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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.516 of 2016
and
C.M.P.No.9131 of 2016

Dhanalakshmi ...Appellant/Appellant/3rd Defendant
Vs.

1.J.Suresh Kumar ... 1st Respondent/1st Respondent/Plaintiff

2.Natarajan

3.Jayaraman ... Respondents 2&3/Respondents 3&4/Defendants 5&6

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and the judgment dated 19.02.2016 rendered in A.S.No.45 of 2013, on the file of the Subordinate Judge, Tirupattur, Vellore District, modifying the Decree and the Judgment dated 31.10.2013 rendered in O.S.No.390 of 2005 on the file of the Additional District Munsif of Tirupattur.

For Appellant : M/s.Elizabeth Ravi

For Respondents : Mr.S.Kalyanaraman for R1
No Appearance for R2 & R3

JUDGMENT

The 3rd defendant is the appellant in this Second Appeal.

2.The 1st respondent/plaintiff filed the suit seeking for the relief of declaration of title and for permanent injunction.

3.The case of the plaintiff is that he is the owner of the property at S.No.76/2C1 measuring an extent of 0.025 ares which is equivalent to 6 cents. The plaintiff traces his right through documents marked as Exs.A1 to A4. The property was conveyed in favour of the plaintiff by one Saraswathi through Ex.A4 Sale



Deed. The further case of the plaintiff is that the revenue records were also mutated in his name and patta was issued in his favour.

4.The grievance of the plaintiff is that he took steps to measure and demarcate the suit property with the help of the Surveyor and he also paid the necessary charges. However, the survey was prevented by the defendants and they also attempted to trespass into the suit property. Hence, the suit came to be filed seeking for the reliefs stated supra.

5.The 1st defendant filed the written statement and it was adopted by the 2nd defendant. According to these defendants, the total extent of the suit property is only 2½ cents and it is situated in Old S.No.27/2C and this property was purchased by one Kannayiram from Appu alias Munusamy through a Sale Deed dated 07.12.1977. The further case of the defendants is that the said Kannayiram executed a Settlement Deed in favour of the 1st defendant on 24.11.2004 and this document was marked as Ex.B2. The defendants further pleaded that their property is situated on the northern side of the suit property and this property was conveyed in favour of the 1st defendant through a Sale Deed dated 14.09.1987. Accordingly, these defendants denied the very claim made by the plaintiff for an extent of 6 cents and sought for the dismissal of the suit.

6.The 3rd defendant filed a written statement. She took a stand that she is the wife of the 1st defendant and the suit property absolutely belongs to the 1st defendant and it was in his possession and enjoyment. On his demise, the property was inherited by the 3rd defendant. Accordingly, the 3rd defendant also sought for the dismissal of the suit.

7.The trial Court on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence, decreed the suit as prayed for through a Judgment and Decree dated 31.10.2013. Aggrieved by the same, the 3rd defendant filed an appeal before the Sub Court, Tiruppattur in A.S.No.45 of 2013. The lower Appellate Court on re-appreciation of the oral and documentary evidence and after considering the findings of the trial Court, modified the Judgment and Decree passed by the trial Court and held that the plaintiff is entitled for the relief only for an extent of 2½ cents. Aggrieved by the same, the 3rd defendant has filed this Second Appeal.

8.Heard M/s.Elizabeth Ravi, learned counsel appearing on behalf of the appellant and Mr.S.Kalyanaraman learned counsel appearing on behalf of the 1st respondent.



9. This Court also carefully perused the materials available on record and the findings of both the Courts below.

10. The trial Court had decreed the suit in entirety and consequently, the relief was granted for an extent of 6 cents in S.No.76/2C1. However, the Appellate Court on re-appreciation of the evidence and on considering the findings of the trial Court, found that the plaintiff was claiming for a right and title over the property only by virtue of Ex.A4 and what was conveyed to the plaintiff was only an extent of 2½ cents. In view of the same, the lower Appellate Court after assigning proper reasons, modified the decree and gave the relief only for an extent of 2½ cents.

11. The learned counsel for the appellant submitted that the plaintiff had described the suit property by giving the boundaries and according to the plaintiff, an extent of 6 cents fell within these boundaries. However, when the Appellate Court modified the Decree passed by the trial Court, even though the right was confined only to an extent of 2½ cents, the very same boundaries that were shown by the plaintiff were sustained and according to the learned counsel for the appellant this requires the interference of this Court.

12. In the considered view of this Court, the lower Appellate Court had based its findings by relying upon Ex.A4. The boundaries as found in Ex.A4 tallies with the boundaries that are shown in the suit schedule. However, it was found that what was conveyed under Ex.A4 was only 2½ cents and not 6 cents as claimed by the plaintiff. It is therefore clear that only 2½ cents of land was covered by the boundaries as shown in the suit schedule and this suit schedule is in line with the boundaries shown in Ex.A4 document.

13. The above finding rendered by the lower Appellate Court is supported by cogent reasons and it does not suffer from any perversity. The learned counsel also questioned the findings of both the Courts below to the effect that the 2nd defendant being the attesting witness in Ex.A2 document cannot question the claim made by the plaintiff over the suit property. It was contended that an attesting witness need not know about the contents of the document and therefore, merely because the 2nd defendant was an attesting witness, that cannot be put against the defendants while deciding the right and title claimed by the plaintiff.

14. In the considered view of this Court, this finding rendered by both the Courts below becomes irrelevant in view of the fact that the right and title of the plaintiff has been ultimately decided only based on the title document marked as



Ex.A4. Hence, the mere finding of both the Courts below on the attesting witness, will not change the ultimate decision taken by the lower Appellate Court by confining the right and title of the plaintiff to 2½ cents based on Ex.A4.

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15.The Judgment and Decree passed by the lower Appellate Court does not warrant any interference. In any case, no substantial question of law is involved in this Second Appeal.

16.In the result, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there will be no order as to costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Subordinate Judge,
Tirupattur,
Vellore District.
2. The Additional District Munsif,
Tirupattur.
3. The Section Officer,
V.R. Section,
High Court, Chennai.

+1cc to M/s.Elizabeth Ravi, Advocate, S.R.No.29211

+1cc to M/s.S.Kalyanaraman, Advocate, S.R.No.28324

S.A.No.516 of 2016
and
C.M.P.No.9131 of 2016

SJ(CO)
SU(18/05/2022)