



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.757 of 2006

WEB COPY

Patturoja ... Appellant / Respondent / Defendant

-Vs-

Arumugam ... Respondent / Appellant / Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the learned first Additional Subordinate Judge, Trichirappalli in A.S.No.168 of 2004, dated 20.10.2005 reversing the decree and judgment of learned second Additional District Munsif, Trichirappalli in O.S.No.865 of 1996, dated 31.08.2004.

For Appellant : Mr.S.Muthukrishnan

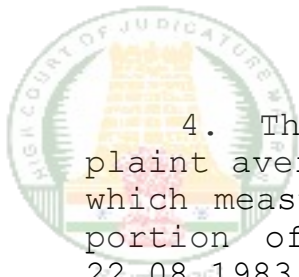
For Respondent : Mr.M.Siddharthan

JUDGMENT

The defendant in O.S.No.865 of 1996 on the file of the second Additional District Munsif, Trichy is the appellant herein.

2. The respondent herein namely Arumugam filed the said suit for restraining the appellant herein from interfering with his possession and enjoyment of the suit 'B' schedule property by putting up any construction or in any other manner. The case of the plaintiff was that he is the owner of the 'A' schedule property. He purchased the same from one Lalitha vide registered sale deed dated 30.05.1990. The said Lalitha had sold a portion lying to the east of 'A' and 'B' schedule property to the appellant Arumugam vide sale deed dated 22.08.1983.

3. It is the specific case of the plaintiff that Lalitha and the appellant entered into an agreement dated 10.03.1990 that 'B' schedule property will always be maintained as 5 feet common lane so that both the parties can use the same to reach the back portions of their house. The contention of the plaintiff Arumugam is that the benefit under the said agreement will enure in his favour also. His grievance was that the appellant Patturoja begun to act in contravention of the said agreement by putting up construction in the 'B' schedule property. That necessitated filing of the said suit.



4. The appellant filed written statement controverting the plaint averments. According to the appellant, 'B' schedule property which measures 5 feet east-west and 56 feet north-south falls in a portion of the property was purchased by her under Ex.B1 dated 22.08.1983. Ex.A3 agreement dated 10.03.1990 between Lalitha and Patturoja never came into force. In any event, Lalitha could not have conveyed the title that legitimately belongs to Patturoja in favour of the plaintiff through Ex.A3. Based on the rival pleadings, the trial Court framed the necessary issues. The plaintiff Arumugam examined himself as P.W.1 and marked Ex.A1 to Ex.A3. The defendant Patturoja examined herself as D.W.1. Ex.B1-sale deed dated 22.08.1983 executed in favour of Patturoja was marked as Ex.B1. An advocate commissioner was appointed and his reports and plans were marked as Court Ex.C1 to Ex.C4. After a consideration of the evidence on record, the trial court by judgment and decree dated 31.08.2004 dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.168 of 2004 before the Sub Court, Tiruchirappalli. By the impugned judgment and decree dated 20.10.2005, the first appellate court reversed the decision of the trial court and decreed the suit. Challenging the same, this second appeal came to be filed.

5. The second appeal was admitted on the following substantial questions of law:-

"1.Whether the agreement entered into between vendor of the property with previous vendee will give any right to the subsequent purchaser of the remaining area?

2.Whether the vendor of the property can convey the title of the property which she has not possessed?"

6. The learned counsel appearing for the appellant reiterated the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellant and allow the appeal by setting aside the impugned judgment and decree and by restoring the decision of the trial court.

7. Per contra, the learned counsel appearing for the respondent submitted that the impugned judgment and decree do not call for any interference.

8. I carefully considered the rival contentions and went through the evidence on record. The learned counsel appearing for the appellant would point out that in Ex.A1, the eastern boundary is shown as the house of Patturoja. His contention is that if Ex.A3 has really come into existence, the eastern boundary would be shown as 5 feet common lane. The fact that 5 feet common lane has not been mentioned as one of the boundaries shows that Ex.A3 did not come into force. He would also contend that 'B' schedule property covers 2 1/4 feet of lane belonging to the appellant. The



plaintiff's vendor could not have conveyed the defendant's land in favour of the plaintiff merely because she had entered into an agreement Ex.A3. The plaintiff did not examine her vendor to prove that Ex.A3 came into force. It was only the defendant who examined Lalitha's husband Sundaram on his side as D.W.2. Though this contention urged by the learned counsel appearing for the appellant has considerable force, I cannot lose sight of one fundamental aspect. There is something called urban planning. The concept of side set back area is an established feature of town planning. The plaintiff has purchased a ready built house from Lalitha. The defendant / appellant herein had also put up a house. As per Ex.A3, the appellant was to leave 2 1/4 feet on her side, while Lalitha was to set apart 2 3/4 feet on her side. As a result, there is a 5 feet gap between the two houses. This is what is called as side set back area. Whenever an applicant approaches the town planning authority for putting up a house, the plan will be approved only if the side set back area is provided. If no side set back area is provided, the plan will not be approved. Thus, virtually Lalitha and the appellant herein have only upheld the principle of side set back area by entering into Ex.A3-agreement. Viewed from this perspective, one has to necessarily sustain the approach of the first appellate court. In this view of the matter, I answer the substantial questions of law against the appellant.

9. The second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The first Additional Subordinate Judge, Trichirappalli.

2.The second Additional District Munsif, Trichirappalli.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc to Mr. M. Siddharthan, advocate in CA SR NO.30403/2021.

Judgment made in
S.A.(MD)No.757 of 2006