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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.1047 of 2014

1. Varada Gounder

2. Mani

3. Balasundaram

4. Somasundaram

5. Gokulakrishnan

... Appellants/Defendants
in Trial Court

Vs.

M.Sambasivam

... Respondent/Plaintiff
in Trial Court

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 10.12.2013, made in A.S.No.13 of 2012, on the file of Sub Court, Cheyar, in reversing the well considered judgment and decree dated 31.01.2012, made in O.S.No.230 of 2012, on the file of Principal District Munsif Court, Vandavasi, Tiruvannamalai District.

For Appellants : Mr.A.Gouthaman

For Respondent : Mr. S.Baskaran

JUDGMENT

The defendants are the appellants in the Second Appeal.

2. The respondent/plaintiff filed a suit seeking for the relief of permanent injunction restraining the defendants from in any way interfering with the possession and enjoyment of the property.

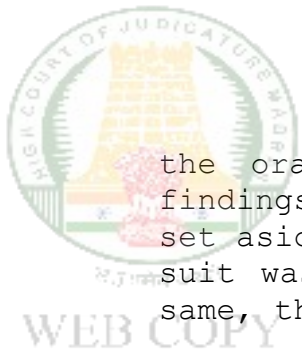


3. There were totally four items that formed part of the schedule of property in the plaint. There is no dispute with regard to items 2 to 4. Insofar as the first item is concerned, it measures an extent of 45 cents and there is no dispute with regard to 38 cents. The entire dispute confines only to the remaining 7 cents in the first item of the suit schedule. Therefore, this Court has to only see if the findings rendered by the Lower Appellate Court are perverse insofar as the first item of the suit property is concerned.

4. The specific case of the plaintiff is that the plaintiff, first defendant and one Ramasamy are brothers. Defendants 2 to 5 are the legal representatives of Ramasamy. The further case of the plaintiff is that he has purchased the suit properties through a Sale Deed dated 26.12.1977 and he is in possession and enjoyment of the property and his name has also been mutated in the Revenue Records and he was also paying kisth. The grievance of the plaintiff is that the defendants attempted to interfere with the possession and enjoyment of the suit properties. Hence the suit came to be filed seeking for the relief of permanent injunction.

5. The first defendant filed a written statement and with respect to the first item of the property is concerned, the defendant took a specific stand that they are entitled for 0.46 cents in Survey No.95/4B and they are in possession and enjoyment of the same for more than 30 years. That apart, the defendants have also mutated their name in the Revenue Records and paying the kisth for the said property. The sum and substance of the defence taken by the defendants is that the plaintiff is attempting to misuse the Sale Deed marked as Ex.A1 and take away 7 cents from the property belonging to the defendants. To that extent, the defendants have sought for the dismissal of the suit.

6. The Trial Court on appreciation of the oral and documentary evidence and after considering the facts and circumstances of the case was pleased to dismiss the suit in entirety on the ground that the defendants have questioned the right and title of the plaintiff and hence the plaintiff cannot maintain a suit for bare injunction and should have sought for the relief of declaration of title. Aggrieved by the same, the plaintiff filed an Appeal before the Sub Court, Cheyyar, in AS No.13 of 2012. The Lower Appellate Court on re-appreciation of



the oral and documentary evidence and after considering the findings of the Trial Court was pleased to allow the Appeal and set aside the judgment and decree of the Trial Court. Thereby the suit was decreed in favour of the plaintiff. Aggrieved by the same, the defendants have filed this Second Appeal.

7. Heard Mr.A.Gouthaman, learned counsel appearing for the appellants and Mr.S.Baskaran, learned counsel appearing for the respondent. This Court also carefully perused the materials available on record and the findings of both the Courts below.

8. Insofar as the first item of the suit property is concerned, it was found that Survey No.95/4 originally consisted of a total extent of 2.95 acres. This property ultimately vested on three persons namely Muthusamy Gounder, Raji Gounder and Selvaganapathi Gounder and each of them got 45 cents. The plaintiff and the first defendant are the sons of Muthusamy Gounder. The plaintiff through Ex.A1 had purchased the first item of the suit property from Jayarama Gounder and Elumalai Gounder. In the said Sale Deed, it has been mentioned that in Survey No.95/4, out of 2.95 acres, 0.45 cents was conveyed in favour of the plaintiff. The main issue that was raised by the defendants is that even though the Sale Deed mentions the extent as 45 cents, patta has been issued only for an extent of 37.05 cents. Therefore, the defendants have taken a plea that the plaintiff will be entitled only for 38 cents in the first item of the property and he is in possession and enjoyment of only this extent.

9. It is seen from the pleadings in the written statement that the defendants are claiming their right over the property in Survey No.95/4B measuring an extent of 46 cents. The Lower Appellate Court on going through Exs.B10 to B14 and Ex.B15, found that there was no reference to any survey number in these documents. That apart, the Lower Appellate Court also found that there is absolutely no correlation between the property that is referred to by the defendant and the property that was actually purchased by the plaintiff through Ex.A1. The defendants were making reference to the property in Survey No.95/4B. Whereas the plaintiff had purchased through Ex.A1, the property in Survey No.95/4 which later on subdivision was assigned new Survey No.95/4A. Therefore, considering all these documents, the Lower Appellate Court came to a conclusion that the property that is referred to by the defendant and the property for which the right is claimed by the plaintiff are different. On this ground, the



Lower Appellate Court reversed the findings of the Trial Court and granted the relief in favour of the plaintiff.

10. In the considered view of this Court, the defendants have not traced their right and title for the property in Survey No.95/4B. Whereas the plaintiff is claiming right over 95/4 (New Survey No.95/4A) through Ex.A1. The right and title of the plaintiff is borne out through a title document insofar as the first item of the property is concerned. Therefore, the onus of proof was on the defendants to have established that the property to which they are placing their right (Survey No.95/4B) is the same property which is referred as 'Item I', in the suit property. Having failed to discharge this onus, the Lower Appellate Court rightly rejected the defence taken by the defendants and decreed the suit in favour of the plaintiff. This Court does not find any perversity in the findings of the Lower Appellate Court and it is a factual finding based on the available oral and documentary evidence. In any case, this Court does not find any substantial question of law involved in the Second Appeal.

11. In the result, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. If really the defendants want to establish their title over the property in which they are claiming their right and title, it will be left open to them to independently institute a suit and seek for an appropriate remedy.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

jv

To

1. The Subordinate Judge,
Cheyar.
2. The Principal District Munsif,
Vandavasi,
Tiruvannamalai District.



Copy to:

The Section Officer,
VR Section,
High Court Madras.

+1cc to Mr.M.Suresh, Advocate SR.No.21514

+1cc to Mr.S.Baskaran, Advocate SR.No.21276

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GPL (CO)
CB(13/04/2022)