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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.NO.181 OF 2012

K.Kasi

.. Appellant/
Appellant/Defendant

-Vs-

Bommi Ammal

..Respondent/
Respondent/Plaintiff

PRAYER :

Second Appeal filed under Section 100 of C.P.C., against the Decree and Judgment dated 28.10.2011 in AS.No.2 of 2011 on the file of Principal Sub Court, Thiruvannamalai, confirming the Decree and Judgment dt.02.11.2010 in OS.No.395 of 2006 on the file of Principal District Munsif, Thiruvannamalai.

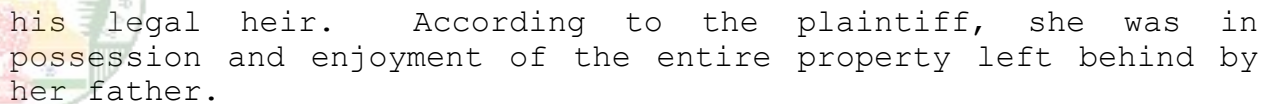
For Appellant : Mr.R.Rajarajan

For Respondent : Mr.K.V.Sajeev Kumar
Ms.Reshmi Christy

JUDGMENT

The defendant is the appellant in this second appeal.

2.The case of the plaintiff is that the suit property along with larger extent of property measuring 3 ares was originally owned by one Kanna Udaiyar. On his demise, the property was inherited by his wife and children. They executed a registered sale deed dated 12.05.1985, marked as Ex.A-1 in favour of the father of the plaintiff and the possession and enjoyment of the property was also handed over to the father of the plaintiff. The further case of the plaintiff is that her father died intestate on 21.05.1997 leaving behind the plaintiff alone as



attempt

7. When the Second Appeal was admitted, the following substantial questions of law were framed:

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falls within the suit property?

2. Is not the first appellate Court wrong in law, by not considering the failure of the plaintiff to trace the title which is fatal in the facts and circumstances of the case?

3. Is not the appellate Court wrong in law by directing the suit without framing the issue whether the boundary recitals in Ex.A.1 is correct or incorrect and which goes to the root of the case?

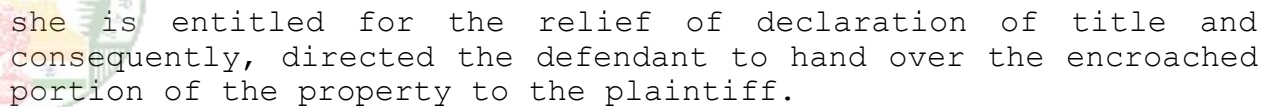
4. Whether the appellate Court is correct in law by dismissing the appeal without considering the objection against the commissioner report and without any finding thereon?

8. Heard Mr.R.Rajarajan, learned counsel for the appellant and Mr.K.V.Sajeev Kumar, learned counsel for the respondent. This Court carefully perused the materials available on record and the findings of both the Courts below.

9. A careful look at the description of the property in the plaint shows that the boundaries to the suit property has not been stated and the property has been described by showing the total extent as 1637.6 sq.ft (roughly 3.756 cents).

10. The dispute in the present case confines itself to the alleged encroached portion which according to the plaintiff is in possession and enjoyment of the defendant. In order to determine as to whether the defendant has encroached upon the portion of the property belonging to the plaintiff, it becomes necessary to first ascertain the total extent of property to which the plaintiff was entitled.

11. The trial Court while dealing with this issue has taken into consideration, the document marked as Ex.A-1 wherein, the total extent of the property is mentioned as 8 cents. The trial Court also took into consideration Exhibits A-5 and A-6 which was issued by the Revenue Department. While analysing the same, the trial Court found that there was no evidence to show that there was a partition between three brothers and pursuant to the same, each became entitled to 2 ½ cents. The trial Court also took into consideration the rectification deed which was marked as Ex.B-4 and gave a finding to the effect that such rectification had taken place after nearly 21 years and hence, the same cannot be taken into consideration to substantiate the claim made by the defendant. The trial Court mainly focussed on the documents that were produced on the side of the defendant and came to a conclusion that the defence taken by the defendant has not been established. The trial Court also placed reliance upon the evidence of DW-1 and DW-2 and rendered a finding that the plaintiff had proved her case and accordingly found that



16. In the considered view of this Court, both the Courts below had attempted to pick holes in the case of the defendant without focussing on the plaintiff, who is supposed to discharge the burden in proving the right and title over the property. The defendant had taken a very specific stand to the effect that the plaintiff could not have purchased an extent of 8 cents under Ex.A-1 since she was tracing the title from Angappa



Udaiyar, who himself was entitled for only 2½ cents. The boundary recitals of the document that was relied upon by the plaintiff had shown the eastern boundaries as Shekar's land instead of the road that was acquired from the original owners measuring an extent of ½ cent. The defendant had made a very specific pleading in this regard in the written statement. Therefore, the burden of proof was heavily on the plaintiff to have properly traced her title to the property and established that she was entitled for 8 cents of land. For this purpose, the evidence on the side of the defendant can only be taken for corroboration and the plaintiff should have primarily proved that she is entitled for 8 cents of land. This burden of proof on the part of the plaintiff has not been discharged. If this burden has not been discharged, it will become very difficult to come to a conclusion as to how much of the property belonging to the plaintiff has been encroached by the defendant. The burden of proof is heavy on the plaintiff to establish title over 8 cents of land since the defendant and his brother had purchased an extent of 450 sq.ft., from the son of Appadurai Udaiyar through registered sale deed dated 20.08.1982, marked as Ex.B-2. Nobody had disputed this sale deed. If this sale deed is taken into consideration, obviously the plaintiff could not have traced title for 8 cents of land from the Angappa Udaiyar's branch. In view of the same, this Court holds that the plaintiff has failed to trace her title and establish that she was entitled for 8 cents of land and that the disputed portion of the property fell within the suit property. The first and second substantial questions of law are accordingly answered in favour of the appellant.

17. There is yet another issue which was not taken note of by the Courts below. The Commissioner's report was filed without any reference to the title deeds. The same is evident on reading the learned Advocate Commissioner's report. It is also evident from the report of the learned Advocate Commissioner that while describing the boundaries, the eastern boundary has been shown as the road which is quite contrary to the boundary that was shown in Ex.A-1 sale deed relied upon by the plaintiff. In any event, the report of the learned Advocate Commissioner becomes irrelevant since the plaintiff failed to establish her title over an extent of 8 cents of land.

18. In the considered view of this Court, the findings of both the Courts below suffers from perversity and the same warrants the interference of this Court in the present second appeal. The third and fourth substantial questions of law are answered accordingly.

19. The above discussion leads to the conclusion that the judgment and decree of both the Courts below deserves the



interference of the Court. This is a classical case where both the Courts below lost sight of the fundamental law that the plaintiff has to prove his case and the plaintiff cannot be permitted to discharge the burden by picking holes in the case of the defendant. Both the Courts below were swayed by the case put forth by the defendant, even without seeing if the plaintiff had proved her title over 8 cents of land in which she had alleged that the defendant had encroached upon. Accordingly, all the substantial questions of law are answered in favour of the appellant and the Judgement and Decree passed by both the Courts below are set aside. As a consequence, the suit stands dismissed.

20. In the result, this Second Appeal is allowed. Considering the facts and circumstances of the case, there shall be no order as to cost.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Principal Subordinate Judge,
Thiruvannamalai.
2. The Principal District Munsif,
Thiruvannamalai.

Copy To

The Section Officer
V.R.Section, High Court, Madras.

+1cc to Mr.R.Rajarajan, Advocate, S.R.No.22093

S.A.No.181 of 2012

EV(CO)
PM/10/06/2022