

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 07.09.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2802 of 2021

and

C.M.P.No.13378 of 2021

Ezhumalai

... Appellant/Respondent/Defendant

Vs.

S.Lakshmi

... Respondent/Appellant /Plaintiff

Prayer: Civil Miscellaneous Appeal is filed under Order XLIII Rule 1(U) of the Code of Civil Procedure against the Judgment and Decree dated 21.06.2021 passed in A.S.No.10 of 2020 on the file of the learned Additional Subordinate Judge, Puducherry, which reversed the Judgment and Decree dated 14.08.2019 passed in O.S.No.909 of 2014 on the file of the learned Principal District Munsif, Puducherry.

For Appellant : Mr.S.S.Rajesh

For Respondent : Mr.K.Sukumaran

JUDGMENT

The defendant is the appellant before this Court challenging the order of remand made by the learned Additional Subordinate Judge, Puducherry in A.S.No.10 of 2020.

2.The facts in brief are as follows:

The respondent/plaintiff had filed a suit O.S.No.909 of 2014 on the file of the learned Principal District Munsif, Puducherry, for a permanent injunction restraining the respondent, their men, agents from entering into the suit property in any manner. It is their case that the suit property belonged to her by virtue of a registered Donation Deed dated 15.03.2000 executed by her brother A.Srinivasan. The plaintiff has been in possession and enjoyment of the same since then. She has also constructed a compound wall around the suit property and put up a gate. The gate is locked and the key is with the plaintiff. The plaintiff's mother in turn had purchased the property from

Vadivelu and Adhimoolam @ Natarajan, the sons of Govindasamy through their power agent Satchidanandam who they had appointed under the Deed dated 19.07.1991. The plaintiff would further submit that her husband had purchased the property to the East of the suit property under the Sale Deed dated 02.11.1992 registered as Document No.3704/1992. The plaintiff would further submit that the defendant is now trying to make a claim over the suit property and is causing disturbance in the peaceful possession and enjoyment of the suit property.

3.The defendants had filed their Written Statement in which they admitted that the property originally belonged to one Vadivelu and Adhimoolam @ Nadarajan by virtue of a Partition Deed dated 24.02.1965. It is their case that they had appointed one Satchidanandam as a power agent under a Deed dated 19.07.1991 authorising him to sell the entire or part of the property. Pursuant to this Deed, the said Satchidanandam also sold the portions of the

property to Sakthivel, Sengani, the defendant, Kala, Srinivasan, Sivanadam and others. The defendants in turn had purchased the property under a registered Sale Deed dated 07.10.1991. The assurance bond described in the said Deed would show that the vendors of the defendant had retained the property and that the plaintiff, her vendor and her husband had purchased the property after the sale in favour of the defendant. The Sale Deed dated 04.03.1992 in favour of Kala would show that the property is situate to the East of the property of the defendant. The defendant had further contended that the suit for bare injunction without claiming title is not maintainable and further, it was only the defendant who was in possession and enjoyment of the property.

4.The learned Principal District Munsif, after considering the evidence on record, came to the conclusion that the plaintiff was not entitled to the relief of permanent injunction. The learned Judge also took note of the fact that the plaintiff was unable to prove the identity

of the suit property by adducing cogent and acceptable evidence. Therefore, she was non suited. The said Judgment and Decree was taken up on appeal in A.S.No.10 of 2020 on the file of the learned Additional Subordinate Judge, Puducherry. The learned Judge after hearing the learned counsel appearing for the petitioners remitted the matter back to the trial Court in order to identify the property that is the subject matter of the dispute. Aggrieved by this order of remand, the defendant is before this Court.

5. Admittedly, the defendant and the plaintiff are adjacent owners and there is also an issue regarding the ridge between them. The learned counsel for the defendant would submit that the Appellate Court could have appointed an Advocate Commissioner to identify the property so as to enable the Court to arrive at a conclusion. They had also contended that the trial Court had earlier dismissed the petition filed by the plaintiff for appointing an Advocate Commissioner. The defendant had also admitted the existence of the compound wall and

that he had no objection for measuring the wall in the suit property. The remand order has been made only to appoint an Advocate Commissioner to note down the physical features and identify the property. The trial Court was directed to dispose of the suit within a period of three weeks. Aggrieved by this order, the appellant/defendant is before this Court.

6.Heard the learned counsels appearing on either side and perused the papers.

7.The suit is one for a bare injunction with each party claiming a right to the suit property. Documents have been marked on either side to substantiate their respective cases. The Appellate Court has remitted the matter back only for the purpose of appointing an Advocate Commissioner for inspecting the suit property and submitting his Report. This exercise can be done by the Appellate

Court itself. Further, the documents on the basis of which both the parties claim a right are already before the Court.

8.The learned counsel appearing for the appellant would submit that the plaintiff had earlier taken out an application for appointing an Advocate Commissioner which was dismissed by the trial Court. Therefore, once an order has been passed and there is no appeal, the order attains a finality. However, a perusal of the schedule of the properties in question shows that the identity of the property requires some clarity. It is needless to state that since the Appellate Court requires clarity it is well open to the Court to itself appoint an Advocate Commissioner to inspect the suit property. There is force in the contention of the plaintiff that since the identity of the property is in serious dispute a report of an Advocate Commissioner would help to sort out this confusion. Thereafter, the disposal of the appeal can be done quickly.

9.In the instant case, the dispute revolves only around the identity of the properties and its measurements. Therefore, this Civil Miscellaneous Appeal is allowed and the Judgment and Decree dated 21.06.2021 passed in A.S.No.10 of 2020 on the file of the learned Additional Subordinate Judge, Puducherry, is set aside with the following directions:

(1)The learned Additional Subordinate Judge, Puducherry, shall appoint an Advocate Commissioner to note down the physical features of the properties comprised in Ex.A.1, Ex.A.2 and Ex.A.4.

(2)To measure the properties in accordance with the Sale Deeds of both parties with the help of the Surveyor or other Revenue Official of the Revenue Department as the Advocate Commissioner deems fit.

(3)The Appellate Court shall arrange to receive the report of Advocate Commissioner at the earliest and it is made clear that the Advocate Commissioner shall not make any comments about the possession of the properties.

This Civil Miscellaneous Appeal is disposed of with a direction to the Lower Appellate Court to appoint an Advocate Commissioner immediately with a direction to the Advocate Commissioner to submit his report within a period of two months from the date of receipt of a copy of this Judgment. The learned Judge shall thereafter hear and pass orders within a period of two months from the date of receipt of the report of the Advocate Commissioner. consequently, connected Miscellaneous Petition is closed.

07.09.2022

Index : Yes/No

Internet : Yes/No

Speaking order / Non speaking order
mps

To

1.The Additional Subordinate Judge,
Puducherry.

2.The Principal District Munsif,
Puducherry.

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P.T. ASHA, J,

mps

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