



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

S.A.No.837 of 2014

&

M.P.No.1 of 2014

Purushothaman ... Appellant/Respondent/Plaintiff

Vs.

Vellai Maistry ... Respondent/Appellant/Defendant

PRAYER: The Second Appeal has been filed under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 20.02.2013 passed in A.S.No.10 of 2011 on the file of the Sub Court, Ranipet in reversing the judgment and decree dated 28.07.2010 passed in O.S.No.204 of 2006 on the file of the District Munsif Court, Ranipet.

For Appellant : Mr.P.Mani

For Respondents : Mr.T.P.Prabakaran

#### J U D G M E N T

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

2. For the sake of convenience, the parties are called as per their rank in the suit.

3. The unsuccessful plaintiff is the appellant before this Court. The plaintiff filed a suit for declaration of title over the B schedule property, possession and for mandatory injunction to remove the encroachment and the wall constructed on the B schedule property.

4. It is relevant to state that the B schedule property is an integral part of the A schedule property. The A schedule property was purchased by the brother of the plaintiff on 09.12.1987. There was an oral partition between the plaintiff and his brother and the plaintiff had constructed the house on



the northern side and his brother constructed house on the southern side of A schedule property. The plaintiff's share lies on the south side of the defendant's property. According to him, he had left a lane with 5 feet breadth on the northern side. This was encroached by the defendant and the lane was reduced to 2 feet from 5 feet breadth. Aggrieved over the same, he issued notice and filed a suit for declaration and mandatory injunction.

5. The defendant, denying the averments made in the plaint, would contend that the property of the defendant is an ancestral one and it existed even before the purchase of A schedule property by the defendant's brother. There is no such 5 feet lane left by the plaintiff and in fact, the defendant left 2 feet passage on the southern side of the property which is the northern boundary of the plaintiff.

6. The trial Court framed appropriate issues and decreed the suit in favour of the plaintiff. On appeal, the lower appellate Court reversed the findings of the trial Court for want of proof of encroachment.

7. Aggrieved over the same, the plaintiff has filed the above second appeal. The same was admitted on 07.10.2014 and the following substantial questions of law were framed for consideration:

"a) Whether the plaintiff is entitled to the relief as prayed for with respect to the "B" schedule property when the plaintiff established his title over the "A" schedule property and when "B" schedule property forms part of "A" schedule property?

b) Whether the defendant is entitled to more extent with measurements as stated in Ex.B1 and B2 sale deeds when lesser extent and measurements have been stated in the previous title deed Ex.A3?"

8. According to the learned counsel for the plaintiff, it is categorically admitted that Ex.B1 and Ex.B2 are the sale deeds of the defendant. The defendant claims title through Exs.B1 and B2 sale deeds, dated 14.07.1997 and 11.08.2006, wherein, it is mentioned that the property is 30 yards in length and 6 yards in breadth. 1 yard is equal to 3 feet. Thus, the measurements of the defendant's property is 90 feet x 18 feet, whereas, the defendant, as DW1 in his evidence, has admitted that he is possessing the property measuring 90 feet x 22 feet.



Therefore, it is the case of the plaintiff that the excess land possessed by the defendant is the B schedule property is the one which was encroached by him. The trial Court had also finding lesser measurement in Exs. B1 and B2 decreed the suit in favour of the plaintiff. According to him, the findings of the lower appellate Court without adverting to Ex.A3 sale deed of the plaintiff's brother and Ex.B1 and Ex.B2, sale deeds of the defendant for a lesser extent is erroneous and liable to be set aside. He would also contend that the defendant himself admits the title of the plaintiff to the A schedule property, he is estopped from denying title of the plaintiff with respect to the B schedule property, which is an integral part of the A schedule property.

9. Per contra, learned counsel for the defendant would vehemently contend that the plaintiff has drastically failed to prove the encroachment by marking the measurement of the property. It is categorically admitted by the plaintiff, during the course of cross examination, that he has not purchased the property after measuring it. In other words, the property in A schedule was purchased without taking measurements before it was purchased. Without knowing the exact measurement of the property, the plaintiff is not entitled to rely on the title documents of the defendant and seek for excess land. There is no clear proof as to the existing measurement of the plaintiff as well as the defendant and therefore, the alleged encroachment on the basis of the measurements found in the title deeds itself is absolutely baseless and the substantial questions of law raised by the appellant are questions of fact and there is no substantial questions of law in issue.

10. On the perusal of the plaint, it is noted that the plaintiff's brother purchased the property from one Arumugam by entering into an exchange deed on 09.12.1987. Thus, the property belongs to the plaintiff's brother. Even though the plaintiff states that there was partition between the brothers and that he is the owner of the northern portion of the A schedule property, he has not filed any documents to prove that he had perfected his title through oral partition. Admittedly, A schedule property measures east- west 90 feet, north-south 16 feet as per the schedule mentioned in the plaint. As per the plaint schedule, there are two pieces of properties in A schedule. The first piece of property measures 90x16½ feet, other piece of property measures 120 x10 1/8 feet. Out of which, 3 x 200 feet is said to be encroached as mentioned in B schedule. If this measurement is taken into account, the evidence of PW1, the plaintiff, that he owns the house with a



breadth of 27 feet is falsified. The breadth of the house to the maximum is 16 ½ feet and nothing more than that. Be that as it may, there is a probability that the length of the property on the east and the north-south should be 216 feet and on the east-west, it should be 16 ½ feet. In A schedule property, both the plaintiff and the plaintiff's brother have constructed house. In a property which is measuring a breadth of 16 ½ feet, there is no possibility of leaving 5 feet on the eastern side. If 5 feet is left, it will reduce the breadth by 10 feet x 11 feet. Therefore, the measurements given in the plaint appears to be not correct.

11. Further, in the evidence also, the plaintiff claims that the defendant has encroached 3 feet x 200 feet, based on the measurements in Exs.B1 and B2 title deeds of the defendant. In case of encroachment, the plaintiff shall set out the exact measurements of his property and the area in his possession and the area encroached by the defendant depriving him of his land. In the plaint, the plaintiff has not attached any diagram or any documentary evidence that the defendant has encroached 3 feet x 200 feet of the land belonging to the plaintiff. The trial Court has wrongly proceeded on the basis of the measurements found in the title deeds, but not on the physical measurements that exist on ground. The lower appellate Court has rightly faulted with the finding of the trial Court and held that the plaintiff has failed to prove the encroachment by sufficient evidence. The findings of the lower appellate Court is found on justifiable reasons that the plaintiff has failed to prove the encroachment by sufficient evidence. In the absence of any proof of existence of the dispute, this Court is not inclined to interfere with the findings of the lower appellate Court. The questions of law framed are merely questions of fact and I do not find any substantial questions of law involved arising out of the judgment of the Court below. Therefore, on the basis of the questions of fact, the second appeal cannot be entertained.

12. In fine, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Court,  
Ranipet.

2. The District Munsif Court,  
Ranipet.

+1cc to Mr.T.P.Prabakaran, Advocate SR.No.45628

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&  
M.P.No.1 of 2014

SR II (CO)  
GN (07/06/2022)