



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.NO.317/2017 & CMP.NO.7497/2017

K.C.Selvan

...Appellant / Appellant /
Defendant

Vs.

N.Devaraj

...Respondent / Respondent /
Plaintiff

Prayer :- Second Appeal preferred under 100 of CPC against the judgment and decree dated 12.03.2014 made in AS.No.95/2013 on the file of the learned Principal District Judge of Erode by confirming the judgment and decree dated 30.04.2013 passed in OS.No.276/2009 on the file of the learned Subordinate Judge, Perundurai, Erode.

For Appellants : Mr.R.Maruthachalamurthy

JUDGMENT

- (1) The unsuccessful defendant in the suit in OS.No.276/2009 before the Sub Court, Perundurai, Erode, is the appellant in this Second Appeal.
- (2) The respondent herein, as plaintiff, filed the suit in OS.No.276/2009 for granting a decree directing the defendant to execute a registered Rectification Deed in favour of the plaintiff pertaining to the Sale Deed dated 20.04.2000, registered as Document No.955 of 2000, by substituting the correct description of the property and for other consequential reliefs.
- (3) It is admitted that the defendant originally executed a registered Sale Deed dated 20.04.2000 in favour of the plaintiff. The property conveyed by the defendant/appellant in favour of the plaintiff under the Sale Deed dated 20.04.2000 is described under two items. The first item is an extent of 2700 sq.ft., with reference to specific boundaries and the second item is again an extent of 3240 sq.ft. within the boundaries mentioned in the document. However, the total extent of 5940 sq.ft.,



conveyed under the document which is also marked as Ex.A1, was described as a property comprised in Old.S.No.468 and R.S.No.687/4D1.

- (4) It is the case of the plaintiff that the survey number has been wrongly mentioned as RS.No.687/4D1 in stead of RS.Nos.687/2B and 687/6B. It is also stated that there is no dispute with regard to identity and extent which was sold in favour of the plaintiff by the defendant. The mistake is only clerical or typographical and it is only with reference to Resurvey Numbers. Hence, the suit came to be filed by the plaintiff under Section 26 of the Specific Relief Act for rectification of the instrument by showing the correct resurvey number of the property.
- (5) The suit was contested by the defendant by filing a written statement specifically denying that the suit property which was conveyed by the defendant in favour of the plaintiff falls in RS.Nos.687/2B and 687/6B. It is contended by the defendant that there is no mistake in the description of the property in the Sale Deed. It is also contended by the defendant in the written statement that he did not sell the property in RS.No.687/2B and 6B. Since there is no discrepancy in the boundary description according to the defendant, the defendant prayed for dismissal of the suit.
- (6) The Trial Court, after framing issues, specifically found that as per 'A' Register, the property in S.No.687/4D1 does not exist and that the Sale Deed executed by the defendant in favour of the plaintiff must be the property comprised in RS.Nos.687/2B and 687/6B. The Trial Court discussed the evidence of PW2 who was examined on behalf of the plaintiff. PW2-a revenue official brought before the Trial Court, a set of revenue documents, namely, Chitta and 'A' Register to show that the property in S.No.687 was not sub-divided as S.No.687/4D1. It is also evident that there is no discrepancy in the boundary description or the extent. Therefore, the Trial Court specifically held that the plaintiff is entitled to the relief of rectification of the document as the defendant has failed to prove that the survey number which was referred to in the original Sale Deed under Ex.A1 is in existence. Aggrieved by the judgment and decree of the Trial Court, decreeing the suit, the defendant preferred an appeal in AS.No.95/2013 before the learned Principal District Judge, Erode.
- (7) The Lower Appellate Court also, after independently considering the pleadings, evidence and documents, came to



WEB COPY

the conclusion that the suit property situate only in RS.No.687/2B and 687/6B and not in RS.No.687/4D1 as it was contended by the appellant. The Lower Appellate Court also observed that the appellant had not produced any evidence to show that he had right over RS.No.687/4D1. Since the appellant has failed to prove that the property in RS.No.687/4D1 was also a property of the appellant, the Lower Appellate Court could not believe the case of the appellant. Learned counsel appearing for the appellant conceded before the Lower Appellate Court that no other property with similar boundary description is available with the appellant in any other survey field. Therefore, the Lower Appellate Court is also right in holding that there is no dispute with regard to the identity of property and that the property conveyed to the respondent/plaintiff must be the suit property which falls in RS.Nos.687/2B and 6B. The Lower Appellate Court after recording the facts in the above line, dismissed the Appeal. Aggrieved by the concurrent judgments and decrees of the Courts below, the appellant has preferred the above Second Appeal.

(8) The appellant, in the Memorandum of Grounds of Appeal, has raised the following substantial questions of law:-

- A) Whether the suit is hit by non joinder of necessary parties?
- B) Whether the suit is barred by limitation?
- C) Whether the Courts below are right in appreciating Ex.B1 to B4?
- D) Whether the Courts below rightly applied Section 102 of the Indian Evidence Act, 1872, in the present case?
- E) Whether the Courts rightly applied Section 101 of the Indian Evidence Act, 1872, before accepting the case of the plaintiff?
- F) Whether the Courts below right in fixing the burden of proof upon the defendant?
- G) Whether the Courts below are right in accordance with law of disbelieving the evidence of defendant?

(9) The learned counsel for the appellant submitted that the property in S.No.687/2B and 6B though belonged to the appellant earlier, the same was allotted to his sister in a partition that took place in the year 2002. There is no pleading with regard to the Partition Deed produced by the appellant before the Lower Appellate Court. The Partition Deed was filed only at the appellate stage.



(10) It is not known as to how the property of the appellant could be partitioned with his sister. The appellant failed to clear the cloud before the Lower Appellate Court by specific pleading.

WEB COPY

(11) It is true that a suit for rectification of an instrument, as in the present case, can be filed only if the plaintiff proves that there is a mutual mistake while describing the property. It is not in dispute that the defendant/appellant executed the Sale Deed earlier professing himself as the absolute owner of the property which was described with reference to boundaries. However, from the 'A' Register produced by the respondent/plaintiff and the evidence of P.W.2, a revenue official, the respondent/plaintiff has proved that there is no sub-division as S.No.687/4D1. When the property with the description of S.No.687/4D1 does not exist and there is no evidence adduced by the defendant that he is also the owner of another property in S.No.687/4D1, it is not possible for the Court to believe the version of the appellant/defendant. Therefore, what was conveyed in favour of the respondent/plaintiff under Ex.A1, must be the property which was shown as the property of the defendant/appellant as per the 'A' Register which falls in S.No.687/2B and 6B. Therefore, the mistake while describing the property in the document [Ex.A1] must be a typographical or a mistake which occurred due to inadvertence. The appellant probably with an ill-motive resisted the claim. However, he could not succeed in his stand as he failed to examine himself to controvert the specific case of plaintiff as PW1 corroborated by the oral evidence of PW2. This Court, having regard to the specific findings rendered by the Courts below is unable to interfere with the findings of facts especially when the findings are based on reasonings and appreciation of evidence, both oral and documentary.

(12) The learned counsel for the appellant submitted that the suit is bad for non-joinder of necessary parties. It to be noted that the appellant has not raised a plea in the written statement. It was based on the additional document filed by the appellant before the Lower Appellate Court, the plea has been taken on the ground that there was a subsequent partition between the appellant and his sister and that his sister was allotted the property in S.Nos.687/2B and 6B. Since there is no pleading in the written statement to sustain the plea, it is not open to the appellant/defendant to build a case on the basis of a subsequent document which is not binding on the respondent/plaintiff.



(13) In view of foregoing discussion, this Court is unable to find any merit in any of the substantial questions of law raised by the appellant in the Memorandum of Grounds.

WEB COPY

(14) In fine, the Second Appeal deserves dismissal and it is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

AP

To

1.The Principal District Judge of Erode.

2.The Subordinate Judge,
Perundurai, Erode.

Copy To

The Section Officer
V.R.Section, High Court
Chennai.

+1cc to M/s.R.Marudhachalamurthy, Advocate Sr.No.21432

S.A.No.317/2017

PMK(CO)
RVM(17/05/2022)