



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.183 of 2012

1. Dr.P.G.Viswanathan

2. Muthulakshmi Viswanathan
Rep. by Power Agent
S.Udayakumar

... Appellants/Plaintiff

Vs

1. Palanisamy
2. Chinna Subramani
3. Chinna Krishnasamy
4. Eswaramurthy Gounder
5. S.E.Balan
6. S.E.Palanisamy
7. S.E.Paramasivam
8. S.k.Subramani
9. Natraj

... Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 18.09.2009 in A.S.No.7 of 2008 on the file of the II Additional Subordinate Court, Gobichettipalayam, and reversing the Judgment and Decree dated 24.10.2007 in O.S.No.154 of 2004 on the file of the District Munsif Court, Satyamangalam.

For Appellants : Mr.S.Chandrasekar

For Respondents : Mr.N.Manokaran for R1 to R3

JUDGMENT

The plaintiffs are the appellants in the second appeal.

2. The case of the plaintiffs is that they purchased agricultural lands to an extent of 95.63 acres through various registered sale deeds, marked as Exs.A2 to A5. It is stated that the defendants are the owners of the adjoining lands on the western side. The further case of the plaintiffs is that the



defendants are cultivating sugarcane in their lands.

3. It is stated that the plaintiffs started fencing the property and when this process was undertaken on the western side of the property, the defendants objected for the same. The plaintiffs therefore made an application to the Taluk Surveyor to measure the property based on the title deeds. Accordingly a survey was undertaken and the boundary stones were marked. This was once again objected by the defendants and they prevented the surveyor from measuring the property and fencing the boundary stones. Left with no other option, the suit came to be filed seeking for the relief of permanent injunction against the defendants.

4. The case of the defendants is that they are the absolute owners of the properties covered under Exs.B1 to B3. The further case of the defendants is that the plaintiffs, at the time of the re-survey, had included an extent of 1.45 acres into their property. This is attempted to be misused and the plaintiffs started putting up a channel and the stream in the encroached portion situated at Old S.F.Nos. 43B and 42. The defendants have therefore questioned the very right of the plaintiffs insofar as the disputed portion of 1.45 acres where the plaintiffs is said to have put up the drainage water channel. Accordingly, the defendants have sought for the dismissal of the suit.

5. The Trial Court, on considering the oral and documentary evidence, decreed the suit through a Judgment and Decree dated 24.10.2007. Aggrieved by the same, the defendants filed an appeal in A.S.No.7 of 2008. The Lower Appellate Court, on re-appreciation of the oral and documentary evidence and after considering the findings of the Trial Court, allowed the appeal through a Judgment and Decree dated 18.09.2009 and thereby the Judgment and Decree of the Trial Court was set aside. Aggrieved by the same, the second appeal has been filed by the plaintiffs.

6. Heard, Mr.S.Chandrasekar, the learned counsel for the appellants and Mr.N.Manokaran, the learned counsel for the respondents 1 to 3. This Court also considered the materials placed on record and the findings of both the Courts below.

7. The appellants are claiming their right and title over the property through the sale deeds, marked as Exs.A2 to A5. While considering the description of the property in these sale deeds, the Trial Court took into consideration the re-survey that was conducted under the Tamil Nadu Survey and Boundaries Act, 1923 and a categorical finding was given to the effect that 1.45 acres, which belonged to the defendants, was included in



the lands belonging to the plaintiffs. According to the Trial Court, since the defendants have not challenged the re-survey within a period of three years, they have lost their title over the said 1.45 acres. In view of the same, the Trial Court decreed the suit in favour of the plaintiffs.

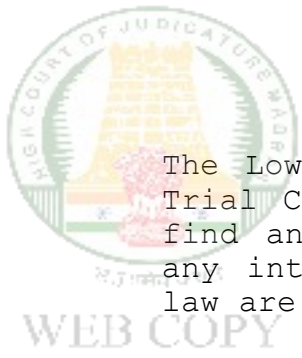
8. The Lower Appellate Court went into this issue and found that the re-survey itself was done without giving any notice to the defendants. Hence relying upon the Judgment of this Court in Lingappa Gounder Vs. Palanisamy Gounder reported in 2006 (1) MLJ 423, the Lower Appellate Court held that the defendants are not bound by the said re-survey and hence there is no requirement to file a suit within three years, as held by the Trial Court.

9. The Lower Appellate Court, next went into the issue with regard to the location of the drainage channel. The plaintiffs were claiming usage of the same and were seeking for the relief of permanent injunction. The Lower Appellate Court, on re-appreciation of the oral and documentary evidence, found that 1.45 acres of land of the defendants was included into the land holding of the plaintiffs and there is absolutely no proof to show as to where this drainage water channel was located. The defendants had specifically denied the title of the plaintiffs insofar as 1.45 acres of land is concerned. In such a case, the Lower Appellate Court held that a suit for bare injunction will not lie and the plaintiffs ought to have sought for the relief of declaration of title.

10. The Lower Appellate Court also took into consideration the fact that the plaintiffs did not get into the box and only his power agent was examined as P.W.1. The power agent, during the cross-examination, had stated that he did not know anything about the suit property prior to the year 1995. This witness was completely ignorant about the details of the suit property. The Lower Appellate Court held that the facts which are exclusively within the knowledge of the plaintiffs cannot be spoken by the agent and this was also put against the plaintiffs.

11. The Lower Appellate Court also took into consideration one other important fact i.e., the plaint schedule did not contain any boundaries. The Lower Appellate Court held that in the absence of boundaries and in view of the fact that an extent of 1.45 acres was wrongly added to the lands of the plaintiffs, there was nothing to show that the drainage channel is within the suit property.

12. The findings of the Lower Appellate Court was based on the re-appreciation of the oral and documentary evidence.



The Lower Appellate Court, while reversing the findings of the Trial Court, had assigned cogent reasons. This Court does not find any perversity in those findings and it does not warrant any interference. In any event, no substantial questions of law are involved in this second appeal.

13. In the result, this second appeal is dismissed. Considering the facts and circumstances of the case, there will be no order as to costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

Lpp

To

1. The II Additional Subordinate Judge,
Gobichettipalayam.
2. The District Munsif,
Satyamangalam.

Copy to:
The Section Officer,
V.R. Section,
High Court, Madras.

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NMI (CO)
SU(08/04/2022)