

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.No.874 of 2012
&
M.P.Nos.1 and 2 of 2012

Jarina Banu ... Appellant/Plaintiff

Vs.

1.M.Jahir Hussain

2.M.Mohammed Hasan ... Respondents/Defendant

PRAYER: The Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the decree and judgment dated 19.03.2012 made in A.S.No.61 of 2011 on the file of the learned Sub Court, Nagapattinam confirming the judgment and decree dated 12.07.2011 made in O.S.No.171 of 2005 on the file of the learned District Munsif Court, Nagapattinam.

For Appellant : Mr.V.Raghupathi

For Respondents : Mr.R.Shivakumar
for
Mr.K.M.Vijayan Associates

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J U D G M E N T

Aggrieved over the concurrent findings of the Courts below, the unsuccessful plaintiff has preferred the above Second Appeal.

2. The short facts leading to the Second Appeal is that the appellant purchased the suit property by virtue of Ex.A1 sale deed dated 06.07.2001 measuring an extent of 0.04 cents in S.No.149/9. When she attempted to fence the property, it was objected and the respondents have interfered her from enjoying the property which she purchased. Hence, she approached the

Court for a relief of permanent injunction restraining the respondent from interfering with her possession. After framing appropriate issues, the Trial Court has partly allowed the suit holding that the respondents shall not interfere with the peaceful possession and enjoyment of the plaintiff with respect to the property which she has purchased measuring 17 ft East-West and $73\frac{1}{4}$ North -South and in respect of the remaining extent out of the 4 cents, the suit was dismissed. On appeal, the Appellate Court dismissed the appeal holding that the plaintiff has right title and possession over the suit property only to an extent of 1245 sq.ft and confirmed the grant of relief of permanent injunction with respect to the above extent. Aggrieved over the same, the plaintiff has approached this Court.

3. The contention of the learned counsel for the appellant is that title deed Ex.A1 of the plaintiff clearly mentions that an extent of 0.04 cents was conveyed to her. The parent deed which is a partition deed vide Ex.B1 between the siblings of the respondents under schedule 'F' had conveyed 0.04 cents in S.No.149/9. If 0.04 cents is converted into square feet it comes to (436×4) 1744 Sq.ft. Therefore, the plaintiff is entitled to enjoy 1744 sq.ft and shall not be interfered by the respondents and Courts below have erred in restricting it only to an extent of 1245 Sq.Ft.

4. A perusal of Ex.B1 and A1 goes to show that an extent of 0.04 cents was conveyed to the plaintiff. But a deeper perusal of Ex.B1 shows that the vendor of the plaintiff was allotted with a house site measuring $73\frac{1}{4}$ on the North-West and 17 feet on the East-West. If these linear measurements are calculated it comes to total area of 1245 sq.ft.

5. It is a well settled legal principle that boundaries will prevail over the extent only when the linear measurements are not clear or ambiguous. Therefore, the when linear measurements are not given and are not correctly given then the boundaries will prevail over the measurements and the entire extent will be entitled to the person who purchased the property within those boundaries.

6. In the instant case, the respondent is allotted with one cent in Ex.B1. Therefore, it is clear that the respondents are not entitled to more than one cent. However, it is to be noted as to what is the total extent of land available for partition. In that view of the matter, deducting this one cent, the share holder viz., vendor of the plaintiff was allotted with a share in the property with clear linear measurements of $73\frac{1}{4}$

feet on the North-West and 17 Feet on the East-West. When specific measurements are given within the larger boundaries then the person will be entitled to the property only according to the measurements. Admittedly, in this case all the four shares adjacent to each other are covered by same boundaries. Therefore, all the more, the measurements has to be adhered to for calculating the total extent of land which was conveyed.

7. It is also well settled principle that the vendor cannot convey a better title than what he or she possesses. In the instant case, the vendor of the plaintiff possessed a property measuring 73/1/4 feet on the North-West and 17 Feet on the East-West in S.No.149/9. Even though the larger extent of 0.04 is conveyed, what was actually available to the vendor of the plaintiff itself was 1245 square feet. The vendor could not have conveyed more what she possessed. Accordingly, what could have been conveyed to the plaintiff was only 1245 Sq.ft and that claim of the plaintiff over and above the extent on a general statement that 4 cents was conveyed is not sustainable. As such what was actually conveyed on board was only 1245 sq.ft even though it is mentioned as 0.04 cents in the title deed.

8. The learned counsel appearing for the respondents would give a categorical undertaking that they are not claiming more than one cent of their land and further categorically undertaken that they will not interfere with the fencing of the 1245 sq.ft of land conveyed to the plaintiff. Therefore, it goes without saying the grant of injunction in favour of the plaintiff to an extent of 1245 sq. ft is valid, apt and legal. Therefore, I do not find any discrepancies to interfere with the concurrent findings of the Courts below. The factual dispute does not give rise to any question of law much less the substantial question of law. Therefore, the Second Appeal does not merit admission and accordingly dismissed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Sub Court, Nagapattinam

2.The District Munsif, Nagapattinam.

+1cc to Mr.V.Raghupathi, Advocate SR.No.45428

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&

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VG-II(CO)

CB(17/03/2022)