



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.No.502 of 2021
and
C.M.P.No10026 of 2021

1. Muthuvel

2. Thirugnanam ... Appellants

Vs.

Arumugam

... Respondent

PRAYER: Second Appeal is filed under Section 100 of CPC to set aside the judgment and decree dated 31.03.2021 passed in A.S.No.13 of 2019, on the file of the Subordinate Judge, Paruti, confirming the judgment and decree dated 18.02.2019 passed in O.S.No.139 of 2014, on the file of District Munsif, Panruti.

For Appellants : Mr.P.Dinesh Kumar

J U D G M E N T

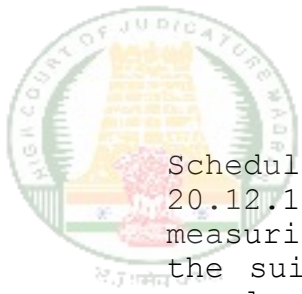
This Second Appeal is directed against the judgment of the learned Sub-ordinate Judge, Panruti, dated 31.03.2021 in A.S.No.13 of 2019 confirming the judgement of the learned District Munsif, Panruti, dated 18.02.2019 in O.S.No.139 of 2014.

2. The respondent filed the suit against the appellants seeking:

i) the relief of declaring his title over B Schedule property and for mandatory injunction, restraining appellants from interfering with the possession and enjoyment of the B Schedule property.

ii) for mandatory injunction seeking the removal of pillars constructed by the appellants, after the institution of the suit and for costs.

3. The case of the respondent, in brief, is as follows: A



Schedule property was purchased by respondent's father on 20.12.1961. A schedule property consist of three properties measuring to an extent of 17 cents. An oil mill is being run in the suit property. The northern portion of A Schedule property was leased out for installing a Cell phone tower. Present Survey of A schedule property is No. 30/1 . After the death of respondent's father, his brother Mr. Rajendiran left the family and later he died. Thus respondent is entitled to the suit property. Appellants are residing on the western side of the A schedule property. They are influential persons. In 2007, appellants encroached respondent's property to an extent of 2.5 feet and constructed toilet. There was a panchayat and appellants promised not to encroach the respondent's property and therefore no action was taken. On 22.06.2014. Appellants tried to encroach the suit property and put up construction. That was prevented by the respondent. Again on 25.06.2014 they made another attempt and that was also prevented. Appellants are repeatedly making attempts to encroach the respondent's property, which is described as B schedule property. After filing of the suit, appellants entered appearance and prayed time for filing the counter in the injunction application in I.A.No.624 of 2014. The case was adjourned to 24.07.2004. Meanwhile appellants with the help of their henchmen, put up seven pillars. Therefore, this suit was filed for the aforesaid reliefs.

4. The appellants filed written statement denying the allegations made against them. It is admitted that A schedule property belongs to respondent. A schedule property is grama natham and its survey number is Survey.No.30/1. Immediately on the west of A schedule property, appellants' property in Survey Nos.29/14 and 29/15 are situated. Appellants and respondent are neighbours and their properties situate in different survey numbers. Respondent is entitled to 00750 sq. meters. Appellants never disputed the possession and enjoyment of the respondent in respect of A schedule property. Survey No.30/1 measures 2.2 meters in the northern side and 14.4 meters on the southern side. Advocate Commissioner inspected the suit property on 19.07.2014 with the help of Surveyor and it was found that the respondent had put up brick compound wall on eastern side, on southern side and barbed wire fencing on the western side and live fence in a portion on the northern side. After measuring appellants property in Survey Nos.29/14 and 29/15, appellants arranged to raise brick construction and started to dig pillars in their property. Then respondent claimed that he has 3.2 meters on the northern side of Survey No.30/1. Respondent has no property to an extent of 3.2 meters on the northern side of Survey No.30/1. It was found that northern measurement is only 2.2 meter and not 3.2 meter. On mistake impression that respondent is entitled to 3.2 meter on the North, he filed the



suit. Therefore, the suit is liable to be dismissed.

5. On the basis of above said pleadings, Trial Court framed the following issues:

1. Whether plaintiff is entitled for the relief of declaration in respect of B schedule property?

2. Whether plaintiff is entitled for the relief of permanent injunction in respect of B schedule property?

3. To what relief, if any the plaintiff is entitled?

The Trial Court has also framed following additional issues.:

i) whether the plaintiff is entitled for the relief of mandatory injunction in respect of B schedule property.

6. During the trial, PW1 to Pw3 were examined on the side of respondent/plaintiff and Exs.A1 to A29 were marked. DW1 to DW3 were examined on the side of the appellants/defendants and Exs.B1 to B10 were marked. Apart from these documents Exs.C1 to C3 and Exs.X1 to X6 were marked.

7. On considering oral and documentary evidences, the learned Trial Judge found that appellants encroached B schedule property, which is a part of the A schedule property and decreed the suit as prayed for by the respondent. Then appeal is filed by the appellants in A.S.No.13 of 2019. The learned Appellate Judge also found that there is no reason to take a different view. In this view of the matter, the learned Appellate Judge confirmed the judgment of the Trial Court and dismissed the appeal. Challenging the judgment of the First Appellate Court this second appeal is filed by the appellants.

8. The learned counsel for the appellants submitted that as per Ex.A2 document relied by the respondent, the northern boundary of Survey No.30/1 measures only 2.2 meters. However, both the Courts below on the basis of the Advocate Commissioner's report, found that northern boundary of A schedule property is 3.2 meters and concluded that there was encroachment made by the appellants. The reliance placed by the Courts below on Ex.A25 which came into existence after filing of the suit is not correct. The measurement especially the northern measurement in this document given as 3.2 meters is contrary to the northern measurement given in Ex.A2 as 2.2 meters. Not only that it is also submitted by the learned counsel for the appellants that even assuming that respondent is entitled to 3.2 meters on the northern side, Commissioner found that the northern measurement starts with 3.2 meters, then broadens to 3.3 meters and then to 3.5 meters. Placing reliance mainly on Commissioner's report, the suit was decreed and that is not correct. Therefore, the learned counsel for the appellants prayed for setting aside the judgment of the Courts below and for allowing this Second Appeal.



9. Considered the submissions of the learned counsel for the appellants and pursued the records.

10. As narrated above, appellants have candidly and clearly admitted that they never disputed respondent's possession and enjoyment of A schedule property as per the measurement given in plaint document No.2. Document No.2 is marked as Ex.A2 i.e., patta in respect of Survey No.30/1 in favour of Rajendiran and Arumugam. Arumugam is the plaintiff/respondent in this case. Rajendiran, according to the first respondent was dead and therefore respondent is absolute owner of the suit property. There is no dispute in this regard that respondent is absolute owner of A schedule property. The issue here is whether there is an encroachment in A schedule property of respondent. The alleged encroached portion is specifically shown as B schedule property in the plaint.

11. As said earlier, apart from witnesses examined on the side appellants and respondent as PWs and DWs, Exs.A1 to A29, B1 to B10, C1 to C3 and X1 to X6 had also been marked. Important witness among them are, PW2 Advocate Commissioner and PW3 the Assistant Surveyor. The evidence of PW3 was extensively discussed by the learned Trial Judge. The issue is with regard to the claim that whether the respondent is entitled to 3.2 meter or 2.2 meter on the North of Survey No.30/1 was discussed with the help of evidence of PW3. It is seen from his evidence that he produced Exs.X2 certified copy of FMB book for Survey No.30/1. He claims that in Ex.X2, northern measurement is given as 3.2 meters. He also produced certificate copies of Adangal, Chitta for Survey No.30/1 as Exs.X3 and X4. Adangal and Chitta extracts of Survey No.29 are produced as Exs.X5 and X6. It is evident that there is an extent of 3.2 meters available on the north of Survey No.30/1 and 14.4 meter is available on south of Survey No.30/1. As per records 750 Sq. meter land available in Survey No.30/1. He confirms that exhibit A25 document, which is challenged by the appellants as after suit document also confirms the measurements in the field measurement book. Copy of plan of Survey No.30/1 is also produced as B4. On appreciating the revenue records produced in the form of Adangal, Chitta and sketches of FMB book in respect of Survey No.30/1, 29/14 and 29/15, the learned Trial judge found that the appellants are in possession of extent allotted to them and confirmed by revenue records.

12. When appreciating evidence of DW1, Trial Court found that DW1 has admitted that he has not measured his property before starting construction. He also admitted he did not know as to the extent of property belong to him. There is also admission that he has not measured his property to find out whether the measurement confirm to his claim. On considering the



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14. Both the Courts below have considered the evidence available on record and discussed the submissions of both the parties and finally concluded that there is an encroachment in the B Schedule property by the appellants and granted decree as prayed for by the respondent. For the reasons above said, this court finds no reason to interfere with the views and decision recorded by the Courts below. Accordingly, the judgment of the learned Subordinate Judge, Panruti in A.S.No.13 of 2019 confirming judgment of the learned District Munsif Court, Panruti in O.S.No.139 of 2014 is confirmed. There is no substantial question(s) of law involved in this Second Appeal for consideration. Resultantly, this Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Assistant Registrar (CS V)

Sub Assistant Registrar

<https://hcservices.ecourts.gov.in/hcservices/>



To

1. The Sub Judge
Panruti.

2. District Munsif
Panruti.

+1cc to Mr.D.Ravichander, Advocate, S.R.No.64415

S.A.No.502 of 2021

SS (CO)
CT 30/03/2022