by virtue of Exs.B1 to B3 cannot at all be countenanced in any manner and therefore the same had been rightly disbelieved and discountenanced by the Courts below.

12. The Advocate Commissioner who had visited and inspected the property for the second time has been examined as D.W.4 and D.W4 in the course of his evidence, has stated that the defendant's property measures 9.8 meters north-south on the eastern side and the plaintiff's schedule property does not lie within 9.8 meters. It is thus found that the defendant is endeavoring to claim title, possession and enjoyment of the portion lying to the south of the AD wall shown in Ex.A6 and when from the present Commissioner's report and plan, the defendant's property is found to be only lying within BCXY, the contention of the defendant that she is enjoying the plaintiff's schedule property as a pathway cannot at all be countenanced, particularly, in the light of the Commissioner's evidence wherein, he has clearly stated that there is no indication that the plaintiff's schedule property had been used as a pathway.

13. As rightly concluded by the Courts below, the judgment and decree rendered in O.S.No.150 of 2000 has not been



challenged and it has attained finality. Therefore, when in the abovesaid suit, the defendant had been only held to be entitled to an extent of $2 \frac{3}{4}$ cents, her claim in the present suit that she is entitled to $3 \frac{1}{2}$ cents inclusive of the plaint B schedule property cannot at all be countenanced and therefore, the Courts below are found to be justified in coming to the conclusion that the plaint B schedule property forms part of the plaint A schedule property and it is only the plaintiff who has the title, possession and enjoyment of the plaint A schedule property inclusive of the plaint B schedule property and accordingly, rightly granted the reliefs prayed for by the plaintiff. In my considered opinion, no reason is warranted to interfere with the abovesaid determination of the Courts below.

14. The only point that has been raised by the defendant in the present second appeal is that the suit laid by the plaintiff is barred by resjudicata in view of the earlier suit in O.S.No.150 of 2000. The earlier suit in O.S.No.150 of 2000 has been laid by the defendant in respect of her property. The present suit has been laid by the plaintiff in respect of his property by virtue of Exs.A1 to A4. In the earlier suit, the defendant claims title to the property by virtue of Exs.B1 to B3 and in the said suit, she has been declared to be entitled to an extent of $2 \frac{3}{4}$ cents. The earlier suit has been laid by the defendant against one Manickam and the plaintiff's grandfather. In the earlier suit, no decree has been passed with reference to the present suit property belonging to the plaintiff. The present suit has been laid by the plaintiff only against the defendant seeking appropriate reliefs qua his suit property. In the light of the abovesaid factors, when the property involved in the earlier suit and the present suit are different and when the parties in both the proceedings are not the same and when the claim of title of the respective parties in respect of their properties are based on a different set of title deeds and when the defendant had been held to be entitled only to the extent of $2 \frac{3}{4}$ cents in the earlier suit whereas in the present suit, she has claimed title to the extent of $3 \frac{1}{2}$ cents and her abovesaid claim not being buttressed by acceptable and reliable materials as above pointed out and on the other hand, and when it is found that the plaintiff has clearly established his claim of title to the suit property without any doubt, in such view of the matter, the Courts below are found to be justified in holding that the present suit laid by the plaintiff is not barred by resjudicata, particularly, when the cause of action for the earlier suit and the present suit are found to be entirely different. The present suit has been laid by the plaintiff only alleging that inasmuch as the defendant had attempted to interfere with his possession and enjoyment of the suit property, he had been necessitated to lay the suit for appropriate reliefs. In toto, it has to be held that the present suit is not barred by



resjudicata, in view of the earlier suit in O.S.No.150 of 2000. Accordingly, the substantial question of law is answered in favour of the plaintiff and against the defendant.

15. In conclusion, the judgment and decree dated 22.01.2007 passed in A.S.No.34 of 2006 on the file of the Principal Subordinate Court, Villupuram, confirming the judgment and decree dated 30.06.2005 passed in O.S.No.372 of 2004 on the file of the I Additional District Munsif Court, Tirukoilur are confirmed and resultantly the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(Lok Adalat)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Principal Subordinate Judge,
Principal Subordinate Court,
Villupuram.
- 2.The Additional District Munsif No.I,
Additional District Munsif No.I Court,
Tirukoilur.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

S.A.No. 366 of 2009
and
M.P.No.1 of 2009

RP(CO)
CB(10/11/2021)