



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.08.2021

CORAM

WEB COPY

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.463 of 2021 &
CMP. No. 8930 of 2021

K.S.Palanisamy

... Appellant

Vs.

1.Ramasamy

2.Rajesh

[2nd Respondent herein is given up as
unnecessary party vide separate memo]

... Respondents

PRAYER: Second Appeal filed under section 100 of the Civil Procedure Code against the Judgment and Decree dated 15.11.2019 made in A.S.No.10 of 2009 on the file of the Sub Court, Sankari, confirming the judgment and decree dated 01.09.2009 made in O.S.No.298 of 2006 on the file of the District Munsif Court, Sankari.

For Appellant : Ms.D.Sathya

JUDGEMENT

The first defendant is the appellant before this Court. He has challenged the judgment and decree in A.S.No.10 of 2009 on the file of the Sub Court, Sankari, in and by which, the learned Subordinate Judge has confirmed the judgment and decree of the learned District Munsif, Sankari in O.S.No.298 of 2006.

2. The suit in question had been filed by the plaintiff for a permanent injunction restraining the defendants and persons claiming under him from interfering with plaintiff's peaceful possession and enjoyment of the suit property. The suit property was 0.08 cents of land comprised in S.No.40/1A of the Avarangampalayam Village, Sankari, Namakkal District. The property has been described with its four boundaries. The Eastern boundary has been shown as the property which was sold to the second defendant, the highways road has been shown on the North, Muthu Gounder's land on the West and S.No.40/2 on the South. The plaintiff would contend that the larger extent of properties belonged to his father Muthu Gounder. The plaintiff being his only son had inherited the properties nearly 30 years ago after his demise. The plaintiff had been possession and enjoyment of the suit property and other joint family properties and plaintiff's mother also passed away 60 years ago. The larger



extent of the suit property measured 1.33 acres and was comprised in S.No.40/1 of Aravangampalayam. On 25.01.1993, the plaintiff had sold about 1.25 acres to one Thangavelu. In the deed also, the Western boundary had been described as the remaining land of the plaintiff measuring 0.08 cents. Thangavelu in turn sold the property that he has purchased from the plaintiff to the second defendant under the sale deed dated 13.12.1993. This sale deed also mentions that the suit property is situated on the West. Out of the land purchased by him, the second defendant had sold an extent of 25 cents to the first defendant. The first defendant had put up Steel Rolling Mill on the Eastern and Southern side of the suit property. The defendants wanted to purchase the property of the plaintiff as it was abutting the road and they envied the enjoyment of the suit property by the plaintiff. Therefore, they started interfering with the possession of the plaintiff. When the plaintiff attempted to cultivate the suit property on 17.12.2006, he was prevented by the defendants and his men who made attempts to trespass into the property. The said attempt was prevented successfully with the help of the neighbours. However, the defendants have reiterated their threat.

3. The first defendant had filed the written statement inter alia contending that it was incorrect to state that the entire extent of S.No.40/1A measuring 1.33 acres and belonged to the plaintiff's family. The defendant had denied the various allegations contained in the plaint and would submit that the plaintiff had not come to Court with the clean hands and suppressed material facts. The defendant would contend that the Firka Surveyor and Taluk Surveyor had measured and opined that Survey No.40/1 measured only 1.25 acres and once, the said extent had been sold, nothing remained for the plaintiff to claim a right over. The plaintiff having sold the entire land is now attempting to encroach the land of the defendant. Therefore, the defendant sought for dismissal of the suit.

4. This contention was refuted by the plaintiff by filing an additional reply statement. The trial Court, viz., the District Munsif, Sankari, on considering the evidence on record, which consisted of the oral evidence of the plaintiff as PW1 and his documents marked as Exs.A1 to A11 and the first defendant as DW1 and Poomalai as DW2 and the documents marked on the defendant side, Exs.B1 to B7 came to the conclusion that the plaintiff was originally entitled to an extent of 0.54.0 hectares which measured about 1.33 acres. Therefore, considering the fact that the plaintiff had only sold the extent 1.25 acres to an extent of 0.08 cent still remains for the plaintiff. The learned Judge had also taken note of the fact that in the revenue documents and the sketch submitted by the Surveyor as well as the Advocate Commissioner would show that the total



extent of land compromised in R.S.No.40/1 is 1.33 acres. The suit was decreed as prayed for. Challenging the judgment and decree was taken up an appeal by the first defendant herein. The appellate Court also confirmed the judgment and decree of the trial Court. Challenging the same, the appellant is before this Court.

5. Heard the learned counsel and perused the records.

6. The entire issue involved in the above second appeal is whether the plaintiff originally owned an extent of 1.33 acres or whether he was only entitled to an extent of 1.25 acres. The case of the plaintiff is that out of the 1.33 acres an extent of 1.25 acres was sold by him leaving him with the balance of 0.08 cents. After the sale, the lands were subdivided as 40/1A and 40/1B. Even in that sale deed executed by the plaintiff in favour of Thangavelu under Ex.A1, Sale deed, the Western boundary is shown as the remaining lands of Ramasamy Gounder. Therefore, it is very clear that the plaintiff had retains some portion after the sale in favour of the Thangavelu. The defendant as DW1 also admitted the fact that the lands in question were ancestral properties of the plaintiff. That apart, from the evidence of DW2, it is clear that when the land in R.S.No.40/1 was measured with the help of surveyor on three occasions, it was concluded that the property totally measured an extent of 0.54.0 ares which is equivalent to an extent of 1.33 acres. The same has been also confirmed by the Advocate Commissioner. The defendants had come forward with the case that in R.S.No.40/1, the total extent is only 1.25 acres, however, the evidence of the Surveyor as well as the reports filed by the Advocate Commissioner which has been marked as Exs.C1 and C2. The patta Exs.A6 and A10 would clearly show that the plaintiff is entitled to the remaining extent of 0.08 cents in S.No.40/1A. Therefore, the defendant has not been able to establish the fact that the plaintiff did not own any land as he had sold the entire extent of 1.25 acres.

7. Consequently, I do find any Substantial Questions of Law for interfering with the concurrent judgment and decree of the Courts below. Consequently, the Second Appeal stands dismissed. However, no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Sub Court,
Sankari

2.The District Munsif Court,
Sankari.

Copy To:

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

+1cc to M/s.Zeenath Begum, Advocate, S.R.No.37941

S.A.No.463 of 2021 &
CMP. No. 8930 of 2021

GSM(CO)
SB(23/11/2021)