



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.07.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.173 of 2011

Chellamuthu

...Appellant/Plaintiff

Vs.

1.Azhagamuthu (Died)

2.Sadasivam

3.Vijayan

4.Nallammal

5.Manimuthu

6.Rathinammal

7.Pachiammal

...Respondents/Defendants

(RR2 to RR7 brought on records as LRs of the deceased 1st respondent vide Court order dated 15.06.2021 in C.M.P.Nos.2670 & 2671 of 2016 in S.A.No.173 of 2011).

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 24.09.2010 passed in A.S.No.5 of 2010 on the file of the Sub Court, Mettur confirming the Judgement and Decree dated 20.11.2009 passed in O.S.No.61 of 2004 before the District Munsif Court, Mettur.

For Appellant	:	Mrs.R.Meenal
For Respondent 1	:	Died
For Respondents 2 &3	:	Served
For Respondents 4 to 7	:	Mr.T.Murugamanickam Senior Counsel for Ms.Zeenath Begum



JUDGMENT

The plaintiff is the appellant before this Court. The Second Appeal arises against the concurrent Judgement and Decree in A.S.No.5 of 2010, Subordinate Court, Mettur and O.S.No.61 of 2004, District Munsif, Mettur. The suit O.S.No.61 of 2004 which was instituted on the file of the District Munsif, Mettur was originally filed for the relief of permanent injunction and thereafter the plaint was amended to include the relief of declaration and recovery of possession in respect of 24 cents. The subject matter of the suit was an extent of 1.48 acres comprised in S.No.387/1.

2.It is the case of the plaintiff that he and the 1st defendant are brothers and the 2nd and 3rd defendants are his nephews. The plaintiff had purchased the suit property under a registered sale deed dated 02.03.1988 and his brother had purchased a land in the very same survey number measuring an extent of 3 acres on 18.02.1984. The plaintiff would submit that he was in enjoyment of an extent of 1.48 acres and his brother 3 acres. A portion of the land belonging to the 1st defendant was acquired by the Government for the purpose of constructing a channel and the compensation was made over to the 1st defendant. Thereafter, the lands had been subdivided and joint patta given in respect of S.No.387/1A.

3. It is the case of the plaintiff that the defendants had encroached into 24 cents of land in the said survey number. Thereafter, the suit has been filed for the relief stated supra. Recovery of possession was only with reference to 24 cents.

4.The 3rd defendant had filed a written statement which was adopted by the other defendants inter alia contending that the suit property is situate to the west and south of the land belonging to the 1st defendant. The defendants had not trespassed into any portion of the suit property belonging to the plaintiff. The plaintiff's land is lying south of the lands of the 1st defendant and his lands were subdivided as S.No.387/1C2 and he has been in possession only with reference to this land. To the North of the said survey number the lands in S.No.387/1C1 and 387/1A belongs absolutely to the 1st defendant. The plaintiff and 1st defendant have not purchased the lands jointly but had purchased independent of each other. The old survey number of the suit property was S.No.387/1 and since the plaintiff and 1st defendant had purchased property in the same survey number but under separate sale deed joint patta was issued.

5.East of the land in question is the land belonging to the Forest Department. The channel was dug in the forest land from



Sekkarapatty water storage for irrigation purposes and after the acquisition by the Government, lands in S.No.387/1 was subdivided as 387/1A, 387/1B, 387/1C1 and 387/1C2. The lands north of the channel was demarcated as S.No.387/1A. The categoric case of the defendants was that the plaintiff did not own any lands beyond S.No.387/1C2. Infact, there was a well defined boundary between S.No.387/1C1 and S.No.387/1C2 by coconut trees and also a stone revetment. Therefore, the contention of the plaintiff that they own lands beyond the said boundaries was totally inconceivable.

6. The Trial Court on considering the evidence on record which was the evidence of plaintiff as P.W.1 and also the evidence of P.W.2 and P.W.3, Ex.A.1 to Ex.A.9, evidence of the 3rd defendant as D.W.1 and Ex.B.1 to Ex.B.14 along with Ex.C.1 to Ex.C.3 and Ex.X.1 to Ex.X.6 come to the conclusion that no case had been made out and accordingly the suit was dismissed.

7. Challenging the same, the plaintiff had filed A.S.No.5 of 2010 on the file of the Subordinate Court, Mettur. Along with the appeal the appellant had also filed I.A.No.36 of 2010 for amending the plaint with reference to survey number. The Appellate Court dismissed the interlocutory application as well as the appeal. Thus the appellant is before this Court.

8. At the time of admission notice was ordered and the respondents / defendants have entered appearance through counsel.

9. Mrs.R.Meenal, learned counsel appearing on behalf of the plaintiff / appellant would submit that the plaintiff had purchased 1.48 acres on 02.03.1988 under Ex.A.1 sale deed. The 1st defendant had purchased 3 acres earlier and both of them had purchased from the same vendor. She would submit that the purchase had been admitted by the defendants. She would submit that the Trial Court had observed that the suit property as comprised in new S.No.387/1C2 which measured 1.24 acres whereas under Ex.A.1 the plaintiff has purchased 1.48 acres. The purchase was originally in the undivided S.No.387/1 and it was after subdivision that the plaintiff's extent got reduced to an extent of 1.24 acres in S.No.387/1C2.

10. Therefore, considering the admission of defendants the plaintiff was still owner of 24 cents of land which the plaintiff seeks to recover. She would also submit that the appellate Court had erred in hearing the application for amendment and the first appeal together and passing orders on the very same day, as a result of which the plaintiff had been deprived of his right to amend the plaint.



11. Per contra, Mr.T.Murugamanickam, learned senior counsel appearing on behalf of Ms.Zeenath Begum, learned counsel for the respondents would draw the attention of the Court to the Commissioner's report and plan which has been marked as Ex.C.1 to Ex.C.3. He would submit that it is inconceivable as to how the plaintiff can claim recovery of possession in respect of lands situate in S.F.No.387/1A which was situate beyond the property that fell to the share of the plaintiff.

12. He would further submit that there is no clarity in the averments of the plaintiff as to the portion which had been encroached upon in his plaint plan. The encroachment is shown as a portion in the property comprised in S.F.No.387/1C1, whereas, the amendment was sought for with reference to S.F.No.387/1A. He would submit that the property belonging to the plaintiff is clearly demarcated by a well defined stone revetment as well as a live boundary consisting of coconut trees both on the western and southern sides. Therefore, he would submit that the plaintiff was very much aware about the extent that was in his enjoyment and had accordingly demarcated the portion.

13. The learned senior counsel would submit that the Courts below being the Courts of fact considered the evidence from its proper perspective and arrived at a conclusion that the plaintiff had to be non suited. This Court sitting in Second Appeal cannot seek to overturn the concurrent Judgement and that too when the challenge in this Second Appeal is on facts.

14. Heard the counsels and perused the records.

15. The plaintiff had originally come forward with a case that the property purchased by him was an extent of 1.48 acres comprised in S.No.387/1. Thereafter, on coming to know about the subdivision made after the acquisition, the plaintiff had sought to amend the plaint to include the prayer of declaration and recovery of possession in respect of the property comprised in S.No.387/1C2.

16. The plaintiff would claim recovery of an extent of 24 cents in S.No.387/1A. While considering the lie on the land in S.No.387/1 it is impossible for the Court to come to the conclusion that the plaintiff is entitled to recover possession of 24 cents in S.No.387/1A since this survey number is not contiguous to the lands belonging to the plaintiff, namely, S.No.387/1C2. The case of the plaintiff is that the extent of 1.48 acres purchased by him in old S.No.387/1 was in one block. However, the 24 cents of which recovery is now sought for is not contiguous to the plaintiff's land.



17. The commissioner's report shows that the property of the plaintiff has well defined boundaries and therefore this Court has to accept the findings of the Courts below that the plaintiff is in possession and enjoyment of 1.24 acres comprised in S.No.387/1C2 and nothing beyond S.No.387/1C2.

18. I do not find any substantial question of law warranting interference and accordingly the Second Appeal stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Court,
Mettur.
2. The District Munsif Court,
Mettur.

+1cc to M/s.R.Meenal, Advocate, S.R.No.35495

+1cc to M/s.Zeenath Begum, Advocate, S.R.No.35445

S.A.No.173 of 2011

SS(CO)
SU(16/11/2021)