



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

SA.No.1024 of 2013
and
MP No.1 of 2013

1. R.Manoharan
2. Ramakrishnan
3. Savithiri ...Appellants/Plaintiffs

Vs.

1. S.Ramakrishnan
2. S.Nagaraj
3. D.Sivaraj ...Respondents/Defendants

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure to set aside the Judgement and decree made in A.S.No.37 of 2011 on the file of the Subordinate Judge, Pollachi dated 28.06.2013 confirming the decree and judgement made in O.S.No.225 of 2005 on the file of the District Munsif Court, Pollachi dated 14.09.2011 and decree the suit as prayed for.

For Appellant : Mr.C.Veeraraghavan

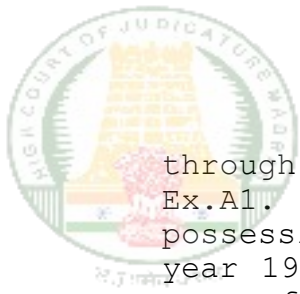
For Respondents : Mr.K.Sudhakar
for R1 to R3

JUDGMENT

The plaintiffs are the appellants in this second appeal.

2. The plaintiffs filed the suit seeking for the relief of permanent injunction restraining the defendants from interfering with the possession and enjoyment of the suit property.

3. The case of the plaintiff is that the suit property originally belonged to the father of the plaintiffs



through a registered sale deed dated 13.12.1933 marked as Ex.A1. According to the plaintiffs, their father was in possession and enjoyment of the properties till he died in the year 1988. After his demise, the patta was transferred in the name of the mother of the plaintiffs and she died in the year 2000. After her demise, the plaintiff are in possession and enjoyment of the suit properties.

4. The further case of the plaintiffs is that the defendants are their neighbours who are having properties on the north east and the north west side of the suit property. Due to heavy rains, the walls surrounding the suit property got damaged and hence, the plaintiff wanted to renovate the walls. When this process was started, the defendants prevented the construction work. Aggrieved by the same, the suit was filed seeking for the relief of permanent injunction.

5. The defendants filed a written statement. They took a stand that there is north-south lane on the eastern side of their properties and this lane was used by them to reach their properties and it was a common lane for both the plaintiffs and the defendants. They alleged that the plaintiff attempted to block this lane and the same was questioned by the defendants. Hence, the defendants sought for the dismissal of the suit.

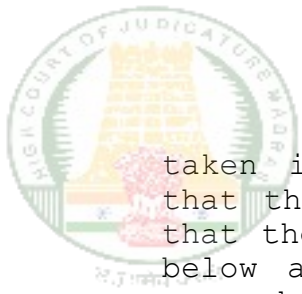
6. Both the Courts below on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence concurrently held against the plaintiffs and dismissed the suit. Aggrieved by the same, the plaintiffs have filed this second appeal.

7. Heard the learned counsel for the appellant and the learned counsel for the respondent and this Court has also carefully considered the materials available on record and the findings rendered by both the Courts below.

8. This Court framed the following substantial question of law :-

Whether both the Courts below after finding that the plaintiffs have established title over the property, failed to appoint an Advocate Commissioner in order to elucidate the matter in dispute and to determine as to whether the disputed wall falls within the property belonging to the plaintiffs?

9. Both the Courts below concurrently found that the plaintiffs have established their right and title over the suit property. To arrive at such a conclusion, the original sale deed marked as Ex.A1, the original patta in the name of the mother of the plaintiffs marked as Ex.A2, the property tax receipts standing in the name of the father of the plaintiffs, marked as Ex.A4 to A8 and the EB receipts standing in the name of the father of the plaintiffs marked as Ex.A10 to A11, were



taken into consideration. Both the Courts below also found that the defendants have not produced any documents to prove that they are the owners of the adjacent property. The Courts below also took into consideration Ex.A15 photographs which was admitted by the defendants wherein the north-south lane was identified. The defendants failed to prove that this lane was running inside the property of the plaintiff. After having given such favourable findings, both the Courts below dismissed the suit only on the ground that the plaintiffs failed to establish that the wall was situated in the suit property and that no steps were taken by them even to appoint an Advocate Commissioner to survey the property as per the title documents and to submit a report.

10. In the considered view of this Court, both the Courts below after having found that the plaintiffs have established their right, title and possession over the suit property, should have appointed an Advocate Commissioner to ascertain whether the wall is falling within the suit property. Even if the plaintiffs have not taken an application in this regard, it is ultimately for the assistance of the Court to render an effective finding, such Advocate Commissioner report is sought for. In the present case, the purpose of appointing an Advocate Commissioner is not to collect evidence and such a report is required to help the Court for the purpose of elucidating the matter in dispute. It is now too well settled that such Advocate Commissioner can be appointed even in a suit for bare injunction. The purpose of appointing an Advocate Commissioner in a case was explained by this Court in [Kandipalayam Rajavaikkal Siru Vivasaiygal Neeretu Prasana Sangam Vs.Nanjay Edayar Vivasaiyigal Sangam by its President, N.M.Mayandi Gounder] reported in 2017 2 CTC 404. The relevant portion in the judgement is extracted hereunder :-

It is obvious to note down here that the present case is unique in its nature. It cannot be equated with the other cases cited above. Insofar as the present case is concerned, this Court would like to place it on record that the provisions of Order XXVI Rule 9 CPC envisages that in any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, the court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the court. The intention of the legislators is that, an Advocate Commissioner can be appointed only for the purpose of elucidating any matter in dispute by way of helping the Court which deems a local investigation is absolutely necessary and proper.

11. In view of the above discussion, this Court holds that the Courts below ought to have appointed an Advocate Commissioner to conduct a survey over the suit



property as per the title deeds and should have ascertained the location of the disputed wall and thereafter, decided the case. The substantial question of law is answered accordingly.

12. In the result, the judgement and decree of the Lower Appellate Court is hereby set-aside. The matter is remanded back to the file of the Sub Court, Pollachi and the Lower Appellate Court is directed to appoint an Advocate Commissioner to conduct a survey of the suit property based on the title deeds of the plaintiffs and to file a report within a stipulated time. If the parties want to file any objections for the report, the same shall be permitted within a stipulated time. The expenses for appointment of the Advocate Commissioner to survey the suit property shall be borne by the plaintiff. The Lower Appellate Court shall thereafter proceed to hear the appeal on merits based on the report of the Advocate Commissioner and final judgement shall be passed on or before 30.06.2022. The Lower Appellate Court shall report compliance after passing the final judgment.

13. Accordingly, this second appeal is allowed in the above terms. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

rka

To

1.The Subordinate Judge, Pollachi.

2.The District Munsif, Pollachi.

Copy To:-

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

+1cc to Mr.C.Veeraraghavan, Advocate SR. No. 21135

+1cc to Mr.K.Sudhakar, Advocate SR. No. 20902

SA.No.1024 of 2013

SV (CO)

PR (10/05/2022)