



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13/08 2021

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SECOND APPEAL NO.411 OF 2012
AND MP NOS.1 OF 2012 AND 1 OF 2013

Auroville Foundation
Auroville
Rep. by its Secretary
having their office at
Town Hall, Vanur Taluk,
Villupuram District.

... Appellant /Defendant

Vs.

Venkatesan

... Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 20.10.2011 passed in A.S.No.55 of 2009 on the file of the Principal Sub Judge, Tindivanam, confirming the judgment and decree in O.S.No.17 of 2003 on the file of the District Munsif, Vanur, dated 24.07.2009.

For Appellant :Mr.V.Raghavachari

For Respondent :M/s.Giridhar & Sai

J U D G M E N T

Aggrieved over the concurrent findings of the Courts below, the defendant / appellant has preferred the above Second Appeal. The Suit is one for declaration, delivery of possession and mesne profits.

2.For the sake of convenience, the parties are called as per their ranking in the Suit.

3.The short facts leading to the Suit are as follows:

4.The plaintiff after purchase of an extent of 0.59 cents of land in S.No.140/4 vide Sale Deed dated 27.04.1965, has sold northern portion of the property measuring an extent of 0.51



cents to the defendant by way of two Sale Deeds dated 12.10.1993 and 13.10.1993. The remaining extent of 0.08 cents was in possession and enjoyment of plaintiff's father. The owner of the property situate in southern boundary, has sold 0.51 cents of land to the defendant. Instead of leaving the 0.08 cents belonging to the plaintiff, they have left 0.16 cents of their southern side and sold 0.51 cents of the northern side. In order to set right the deficit 0.08 cents, the defendant claimed title over the same. Therefore, he issued a legal notice on 26.09.2002 and untenable reply was given on 30.09.2002 by the defendant. Taking this as a cause of action, he filed a Suit for declaration of title, delivery of possession and mesne profits.

5.The defendant in their written statement denied the factum of possession of 0.08 cents by their vendor or his legal heirs namely, the plaintiff. Their vendor has delivered possession after registering the Sale Deed and after receiving the valid sale consideration of Rs.1,95,000/-. The measurement was stated approximately. In the first Sale Deed dated 12.10.1993, the plaintiff's father sold an extent of 0.75 cents, wherein, his property was mentioned as southern boundary. When he sold the remaining extent by way of Sale Deed dated 13.10.1993, they were shown as neighbour's property as northern boundary. Therefore, the plaintiff's father was left with no other property other than the one sold to the defendant. In so far as the property, which was lying on the southern side, the defendant has purchased it from the legal heirs of Dhanapal Gounder, by virtue of registered Sale Deed dated 12.12.2001 measuring an extent of 0.51 cents. The plaintiff's father, namely, Varadharaja Gounder himself did not intend to any extent of 0.08 cents and was not in possession. Whereas, the plaintiff without any title or existence of the property, on own, has imaginarily claimed a non existing plan.

6.The Trial Court framed appropriate issues and declared the title of the plaintiff and consequently directed delivery of possession. In so far as mesne profits is concerned, a direction was given to the plaintiff to work out their remedy under Order XX Rule 12 CPC.

7.Against the judgment and decree of the Trial Court, the defendant preferred an appeal. The Lower Appellate Court, after framing appropriate points for consideration, had confirmed the findings of the Trial Court and ordered mesne profits also. Aggrieved over the same, the defendant has preferred the above Second Appeal, which was admitted by this Court on 17.04.2012, on the following substantial questions of law:-



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"1. Whether the Courts below have not failed to note that the plaintiff had failed to establish that the Elumalai Gounder is entitled to 59 cents to vend in favour of his father Varadharaja Gounder, especially when his family holdings is restricted to 51 cents in R.S.No.140/4 Bommiar Palayam?

2. Whether the Courts below are justified in recognising a larger interest in the plaintiff, when his predecessor in title did not have any?

3. Whether the Courts below ought to have appreciated that the boundary recitals bind the plaintiff and the boundary recitals prevails over extent?."

8. According to the learned counsel for the appellant / defendant, the Courts below have completely mislead the evidence and have decreed the Suit. The vendor cannot convey any better title more than what he entitled to. When their vendor himself was entitled to only 0.51 cents, he could not have sold more than 0.51 cents and cannot have the excess of 0.08 cents as alleged by the respondent / plaintiff. When the boundaries prevail over the extent, the Courts below ought to have seen that the entire extent of the property owned by their vendor was sold to them and he had consciously mentioned somebody else property as northern boundary in the alleged remaining extent as northern boundary. The Courts below have failed to appreciate the boundary recitals and have misdirected themselves in declaring the title.

9. Per contra, the learned counsel for the respondent / plaintiff contest that the defendant, who deposed as D.W.1 has categorically admitted the existence of 0.08 cents on the southern side and the entitlement of the plaintiff to that property. He would further depose that the defendant is not claiming title to 0.08 cents. In that view of the matter, the finding of the Courts below on the basis of the admission made by D.W.1 cannot be challenged. Further, in the appeal, the Court can look into the questions of law raised, but it shall not re-appreciate the evidence on facts and give a factual finding. He would further submit that as per Section 54 of the Transfer of Property Act, 1882, any immovable property can be conveyed by



way of registered document to sale of places the buyer in possession after registering the document. When a specific extent is mentioned in the conveyance, it shall be presumed that only to that extent, the buyer was put in possession. There cannot be any approximation of the extent.

10.As per Section 114 of the Indian Evidence Act, 1872, it shall be presumed that when a document creating an obligation is in the hands of the obliger, the obligation has been discharged and that only 0.51 cents was conveyed and the remaining extent of 0.08 cents belonged to the defendant even if the boundaries are wrongly mentioned.

11.In support of his contention, the learned counsel for the respondent / plaintiff would rely on the following judgments:-

(i) Judgment of this Court in M. RAJAGOPAL MUDALIAR V. K.R. VENKATARAMAN BY POWER AGENT K.G. RAMANATHAN [2002 (1) MLJ 529]

(ii) Judgment of this in [KUPPUSWAMI NAIDU VS. KRISHNASAMI NAIDU](#) [2004 (4) MLJ 677]

12.I have considered the rival submissions.

13.At the outset, it has to be ascertain as to whether this Court while exercising jurisdiction under Section 100 CPC is entitled to go into the facts and appreciate the evidence to set right the error committed by the Courts below. In the case of SARASWATHI AMMAL VS. PONNAMMAL AND ANOTHER [2000 (III) CTC 710] this Court has observed as under:

"6.....Not only they had managed to obtain false records, with the connivance of the revenue authorities, but also the appellate Court had chosen to adopt a cavalier attitude towards the plaintiff by reversing the well considered judgment of the trial Court-thereby reminding us that a mechanical approach under Section 100, C.P.C. to refuse to appreciate the evidence, could spell injustice to poor and gullible litigants. If a reading of the evidence could lead to two different conclusions, it is not for the High Court to adopt its own reasonings. But, if only one conclusion is possible, to refuse to interfere against adverse



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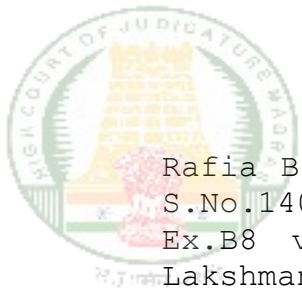
and unconscionable findings on a pedantic interpretation of Section 100, C.P.C., would result in reflecting very badly on the propriety or correctness of the system and wisdom of pecuniary jurisdiction, being the basis for higher Courts not to apply their minds to the facts of a given case and not to do proper justice to the aggrieved party, only because the stakes are comparatively low."

14.Likewise, in the judgment of R.SRINIVASAN VS. M/S.G.MUTHUSAMY CHETTIAR [1998 (II) CTC 488] this Court has observed as under:

"10.This Court is also aware of the limitation prescribed under section 100 of the Code of Civil Procedure with respect to interference findings. However, this Court hastens to add that it has got the powers in terms of section 103(b) of the Code of Civil Procedure to determine the issue when it has been wrongly determined by the court below. Normally this Court will not interfere with the findings of facts. This court will have jurisdiction to interfere with the findings if the court below had determined the issue wrongly either by misreading the evidence or by failure to advert and consider the material evidence."

Therefore, when the Courts below are proceeded on erroneous assumption of law, this Court can very well interfere in the factual findings also.

15.The admitted facts are that the plaintiff's father purchased an extent of 0.59 cents by way of registered Sale Deed dated 27.04.1965. He conveyed an extent of 0.51 cents by virtue of two Sale Deeds dated 12.10.1993 and 13.10.1993. It only remains to answer is as to whether he was in possession and enjoyment of the remaining extent of 0.08 cents as per the documents marked. In this aspect, a perusal of Exs.B7, B8 relied on are very crucial. Exs.B7 and B8 are two mortgage deeds executed by Lakshmanasami Gounder, the brother of Elumalai Gounder, the vendor of the plaintiff's father. Ex.B7 is a registered Document bearing No.1264/1952 dated 30.06.1952. In that document, one Lakshmanasami Gounder for himself and for minor Elumalai Gounder executed a mortgage deed in favour of



Rafia Bibi, wherein he had mortgaged an extent of 0.51 cents in S.No.140/4 in Bommaiarpalayam Village, Tindivanam. Likewise, in Ex.B8 vide Document No.1870 dated 08.12.1954, the very same Lakshmanasami Gounder for himself his brother Elumalai Gounder has mortgaged an extent of 0.51 cents in favour of one Umar Sahib in respect of the very same property situate in Bommaiarpalayam, Tindivanam.

16.From the above, it could be seen that the vendor of the plaintiff's father was holding an extent of 0.51 cents in S.No.140/4 in Bommaiarpalayam Village, Tindivanam. Vide Ex.A1, the plaintiff's father Varadharaja Gounder had purchased an extent of 0.59 cents in S.No.140/4 from Elumalai Gounder. Therefore, there is some discrepancy in the extent mentioned in the Sale Deed vide Ex.A1. Therefore, it is the burden of the plaintiff to prove that the Elumalai Gounder possessed more than 0.51 cents and he conveyed a better title for an extent of 0.59 cents in S.No.140/4. But I do not find any material to show that the said Varadharaja Gounder or the plaintiff put in possession of the 0.08 cents as claimed by them on the basis of the documents.

17.It is to be noted that Ex.A2 is the registered Document bearing No.2485/1993 dated 12.10.1993, wherein the plaintiff's father Varadharaja Gounder has sold an extend of 0.50 cents in S.No.140/3 and 0.25 cents in S.No.140/4, having common boundaries. In Ex.A2, the southern boundary was shown as the remaining land belong to the vendor Varadharaja Gounder as southern boundary. There is no dispute as to the conveyance of this 0.75 cents with regard to Ex.A2.

18.From a perusal of Ex.A3 - Document No.2493/1993 dated 13.10.1993, it is seen that an extent of 0.26 cents in S.No.140/4 was conveyed to the defendant by the plaintiff's father. In that document, the southern boundary was shown as the property owned by one Dhanapal Gounder. It is pertinent to note that there is no mention about the 0.08 cents owned by Varadharaja Gounder, nor it was shown as southern boundary. Even assuming that the boundary was wrongly mentioned, onus is on the part of the plaintiff to show that within the boundaries of Exs.A2 and A3, there lies 0.59 cents. But, no steps were taken towards measuring the property even though that was a prayer in the plaint.

19.This Court, on perusal of the plaint, finds that the legal heirs of Dhanapal Gounder, who was the owner of the southern side property in Ex.A3 have sold 0.51 cents including



0.08 cents owned and possessed by the plaintiff. It is a clear case of the plaintiff that the legal heirs of Dhanapal Gounder have retained 0.16 cents on the southern side of their property and sold 0.08 cents belonging to the plaintiff also to the defendant. Thus, the defendant is wrongfully claiming title. If that is the fact, the plaintiff should have challenged the sale deed executed by the legal heirs of Dhanapal dated 12.12.2001. On the other hand, they claimed that the defendant has encroached on this 0.08 cents. Again, it is imperative to look into Exs.A4 and A5. Ex.A4 is the legal notice issued by the plaintiff, wherein the plaintiff has stated that the defendant have purchased the property from the legal heirs of Dhanapal Gounder, which is not legally valid and that they shall endorse that they will not claim any title or possession over the same. Ex.A4 categorically discloses the fact that the plaintiff had definite knowledge about the purchase of the southern side of the property from the legal heirs of the Dhanapal Gounder. In that event, they should have sued against the legal heirs of Dhanapal Gounder for wrongly conveying their property and also for setting aside the sale, which they claimed as it was not binding on them, for, the defendant in their reply notice vide Ex.A5 dated 30.09.2002 has categorically stated that the plaintiff's father did not have any land, measuring an extent of 0.08 cents and that he sold his entire property within the boundaries to the defendant. If that be so, the plaintiff must have filed a suit to declare the sale deed in conveying the property which includes their property also by impleading the legal heirs of Dhanapal Gounder, who sold the property in favour of the defendant.

20. In so far as the deposition of D.W.1 is concerned, it has to be seen whether D.W.1 has admitted to the title of the plaintiff with respect to 0.08 cents and that they can take possession of the same. A reading of the deposition clearly spells out that the facts pleaded and found in the document were admitted and not the factum of possession or existence of excess lands as per the documents. D.W.1 would state that as per the document, there is an excess of 0.08 cents and that the defendant do not claim any title over the excess lands. He would also state that if any land is available on ground, the plaintiffs are entitled to take the same. This will not amount to admission that there exists 0.08 cents of ground and that they are not claiming title to the same. The case of the defendant was that they have purchased only 1.01 acres from the plaintiff's father and they do not claim any excess extent. Therefore, the findings of the Courts below that D.W.1 admitted to the existence of 0.08 cents and that the entitlement of the

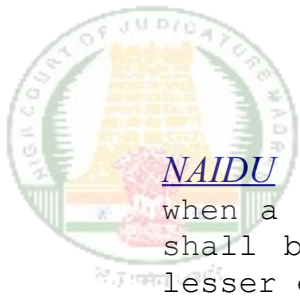


plaintiff is erroneous and the judgment pronounced on this basis is also erroneous.

21.It is relevant to note Exs.B4 to B6 on this aspect. Ex.B4 is Patta No.89, which mentions New S.No.140/4A, which includes old S.No.140/4, 5, 7 measuring an extent of 0.41.5 ares. 0.41.5 ares is equivalent to approximately 102 cents. The "A" Register marked as Exs.B5 and B6 also shows that the defendant possesses only 0.41.5 ares of land, which means the defendant was in actual possession of 1 acre 2 cents. In that event, onus is cast on the plaintiff to show that the defendant is in possession of 0.08 cents as claimed by them.

22.As already discussed, the plaintiff has not produced any material to show that their vendor or themselves were actually in possession of 0.08 cents of land at any point of time. A conjoint reading of Exs.B7 and B8 and Ex.A1 would clearly state that Elumalai Gounder must have actually conveyed an extent of 0.51 cents and put Varadharaja Gounder in possession of the same extent only. He could not have put him in possession of 0.59 cents which he did not possess. Therefore, unless materials are produced to show that there existed 0.59 cents and that the plaintiff's father retained 0.08 cents in his favour, the plaintiff cannot proceed on the presumption that they are entitled to claim title to the suit property. If at all the boundaries of Ex.A3 clearly prove that there is no land left or retained on the southern boundary of the land mentioned in Ex.A3. In fact, after the sale in the year 1993, the owner of the property on the southern boundary, namely, Dhanapal Gounder have sold it to the defendant vide registered Document No.3225/2012 dated 12.12.2001 - Ex.B3. Further, there were partition and alienation with regard to the properties in S.No.140/4 by the legal heirs of Dhanapal Gounder in favour of so many other persons vide Exs.A7, A8 and A9. If the plaintiff claims that the legal heirs of Dhanapal Gounder have wrongfully conveyed the property vide Exs.A7 to A9, they have to challenge the same in the manner known to law. Filing the Suit on presumptions does not disclose any cause of action as against the defendant. The Courts below have solely proceeded on the basis of the deposition made by D.W.1 as admission to the tile of the plaintiff's property. But, it is not so.

23.As far as the judgments relied on by the learned counsel for the respondent/plaintiff in M.RAJAGOPAL MUDALIAR VS. K. R. VENKATARAMAN BY POWER AGENT K.G. RAMANATHAN [2002 (1) MLJ 529] and the judgment in [KUPPUSWAMI NAIDU VS. KRISHNASAMI](#)



NAIDU [2004 (4) MLJ 677] are concerned, it is true to state that when a specific extent is mentioned with definite boundaries, it shall be presumed that only that extent was sold. Only when a lesser extent is sold, then the boundaries will prevail.

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24. In the instant case, there is no discrepancy with regard to the extent of land. Therefore, the sale shall be presumed to have taken place only for an extent of 0.51 cents which was actually owned by the plaintiff's father, the vendor of the defendant. Therefore, the contention of the appellant/defendant that the boundaries will prevail over and they have purchased the entire extent of land from Varadharaja Gounder cannot be sustained. In fact, it is irrelevant to the facts of the case on hand.

25. From the foregoing discussions, it is seen that the plaintiff has not established that the vendor of their father owned more than 0.51 cents and that their father derived a better title for 0.59 cents. Therefore, the questions of law Nos.1 and 2 are answered in favour of the appellant/defendant and the question of law No.3 is negatived.

26. Accordingly, the judgment and decree dated 20.10.2011 passed in A.S.No.55 of 2009 by the learned Principal Sub Judge, Tindivanam, confirming the judgment and decree dated 24.07.2009 passed in O.S.No.17 of 2003 by the learned District Munsif, Vanur, stands set aside and the Suit is dismissed.

27. In fine, the Second Appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

TK
To

1. The Principal Sub Judge,
Tindivanam.

2. The District Munsif,
Vanur.



Copy to

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

+1cc to Mr.V.Raghavachari, Advocate Sr.40250

SECOND APPEAL NO.411 OF 2012

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