



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.215 of 2018
and
CMP.No.5467 of 2018

Indrani Ammal ... Appellant /Defendant
Versus
S.A.Rajendiran ... Respondent/Plaintiff

Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgments and Decree dated 13.10.2017 passed in A.S.No.30 of 2016 on the file of the Principal Subordinate Judge, Cuddalore, confirming the Judgment and Decree dated 06.04.2016 passed in O.S.No.308 of 2011 on the file of the Principal District Munsif Court, Cuddalore, by allowing the Second Appeal.

For Appellant : Mr.T.S.Baskaran

For Respondent : Mr.C.Umashankar for
Mr.T.Karthikeyan

J U D G M E N T

This Second Appeal has been filed to set aside the Judgments and Decree dated 13.10.2017 passed in A.S.No.30 of 2016 on the file of the Principal Subordinate Judge, Cuddalore, confirming the Judgment and Decree dated 06.04.2016 passed in O.S.No.308 of 2011 on the file of the Principal District Munsif Court, Cuddalore, by allowing the Second Appeal.

2.The learned counsel appearing for the appellant submitted that the appellant herein is the defendant in the suit. The suit was filed for declaration and permanent injunction restraining the defendant, her men, agents and servants from interfering with the plaintiff's peaceful possession and enjoyment of the suit properties.

3.Originally, the suit properties were situated in the southern portion of Old S.No.69 and 71, which was originally belonged to Varatharaja Pillai and his brother Kothandarama Pillai. The said properties were divided under registered partition deed dated 16.06.1946. In the said partition deed, Schedule-B mentioned properties were allotted to Kothandaraman Pillai, in the southern portions 0.62 cents out of Ac.1.24 cents in S.No.71 and 0.73 cents out of Ac.1.33 cents in S.No.69 as Items 6 and 7. The remaining northern portions



were allotted to Varatharaja Pillai and his son Veeraragavan as mentioned in schedule A as items 8 and 9.

4.The portions marked as A and B in the plaint plan were allotted to Kothandarama Pillai and the portions marked as C and D in the plaint plan were allotted to Varatharaja Pillai. The portions marked as A and B were resurveyed and new Survey numbers were allotted as S.Nos.105/8 and 105/9 respectively. They are southern portions of Old S.Nos.69 and 71. The portions marked as C and D in the plaint plan were resurveyed and new Survey numbers were allotted as S.Nos.105/7 and 105/6 respectively. The "A" register and survey plan will prove these facts. The said Varatharaja Pillai sold the northern portion of the property to one Venu Chettiar and said Venu Chettiar in turn sold the property to defendant on 28.07.2011.

5.Now the contention of the appellant herein is that though he has purchased the property in terms of the sale deed dated 28.07.2011, with regard to the northern portion of the property partitioned between Varatharaja Pillai and Kothandarama Pillai, from the date of purchase, he has been enjoying the southern portion of the property. He further submitted that PW1 clearly deposed that a bore-well is in S.No.105/8 and the bore-well in S.No.105/9 was unused and they are standing in the name of the appellant and this aspect has not been considered by both the trial court as well as the first appellate court.

6.Therefore, the learned counsel for the appellants have suggested the following substantial question of law to admit this Second Appeal:

"1.Whether the courts below were right in overlooking the Revenue Records in Ex.B1 to Ex.B7 which proves the possession of the appellant/defendant in respect of the suit properties?

2. Whether courts below were right in granting relief of declaration in the absence of evidence to prove the possession and enjoyment of the suit properties by the respondent/plaintiff?

3. Whether courts below were in error in ignoring the admissions of PW1 to grant a decree in favour of the respondent/plaintiff?"

7.The learned counsel appearing for the appellant vehemently argued the matter about the PW1 admission made in the cross examination. However, he fairly submitted that by virtue of the Judgment and Decree passed by both the courts below, the respondent/plaintiff is in the occupation of the northern portion and they are peacefully enjoying the same. However, he submitted that since he was in the enjoyment of the southern portion of the property due to the reason of the Judgment passed by both the courts below, the service connection was cancelled. Now this Counsel submits that this appellant has been enjoying the northern portion of the



property, thus, he submitted the application for the EB service connection for the northern portion.

8.The appellant further submitted that since the appellant has made an application for restoration of the earlier connection which he was enjoying in the southern portion, to the northern portion.

9.This Court ordered notice on admission. The respondent appeared through his counsel and he submitted that he has no objection for availing the service connection for the northern portion of the land of the appellant. Further, he admitted the fact that there was a service connection in the name of appellant in the southern portion. However the same was cancelled, subsequent to the Judgment and Decree of the Courts below. Further he fairly submitted that his client has no objection to restore the said EB Connection cancelled in the southern portion to the northern portion in favour of the appellant.

10.Therefore, the EB Authorities are supposed to transfer/to restore the connection which was cancelled and held in the name of Indraniammal, in the southern portion of the property to the northern portion of the property as per law. In the result the EB authorities who cancelled the EB connection which was stood in the name of appellant in the southern portion is directed to restore/transfer the said connection in favour of appellant to his northern portion of the property. The said exercise shall be completed within a period of one month from the date of receipt of this Judgment through the appellant.

11.In fine, this court is unable to trace any substantial question of law arises for consideration as suggested by the appellant in the appeal. Hence, this Court finds no merit in the appeal and does not find any error in the Judgment and Decree passed by the Courts below. Hence, the second appeal is liable to be dismissed.

12.In the result, the Second Appeal is dismissed. No cost. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (SSA)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,

Guddalore



2.The Principal District Munsif,
Cuddalore.

3.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.T.S.Baskaran, Advocate, S.R.No. 6322

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CNR(CO)
GN(20/10/2021)