



S.A.No.867 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2022

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

S.A.No.867 of 2014

M.P.No.1 of 2014

Palanisamy

.. Appellant

Vs.

1. Sivanandam

2. The Superintendant of Engineer,
Tamil Nadu Electricity Board,
Udumalaipettai and Town,
Tiruppur District.

3. The Executive Engineer,
Tamil Nadu Electricity Board,
Thalavaipattinam Road,
Dharapuram Town,
Tiruppur District.

4. The Junior Engineer,
Tamil Nadu Electricity Board,
Dharapuram Town,
Tiruppur District.

.. Respondents

Prayer: The Second Appeal is filed under Section 100 of Code of Civil Procedure, pleaded to allow the Second Appeal by setting aside the Judgement and Decree passed in A.S.No.8 of 2013 dated 17.02.2014 on the file of the



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Sub Court, Dhrapuram, confirming the Judgment and Decree passed in O.S.No.381 of 2000 dated 23.07.2012 on the file of the District Munsif Court, Dharapuram and consequently decree the suit.

For Appellant	: Mr.S.Saravanan
For Respondent 1	: Mr.M.Guruprasad
For Respondents 2 to 4	: No appearance

J U D G M E N T

The appellant herein is the first defendant in the suit in O.S.No.381 of 2000 on the file of District Munsif, Dharapuram. The said suit was filed by the first respondent /plaintiff herein for the relief of declaration, recovery of possession and mandatory injunction in respect of A, B, C schedule respectively. During the pendency of the suit, as the compromise arrived between the parties, the plaintiff not pressed the mandatory relief claimed in respect of 'B' schedule property. Hence, now the dispute is with regard to 'A' and 'C' schedule of the suit property.

2. For the sake of convenience the parties are referred as per the ranking in the suit.



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3. The contention of the plaintiff is that he purchased 'A' schedule property an extent of 3072 Sq.feet (7 cents) with four boundaries in S.F.No.355/6, from one Palanisamy through Ex.A1 sale deed dated 15.12.1988. He enjoyed the said property as absolute owner. However, on the southern side of the suit property, the 1st defendant owns the property and during his absence, the 1st defendant dug up a bore well on the north eastern portion of the plaintiff's property. Immediately, the plaintiff raised objection by giving a Police complaint. In the meanwhile, the first defendant obtained service connection. Hence, the plaintiff filed the suit. During the pendency of the suit, the first defendant admitted that for digging up bore well in the land belongs to the plaintiff, he relinquished his right over the said bore well by receiving valid consideration from the plaintiff. Thereafter, the plaintiff enjoyed the said bore well. While so, in the month of December 2004, the first defendant again encroached the plaintiff's property with an extent of 456 Sq.feet by putting up a compound wall and also constructed a bathroom and toilet as shown in the plaint schedule. Hence, in respect of 'A' and 'C' schedule property, the plaintiff filed the suit claiming the relief of declaration as well as recovery of possession.



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4. The first defendant contended that he purchased the property on

07.06.2000 in S.F.No.355/6 with an extent of 2655 sq.feet and enjoyed the same as absolute owner and he never encroached the plaintiff's property as alleged in the plaint. Further, he also contended that if at all, any shortage of the land for the plaintiff, he has to work out the same with other adjoining owners not alone with the 1st defendant. He has also insisted to measure the entire neighbouring plots in order to find out the alleged shortage of land in the plaintiff's house site.

5. Before the Trial Court, issues were framed and evidence were adduced on both sides. On hearing both sides and the learned trial judge decreed the suit in respect of 'A' and 'B' schedule holding that as far as the sale deed is concerned, the plaintiff is the absolute owner of 'A' schedule property and as per the Commissioner's report, the plaintiff established that an extent of 456 sq.feet of land belonged to the plaintiff, which was under the encroachment of the 1st defendant. Accordingly, the 1st defendant was directed to remove the encroachment within two months.

6. Challenging the said findings, the 1st defendant preferred an appeal



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in A.S.No.8 of 2013 on the file of Subordinate Court, Dharapuram, wherein the learned counsel for the 1st defendant framed separate issues and analysed the facts and evidence independently and concluded that the purchase was made by the plaintiff with an extent of 3072 sq.feet. As per the sale deed, the plaintiff purchased 3072 Sq.feet, but, as per the Surveyor report along with the Commissioner report, on ground, there is a deficit of 8 feet on the western side and 11 feet on the eastern side for the breadth of 48 feet measuring 456 sq.feet was encroached by the 1st defendant and there is no dispute among other four purchasers of the property situated on the northern side of the plaintiff. So, there is no necessity to measure the property of other plot owners, but the dispute is only with plaintiff and the 1st defendant. The report of the Commissioner also clearly established that on ground, plaintiff's vacant land is only 2616 sq.feet and the remaining 456 sq.feet of land was encroached and construction was made by 1st defendant by putting up a compound wall. Accordingly, the lower Appellate Court dismissed the appeal by confirming the findings of trial judge. Challenging the concurrent findings of the Court below, the first defendant preferred this Second Appeal.

7. The learned counsel appearing for the appellant/ first defendant



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submitted that both the Courts below failed to appreciate the fact that the plaintiff has not produced any document to show that all the house plots were measured at the time of purchase and mere laying the extent found in the sale deed holding that the plaintiff is entitled for 3072 sq.feet, as such it is improper appreciation of the both Courts below. Therefore, the findings given by the both courts below is unjust, unfair and the same is liable to be set aside.

8. By way of reply, the learned counsel for the respondent/ plaintiff submitted that the plaintiff purchase was earliest one through sale deed dated Ex.A1 and he purchased 3072 sq.feet in the year of 1988 itself much prior to the 1st defendant's purchase. But the 1st defendant, who purchased the property on the southern side of plaintiff's property, erroneously claimed more extent and encroached the plaintiff's portion without measuring the property at the time of his purchase and the same was rightly appreciated by the trial judge, which needs no interference.

9. Considering submissions of both sides, this Second Appeal is admitted on following question of law.



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"Whether the present suit for declaration of title of 'A' schedule property and reconvey of possession of 'C'schedule property is maintainable as against the appellant/ 1st defendant when the plaintiff has not chosen to challenge the exhibit B3 which conveyed the property to the appellant/1st defendant under his possession especially when the boundaries and extent of land possessed by the 1st defendant/appellant tallies with the one found on exhibit B3?"

10. The fact reveals that based on Ex.A1, sale deed dated 15.11.1988 the plaintiff claiming absolute right over the 'A' schedule property with an extent of 3072 sq.feet with four boundaries in S.F.No.355/6 through Ex.A1 sale deed, the plaintiff established that he purchased 3072 sq.feet for valid consideration in the year of 1988. Admittedly, the first defendant being the southern side owner of the plaintiff's property contended that he purchased property through Ex.B3 sale deed an extent of 2655 sq.feet for valid consideration in the year 2000. Thereafter, he put up construction in his property and not encroached the plaintiff's property as described in 'C' schedule. The purchase made by both the parties are admitted facts. The only dispute is, how much extent belongs to the plaintiff is to be decided.



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11. The contention of the plaintiff is that during his absence, the 1st defendant at earliest occasion, dug up a bore well in the plaintiff's land. When he raised objection during the pendency of the suit, he admits that bore well is in the plaintiff's land and by receiving the valid consideration, the 1st defendant handed over the said bore well to the plaintiff, but again he put up a construction by encroaching the plaintiff's property with the extent of 456 sq.feet by putting up a compound wall. Hence, the plaintiff approached the Court. Before the Trial Court, the Commissioner was appointed and he inspected the property along with surveyor, thereby, both plaintiff and 1st defendant plots were measured. As per the report, on ground only 2616 alone available and the remaining extent of 456 sq.feet was under the occupation of the 1st defendant.

12. Further as per the Surveyor report, boundary stones were already planted on the northern side of the plaintiff's property, which belongs to one Karrupasamy. Therefore, on the northern side of the plaintiff's property, already survey stones were planted and from that only the Surveyor measured the property and found the encroachments made by the 1st defendant. But, the contention of the 1st defendant is that as per the sale deed Ex.B3, he



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purchased 2655 sq.feet in the same land in S.F.No.43/1 and he put up compound wall within his property and not made any encroachment in the plaintiff's property. If at all, there is any deficit of land, the plaintiff ought to have worked out his remedy with other owners, not only with the 1st defendant. So, the contention of the 1st defendant is that he put up compound wall within his property and not encroached the plaintiff's property.

13. It is an admitted fact that after the purchase made by the plaintiff, the 1st defendant subsequently purchased the property in the year of 2000. Furthermore, at the time of said purchase, the 1st defendant not measured the suit property. So, the plaintiff's vendor, if at all owned any land in Survey No. 43/1 as per the earlier purchase made by the plaintiff for extent of 3072 sq.feet, the remaining extent alone ought to have conveyed to the 1st defendant, who is subsequent purchaser. But, without measuring the property the 1st defendant purchased an extent of 2655 sq.feet, which is admitted by the 1st defendant during trial. Furthermore, both plaintiff and 1st defendant admitted that they have no dispute with the owners of other plots on the northern side. Therefore, the only dispute is between the plaintiff and 1st defendant. If at all, any shortage of land, the plaintiff has to work out his



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remedy only with the 1st defendant and the same was rightly appreciated by both the Courts below, which needs no interference.

14. At the time of Commissioner's visit, Surveyor measured the property by fixing boundary stones on the northern side of the plaintiff's property. While fixing the boundary stone, he found there is a deficit of 456 sq.feet on ground and the same is under the encroachment of the 1st defendant by putting up a compound wall. Therefore, the plaintiff established the fact that as per Ex.A1 sale deed, he owned 3072 sq.feet and out of which, on ground now only 2616 sq.feet is available and the remaining extent of 456 sq.feet is under the encroachment of 1st defendant. On the other hand, the 1st defendant failed to establish the fact that he owned 2656 sq.feet as per the sale deed Ex.B3 and in fact, he has not taken any steps to measure the property at the time of his purchase. Moreover, the purchase made by the plaintiff is earliest to the 1st defendant's purchase, which would show that excluding the land purchased by the plaintiff, the remaining extent alone belongs to the 1st defendant. Both the Courts below rightly appreciated all the facts and evidence. Accordingly, the question of law is answered. The findings of both the Courts below is confirmed, which needs no interference.



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WEB COPY 15. In the result, this Second Appeal stands dismissed. The suit is decreed in respect of 'A' and 'C' Schedule property. Two months time is granted to the 1st defendant to hand over possession. However, in respect of mandatory injunction, suit is dismissed as infructuous. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Speaking/Non-speaking Order
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T.V.THAMILSELVI, J.

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To

The Sub Court, Dhrapuram.

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