



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 23.03.2022
PRONOUNCING ORDERS ON : 25.03.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Second Appeal No.124 of 2014
and
MP.No.2 of 2014

1.P.Mariappan
2.Ponniammal
3.Kannammal
4.Govindammal
5.Krishnaveni
6.Dhanalakshmi
7.Adilakshmi
8.P.Subramani

.. Appellants / Respondents 1 to 8
Plaintiffs 2, 4 to 10

.Vs.

1.K.Govinda
2.K.Gopal
3.Murugan
4.Amudhavalli

..Respondents / Appellants1&2 /
Respondents 9&10 / Defendants /

Prayer: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 04.09.2012 made in A.S.No.20 of 2009 on the file of the Court of the Sub-ordinate Judge at Tiruvallur and by reversing the Judgment and Decree dated 20.12.2007 made in O.S.No.248 of 2002 on the file of the Court of the District Munsif at Tiruvallur.

For Appellants : Mr.M.R.Khapali

For Respondents : Mr.A.Palaniappan
or R1 and R2
R3 & R4 - notice served -
No Appearance



JUDGMENT

The plaintiffs are the appellants in this Second Appeal.

WEB COPY

2.The plaintiffs filed a suit seeking for the relief of declaration of title for themselves and for the 3rd and 4th defendants in the suit property, for permanent injunction restraining the 1st and 2nd defendants from interfering with the possession and enjoyment of the property and for a mandatory injunction directing the defendants to remove the hut put up in the suit property.

3.The case of the plaintiffs is that the suit property measuring 10 feet North to South and 95 feet East to West is a portion of a larger extent of 95 feet East to West and 81 feet North to South in new S.No.281/16. The further case of the plaintiffs is that the site measuring 30 feet East to West abutting the house of Rajagopal Chetty belonged to one Ponnappa Reddi, Kuppu Reddi and Chellappa Reddi. Ponnappa Reddi was in enjoyment of 10 feet abutting the property belonging to the 2nd plaintiff, Chellappa Reddi was in enjoyment of 10 feet in the middle portion and Kuppu Reddi was in enjoyment of 10 feet in the eastern portion. It is further stated that after the death of Kuppu Reddi, his 10 feet portion on the eastern side was sold by his widow to one Subburaya Reddi in the year 1936. Similarly, the widow of Chellappa Reddi sold the 10 feet in the middle portion of the above said Subburaya Reddi through a registered document. These two portions were merged and a construction was put up by the son of Subburaya Reddi. Insofar as the portion belonging to Ponnappa Reddi is concerned, it remained intact and the said Ponnappa Reddi died issueless and he had a brother called Palayappa Reddi. The 1st plaintiff is none other than the daughter of Palayappa Reddi. She therefore, claims an absolute right over this 10 feet portion belonging to Ponnappa Reddi.

4.It is further stated that 51 feet that was running East to West belonged to one Thambu Palayappa Reddi. It devolved upon his sons Perumal and Ganesan and the 2nd and 3rd plaintiffs are the sons of Perumal Reddi and the 1st plaintiff is his widow. The 3rd plaintiff is the legal heir of Ganesan.

5.The grievance of the plaintiffs is that the defendants who are distant relatives of Ponnappa Reddi attempted to claim a right over the property belonging to Ponnappa Reddi. They were only given permissive possession in the property and taking



advantage of the same, they have put up a hut in a portion of the suit property. Therefore, according to the plaintiffs, the title of the 1st plaintiff has been put to challenge and the defendants are attempting to encroach upon the property and hence, the suit came to be filed for the reliefs mentioned supra.

6.The defendants took a stand that the plaintiffs have no right or title or possession over the 'A' schedule or 'B' schedule property. Insofar as the 'B' schedule property is concerned, it was purchased by the defendants' father from one Kuppu Reddi and they are in possession and enjoyment of an extent of 15 feet x 95 feet with specific boundaries. Huts were also put up in this property. According to the defendants, the very description of the property given by the plaintiffs is erroneous and they are merely assumed that the extent of 15 feet x 95 feet is a pathway. The defendants thus, sought for the dismissal of the suit.

7.The trial Court on considering the facts and circumstances of the case and the oral and documentary evidence, decreed the suit and the 'B' schedule property was declared to be the property of the plaintiffs and permanent injunction was also granted in their favour. Aggrieved by the same, the 1st and 2nd defendants filed an appeal in A.S.No.20/2009 and the lower Appellate Court on reappreciation of oral and documentary evidence and after considering the findings of the trial Court, allowed the appeal through judgment and decree dated 04.09.2012 and thereby, the judgment and decree of the trial Court was set aside. Aggrieved by the same, the plaintiffs have filed this Second Appeal.

8.When the Second Appeal was admitted, this Court framed the following substantial questions of law:

- 1) Whether the First Appellate Court erred in not following the provision of Order 41 Rule 31 of Civil Procedure Code by framing appropriate distinct issues instead of one omnibus issue?
- 2) Whether the First Appellate Court erred in not following the concept plaintiff must succeed on the strength of his case and cannot pick holes on the defendants' case properly and thereby erred in rejecting the supporting evidence from the respondents side?



WEB COPY

3) Whether the Lower Court was in error in allowing I.A.No.50/2010 seeking to adduce additional evidence under Order 41 Rule 77 ?

9.A careful reading of the judgment of the trial Court shows that the trial Court has reached a conclusion that the defendants have encroached upon the property of the plaintiffs to an extent of 6 feet x 95 feet. To reach this conclusion, no reasons have been assigned by the trial Court. The trial Court has given a further finding that if the defendants have a lesser extent than what they are entitled for, they can only claim it from the property of Subburaya Reddi and not from the plaintiffs. Once again, there is no reason as to why the trial Court gave such a finding. The trial Court merely places reliance upon the decree passed in O.S.No.493/1936 marked as Ex.B-4 and the sale deed dated 12.6.1959 marked as Ex.B3. The trial Court which is the first Court of fact is expected to deal with the facts of the case and assign reasons for the findings rendered by it. The trial Court completely failed in its duty and the findings were rendered without assigning proper reasons.

10.The lower Appellate Court considered the findings of the trial Court and also reappreciated the oral and documentary evidence. The lower Appellate Court found that the pleadings made in the plaint was not in compliance with Order 7 Rule 3 of CPC., since the property itself has not been properly described in the plaint. The suit schedule property was described as the schedule 'A' and 'B' schedule properties and where as the body of the plaint gave a different description to the suit property. Therefore, it was not clear as to where exactly the encroachment was alleged in the property where the hut has been put up by the defendants. The lower Appellate Court took note of the fact that the plaintiffs were seeking for the relief of mandatory injunction and there was no proper description of the property and the extent to which the encroachment was made. The lower Appellate Court also found that the rough sketch appended to the plaint did not tally with the description given to the property in the plaint. The lower Appellate Court also found that the relationship between the parties has not been properly explained in the plaint and over all it was found that the plaintiffs have come up with a confusing case which could not be deciphered by the lower Appellate Court.

11.The lower Appellate Court while dealing with the findings of the trial Court found that the conclusion arrived at by the trial Court was on mere assumptions without any



reasoning. The lower Appellate Court rightly held that the trial Court without assigning any reasons straight away came to a conclusion that the defendants have encroached upon 6 feet x 95 feet in the property belonging to the plaintiffs.

WEB COPY

12. In view of the lack of clarity in the case projected by the plaintiffs and improper description of the property and the fact that the report of the Advocate Commissioner was not really helping the Court, the lower Appellate Court came to a conclusion that the plaintiffs are not entitled for the reliefs sought for by them.

13. While arriving at the above conclusion, the lower Appellate Court had taken into consideration the findings of the trial Court and assigned reasons as to why it is differing with the findings. The controversy involved in this case has been properly dealt with by the lower Appellate Court and there is no violation of Order 41 Rule 31 of CPC. The first substantial question of law is answered accordingly.

14. The plaintiffs have come forward with a case which was found to be lacking in clarity and there was no proper description of the property in order to grant the relief in favour of the plaintiffs. Unless the plaintiffs discharge the initial burden, there is no requirement to even look into the case of the defendants. The supporting evidence for the plaintiffs on the side of the defendants can be taken into consideration only if the plaintiffs first prove their case. The plaintiffs in the present case have not even proved their case properly and hence, there is no requirement even to look into the evidence that is available on the side of the defendants. The second substantial question of law is answered accordingly.

15. It is true that additional evidence was allowed by the lower Appellate Court on the application filed by the defendants 1 and 2. However, the additional evidence was not relied upon while rendering the findings and the findings were rendered by the lower Appellate Court based on the pleadings of the plaintiffs and the material that was relied upon by them. The third substantial question of law is answered accordingly.

16. In view of the above discussion, this Court does not find any ground to interfere with the judgment and decree of the lower Appellate Court and there are absolutely no merits in this Second Appeal. All the substantial questions of law are answered against the appellants.



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

WEB COPY

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Sub-ordinate Judge,
Tiruvallur.
2. The District Munsif,
Tiruvallur.
3. The Section Officer
V.R.Section, High Court, Madras.

+1cc to Mr.M.R.Khapali, Advocate, S.R.No.20172
+1cc to Mr.A.Palaniappan, Advocate, S.R.No.20170

Second Appeal No.124 of 2014

GMR[co]
NSK 04/04/2022