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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2021

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SA NO.657 OF 2017

AND

CMP NO.16272 OF 2017

S.Siva

... Appellant/
1st Respondent/Plaintiff

VS.

1.B.Govindarajan

... 1st Respondent/
Appellant/1st Defendant

2.G.Saraswathi

3.G.Balaguru

4.G.Siva Sankar

5.B.Balambal

... 2 to 5 Respondents/
Respondents/Defendants

PRAYER:

Second Appeal filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 30.08.2016 in A.S.No.12 of 2013 on the file of I Additional Sub Court, Villupuram reversing the judgment and the decree dated 29.01.2013 in O.S.No.86 of 2007 passed by the I Additional District Munsif, Thirukoilur.

For Appellant : Mr.T.Sezhian

For Respondent-1 : Mr.C.Munusamy

J U D G M E N T

The plaintiff is the appellant before this Court. Aggrieved over the reversal of the decree granted by the Trial



Court by the First Appellate Court, the above Second Appeal has been preferred.

2. According to the plaintiff, the property in "A" Schedule originally belonged to one Dhanapakkiammal. She sold it to one Subbu Ammal on 05.10.1967 by virtue of a registered sale deed. In turn, the said Subbu Ammal, sold the property to one Jayaraman on 19.03.1997, who in turn, sold it to the plaintiff on 05.05.2000 by virtue of a registered sale deed. The property measured about 130 feet on the east west direction. Even though the boundaries mentioned in the properties in the sale deed made by Subbu Ammal in favour of Jayaraman were correct, the east west measurement was mentioned as 51 feet and in the sale made to the plaintiff, it was mentioned as 63 ½ feet. But, as per the boundaries, the predecessors in title to the plaintiff were enjoying the entire extent for over 25 years and thereby entitled to prescriptive title also. The plaintiff also constructed a house in the "A" Schedule property in the year 2003 and was assessed to tax. He is in peaceful possession and enjoyment of the same. While so, the respondents / defendants included their names as title holders of "B" Schedule property, which form part of "A" Schedule property and made entries in the "A Register". On 28.06.2005, the plaintiff filed a petition before the Revenue Department and got the patta transferred in his name. But on 09.02.2007, the defendants encroached into the property and put up compound wall for a height of 6 feet. Hence, he filed a Suit for declaration of title and for mandatory injunction to remove the construction and deliver vacant possession and also for mesne profits.

3. The defendants filed an elaborate written statement denying the averments made in the plaint. Actually, Subbu Ammal sold the property with correct measurements having 51 feet east-west and 21 feet north-south admeasuring an area of 1071 sft. by virtue of a registered sale deed dated 19.03.1997. But the purchaser Jayaraman suppressing the actual measurements, sold 1366 ½ sft to the plaintiff herein on 05.05.2000 in excess of the land to which he had title. From 2000 to 2003, the plaintiff was enjoying the property which he purchased from Jayaraman to an extent of 1071 sft. and nothing more than that. But he preferred the case on a false cause of action. The property described in "B" Schedule belonged to the defendant. It is a natham property and the defendant was issued with patta in the year 1995 itself by Natham Tahsildar. Since the plaintiff attempted to encroach the property, he constructed a compound wall. Therefore, he filed a Suit with a malafide intention to cause mental torture.

4. The Trial Court after framing appropriate issues tried the Suit. Pending trial, a Commissioner was appointed and



he filed a report. Based on the materials placed before the Court, the Suit was decreed. On appeal by the first defendant, the First Appellate Court found that the plaintiff had not established the fact that his original vendor did possess the extent of land claimed by the plaintiff and therefore, he is not entitled to more than what was purchased by his predecessors in title and reversed the decree. Aggrieved over the same, the plaintiff has preferred the above Second Appeal.

5. Heard the submissions made on either side and perused the materials available on record.

6. From the materials produced before the Court, it could be seen that the plaintiff purchased the property from one Jayaraman. His sale deed was marked as Ex.A3. The sale deed executed by Subbu Ammal predecessor in title in favour of Jayaraman was marked as Ex.A2 and the sale deed executed by the original owner Dhanapakkiammal in favour of Subbu Ammal was marked as Ex.A1. In Ex.A1, the property was sold with linear measurements of 50 X 21 feet on 05.10.1967. Ex.A2 also conveys same extent of land, with same boundaries. Therefore, it is very clear from the schedule of Exs.A1 and A2 that the linear measurements of the property was 50 X 21 feet admeasuring an area of 1071 sft. It is also relevant to note that the property was classified as "grama natham" in S.No.101/6. However, in Ex.A3 the vendor of the plaintiff who had purchased 1071 sft has sold an extent of 1366 $\frac{1}{2}$ sft in favour of the plaintiff. There is no explanation as to how the extent of the property increased from 1071 sft to 1366 $\frac{1}{2}$ sft. In other words, 50 feet was increased to 63 $\frac{1}{2}$ feet by the vendor of the plaintiff. The eastern boundary was mentioned as Thirukoilur Oil Mill. During the cross examination, P.W.1 would categorically admit that there is gap between the property of the plaintiff and Thirukoilur Oil Mill. The Oil Mill situates $\frac{1}{2}$ km away from the Suit property.

7. From the evidence of parties, it could be seen that in between the eastern boundary of the plaintiff and the Thirukoilur Oil Mill, there were lot of occupants put up constructions over the Natham land. The sketch prepared by the Advocate Commissioner clearly shows that the plaintiff's property measures lesser extent and not 130 feet as claimed by him in the east west direction.

8. It is imperative to note that Ex.B1 is Manaivari Thoraya Patta dated 03.07.1995 issued by Natham Tahsildar of Thirukoilur in favour of the first defendant. It is also relevant to note that the plaintiff purchased the property only on 05.05.2000. Therefore, it is clear that the defendants were in enjoyment of the property as per Ex.B1 even before the



purchase made by the plaintiff. The plaintiff as P.W.1 would admit that he has not measured the property before purchase. He made only approximate measurements. As seen above, the discrepancy in measurement between Exs.A1, A2 and A3 spells out that the plaintiff is claiming more than what his predecessor in title was entitled to.

9.Further, it is an admitted fact that the property is classified as "Natham Poramboke". Whoever is in possession and occupation of the property is entitled to hold the same. Even though the plaintiff has purchased the property on 05.05.2000 and produced patta vide Ex.A4 as discussed by the First Appellate Court, it was obtained on 23.09.2005. But, there were no proceedings for cancelling the patta of the first respondent / first defendant and it was issued without any notice. Particularly, Ex.A4 proceedings does not disclose issuance of notice, conduct of enquiry or the procedure contemplated for granting patta in respect of Natham land. Therefore, the First Appellate Court has rightly found that by virtue of patta, the plaintiff cannot claim any title over the property which is under occupation of the first respondent / first defendant. On the other hand, the possession of the first defendant was proved through Ex.B2, the petition sent to the District Collector and Ex.B5 dated 10.02.2007, CSR issued by the Police and Ex.B6, demand certificate issued by the Executive Officer, Town Panchayat. From this, it is very clear that the possession of the first respondent was sought to be disturbed by the plaintiff.

10.Therefore, it is crystal clear that the plaintiff is claiming larger extent of property through the sale deed dated 05.05.2000. When his predecessor in title themselves were not having larger extent, he cannot claim more than what he purchased through his predecessor. If at all there is any discrepancy, he should have approached the appropriate authorities for rectifying the sale deed with concrete proof. It is also important to note that the plaintiff is not claiming title and possession over "B" Schedule property by virtue of his occupation over "natham lands". He claims title only through the title deed. Whereas, the defendants were in possession of the property even before the purchase made by the plaintiff. Ex.B1 - Thoraya Patta issued in the year 1995 i.e., five years prior to the purchase of the property by the plaintiff can amply prove the possession by the first defendant. Therefore, I do not find any infirmity or discrepancy on the reasons recorded by the First Appellate Court for reversing the erroneous finding of the Trial Court. There is no question of law arising out of factual materials produced before the Court much less any substantial question of law. The questions of law projected by the appellant are not questions of law, but questions of fact. Therefore, the



Second Appeal does not deserve consideration and accordingly, dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

TK

To

1. The I Additional Sub Court
Villupuram.
2. The I Additional District Munsif
Thirukoilur.

Copy To

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

+1cc to Mr.C.Munusamy, Advocate, S.R.No.68437

SA NO.657 OF 2017

KJ(CO)
PM/02/06/2022