



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment  
12.01.2022

Date of Pronouncing Judgment  
25.01.2022

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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

S.A.No.97 of 2013  
and  
M.P.No.1 of 2013

N.Subramania Choudhry,  
Late.Nagappa Choudry,  
Perumal Koil Street,  
Kannapalaym Village,  
Avadi Firka, Poonamallee Taluk.

.. Appellant/Respondent/Defendant

Vs.

1.S.Ramu (Died)  
S/o.Late Subramania Soudhry,  
No.1/110, Perumal Koil Street,  
Kannapalaym Village,  
Avadi Firka, Poonamallee Taluk.

2.R.Kumari,  
W/o.Late Ramu

3.C.Parameswari,  
W/o.Chandru  
D/o.Late Ramu

4.E.Nalini,  
W/o.Elumalai,  
D/o.Late.Ramu,

R2 to R4 residing at  
S/o.Late Subramania Soudhry,  
No.1/110, Perumal Koil Street,  
Kannapalaym Village,  
Avadi Firka, Poonamallee Taluk.



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(R2 to R4 brought on record as LR's of the deceased first Respondent (sole) viz., S.Ramu vide Court order dated 20.06.2017 made in M.P.No.1 of 2015 in S.A.No.97 of 2013)

...Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree in O.S.No.620 of 2001 dated 22.06.2007 on the file of the District Munsif, Poonamallee modified in A.S.No.58 of 2008 dated 29.06.2012 on the file of the Subordinate Judge, Poonamallee.

For Appellant : Mr.V.Manohar

For Respondents : Mr.T.Jayaramaraj  
(for R2 to R4)

#### J U D G M E N T

The Appeal is filed against the Judgment and Decree in O.S.No.620 of 2001 dated 22.06.2007 on the file of the learned District Munsif, Poonamallee modified in A.S.No.58 of 2008 dated 29.06.2012 on the file of the learned Subordinate Judge, Poonamallee.

2.The defeated Defendant has preferred this Appeal and the following substantial questions of law are framed:

- (i)Whether the Courts below are correct in entertaining the suit for bare injunction in the disputed rights over the property without adopting the legal requirements to seek the declaration of title over the same?
- (ii)Whether or not the Courts below have violated the mandatory requirement contemplated under Sec.34 of Specific Relief Act?
- (iii)Whether the Courts below are right in entertaining the suit for injunction on the property of vague description without proper identification as against requirement of law?
- (iv)Whether the Courts below are empowered to give their interpretation to the document came into existence under the Court auction on their own without directing the party claiming to approach the appropriate court to clarify the proper description of the property?



3.The learned counsel for the Appellant heard on the above substantial questions of law and the learned counsel for the Respondents 3 to 4 also heard.

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4(a).The suit is for bare injunction.

4(b).The suit property as described in the Plaint is house and site in No.7, Kannapalayam Village, Avadi Firka, Poonammallee Taluk, admeasuring 6104 sq. ft. (11 cents) in new S.No.385/41, Old S.No.20/4, bounded on the North by Road, South by agricultural land, East by Balarama Choudry's vacant and West by Subramania Chowdry's vacant site.

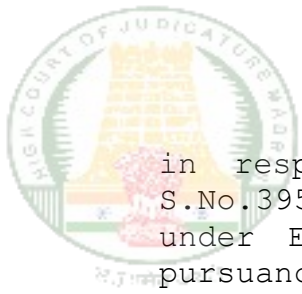
4(c).The case of the Plaintiff is that the entire suit property had been purchased by his father Surbramania Chowdry Son of Bangaru Choudhry by a registered sale deed dated 19.02.1976 executed by Additional District Munsif, Poonammallee on behalf of one Muniammal in execution of decree for specific performance in O.S.No.512/72, but the Defendant whose name is also Subramania Chowdry obtained patta for suit property misleading revenue authorities and tried to interfere. Hence the Suit.

5(a).In order to substantiate his case, the Plaintiff has examined himself as PW1, Ex.A1 and Ex.A4 is a sale deed dated 19.2.76 executed in favour of Subramania Chowdri by Muniammal in execution of decree passed in suit for specific performance. The Defendant herein has contended that only an extent of 100 x 12 ft was conveyed to the Plaintiffs father by Muniammal in execution of decree in O.S.512 of 72 and the remaining property was only with Muniammal, who had executed a Will in favour of Krishnaveni Ammal with regard to all her properties including a house site measuring 19 feet East to West and 185 feet North to South.

5(b).It is Ex.B1, Krishnaveni, sold the above said site tot he Defendant by sale deed dated 24.11.1986, it is Ex.B2, through this document Defendant is claiming to owning the site measuring 19 feet East to West and 185 feet North to South, on the East of property purchased by Plaintiff's father under sale deed dated 19.02.1976. Hence, the Plaintiff is not entitled to the suit property.

5(c).The Plaintiff has contended that the entire suit property was purchased by his father from one Muniammal on 19.2.76 pursuant to execution of decree for specific performance in O.S.No.512 of 72, as per Ex.A1. Per contra, the Defendant has contended that a house and an extent of 100 x 12 ft (i.e.) 1200 ft only has been conveyed through Ex.A1.

6(a).After hearing the submissions of the learned counsel for the Appellant and perusing the lower Court records, this Court finds that the Plaintiff filed the suit for an injunction



in respect of entire extent of suit property comprised in S.No.395/41. The Plaintiff claims title to the suit property under Ex.A1 sale deed obtained by his father from Court in pursuance of decree passed in O.S.No.512 of 1972 and confirmed in A.S.No.107 of 1974. The contention of Plaintiff is, entire property in S.No.395/41 owned by his father's vendor Muniammal, W/o.Raju Chowdhry was conveyed under Ex.A1. On the Defendant side not disputed the validity of Ex.A1, but his contention is entire extent of property as mentioned in the suit plaint schedule was not conveyed under Ex.A1, only portion of the property on the western side measuring 12 x 100 was conveyed, the remaining extent of land was later bequeathed by the said Muniammal to her brother's daughters under the registered Will dated 17.08.1978 in Ex.B1. The beneficiaries under the Will in turn sold the property to Defendant under Ex.B2.

6(b).The dispute arose because of, in Ex.A1 the extent of property, linear measurement of property conveyed were not given, only boundaries were given. According to Plaintiff the entire extent of suit property was conveyed, but in the annexure form to Ex.A1, Court sale deed, the total extent of conveyed property is given as 12 x 100 i.e., 1200 sq.ft.

7.From the documents produced, it is unambiguously established that the vendor of Ex.A1/Muniammal, W/o.Raju Chowdhry possessed and owned land in old S.No.20/4, present S.No.395/41. She entered sale agreement with Plaintiff's father Subramania Chowdhry, when she failed to honour the agreement, it leads to file suit O.S.No.512/72 by Plaintiff's father for specific performance of contract and obtained decree. In pursuance of decree execution proceedings initiated, sale deed Ex.A1 was obtained by the Plaintiff's father through Court. Later the said Muniammal bequeathed the remaining portion retained by her on the eastern side to her brother's daughters. The Defendant purchased the said bequeathed portion of property from the beneficiaries under Ex.B2. Thus both the property purchased by Plaintiff's father under Ex.A1, and the property purchased by Defendant under Ex.B2 are previously owned by Muniammal, W/o.Raju Chowdhry as single unit. In Ex.A1 sale deed eastern side boundary is shown as site of Muniammal (Defendant). The word Defendant put in bracket is very significant, it proves that vendor of Ex.A1 owned certain land on the eastern side of property conveyed under Ex.A1. The contention of Plaintiff that the Muniammal mentioned in Ex.A1 as eastern side property owner is different person is ruled out and hence I find that the Eastern side property owner with regard to Ex.A1 is Muniammal cannot be countenanced. Similar finding arrived at by the both the Courts below is just and proper and the same is hereby



confirmed.

8.As stated supra, Respondent/Plaintiff relied upon Ex.A1. In Ex.A1, the extent of property conveyed under the document is not mentioned but only boundaries are mentioned. Appellant/Defendant relied upon Ex.B1, Ex.B2, wherein no linear measurement is given that too in Ex.B2 total extent conveyed is given as 2616 sq. ft. The trial Court has held that the Respondent/Plaintiff is entitled to the extent of 1200 sq. ft. only, relying upon the annexure affixed to Ex.A1.

9.On Appeal, the Appellate Court relying upon Ex.C6, FMB Sketch and Ex.C1 & Ex.C2 Advocate Commissioner's report has held that the Respondent/Plaintiff is in possession of balance of the area 2616 sq. ft. The lower Appellate Court cannot do arithmetic calculation, especially, the way in which it has been done in this case. The lower Appellate Court has indulged in doing the arithmetic calculation, based upon the measurement of Ex.B2 and detected it from the Commissioner's report which is unwarranted.

10(a).The Court cannot substitute its calculation on the basis of the Advocate Commissioner's report, especially, when the suit is for bare injunction and the Commissioner's finding as to who is in possession of the suit property in Commissioner's report cannot be looked into. If at all the physical feature noted therein can be taken into consideration, the finding of the Advocate Commissioner as to which party is in possession, cannot be form basis for the legal adjudication.

10(b).On perusal of Ex.A1, it is seen that in the annexure, it is specifically mentioned regarding the value of the property, extent of the property and value per square feet. Accordingly, market value has been arrived at and stamp duty has been paid. The measurement given in the annexure has been admitted by PW1 in cross examination. No document was produced by the Respondent/Plaintiff to prove his possession over the entire extent of the suit property, much less land, over and above 1200 sq. ft., as mentioned in annexure 1A to Ex.A1, Court executed sale deed.

11.For the reasons recorded therein, both the Courts below have rightly come to the conclusion that on the Eastern side of the property covered under Ex.A1, the property of Muniammal was situated as clearly described in the boundary. The said Muniammal by Ex.B1 has executed a Will and under Ex.B2 beneficiary under Ex.B1 has sold the property to the Defendants to an extent of 2616 sq. ft. The Court based upon the Advocate Commissioner's report has held that the balance of the property



in the said survey number belongs to the Plaintiff without any document. PW1 in the cross examination has categorically stated that the Defendant has obtained patta by misleading the revenue authorities. The lower Appellate Court has observed that even though patta stands in the name of Defendant to the full extent of the suit property, it is not create right or extinguish right of the parties. The observation so made by the learned Appellate Court is correct. However, it has rendered a wrong finding that the title of the Plaintiff is established. At the risk of repetition, for the sake of clarity, under Ex.A1 there is no extent of property, in annexure to Ex.A1, it is mentioned as 1200 sq. ft. only and therefore, at no stretch of imagination, right of the Plaintiff cannot be extended beyond it, except 1200 sq. ft., nor the Advocate Commissioner can give such right to the Plaintiff, in the absence of any valid document to ascertain. As to possession, the admission of PW1 regarding patta standing in the name of the appellant/Defendant cannot be kept aside.

12.The Respondent/Plaintiff has not filed the suit for declaration of title. It is a bare injunction suit. Unless the Plaintiff demonstrates before the Court that positive evidence to show on the date of filing of the suit, the Plaintiff is in possession of the larger extent of land over and above, the extent of land mentioned in Ex.A1 is not entitled for any relief of injunction. The trial Court has rightly rendered a similar finding, however, on erroneous consideration by relying upon the finding of the Advocate Commissioner, the lower Appellate Court has committed a mistake in coming to the conclusion that the Respondent/Plaintiff was in possession to the extent of 3880 sq. ft., and hence the finding of the trial Court is restored and the contra finding rendered by the lower Appellate Court is hereby stands vacated. Since the same unsustainable in law.

13.In a suit for bare injunction, granting the relief of permanent injunction, with regard to disputed ownership, without relief of declaration is not appropriate and the same is against the provisions of Section 34 of Specific Relief Act. In a Suit for bare injunction, identification of the property is must, in respect of the unidentified property grant of injunction is improper.

14.In view of the discussion in the preceding paragraphs, this Court finds that the Respondent's vendor and its declaration in Ex.A1 document, which is registered through Court, wherein the annexure disclosed only about the sale transactions of 100 x 12 ft and hence the grant of relief over the entire extent of the said survey number, after deducting the lands covered under Ex.B2



sale deed in faovur of the Defendant is totally unwarranted. Thus, this Court finds that the lower Appellate Court has overlooked the description of the property, about retaining the major portion of the property by the Late Muniammal to show, there was no parting with the entire extent of land, after Ex.A1, eastern portion remains with Muniammal and what was subjected to sale through the Court auction is only about a stretch of land measuring 12 x 100 ft., house property and not the entire property in the said survey number and hence, all the substantial questions of law are answered in favour of the Appellant and against the Defendant. The Judgment and Decree passed in A.S.No.58 of 2008 dated 29.06.2012 by the learned Subordinate Judge, Poonamallee is set aside and the judgment and Decree granted by the learned District Munsif, Poonamallee in O.S.No.620 of 2001 dated 22.06.2007 is restored.

15.Accordingly, the Second Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

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To

1.The Subordinate Judge,  
Poonamallee.

2.The District Munsif,  
Poonamallee.

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

+1cc to Mr.T.Jayaramaraj, Advocate SR.No.4191

+1cc to Mr.V.Manohar, Advocate SR.No.4476

S.A.No.97 of 2013

BR(CO)  
CB(28/02/2022)