



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.570 of 2010

Valambal

... Appellant / Appellant /
Defendant

-Vs-

Mariyayee

... Respondent /Respondent/
Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed by the II Additional Subordinate Judge, Tiruchirappalli in A.S.No.105 of 2006 dated 30.07.2009 confirming the decree and judgment dated 28.02.2006 on the file of the learned District Munsif cum Judicial Magistrate, Lalgudi in O.S.No.561 of 1996.

For Appellant : Mr.S.K.Mani

For Respondent : Mrs.J.Maria Roseline

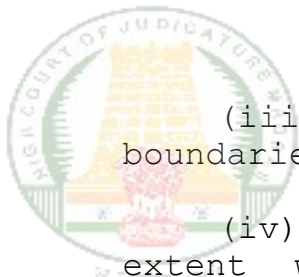
JUDGMENT

The defendant in O.S.561 of 1996 on the file of the District Munsif Court, Lalgudi is the appellant in this second appeal.

2. The suit was filed by the respondent herein for declaration that the suit property belongs to her and for recovery of possession from the appellant herein. The appellant filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial court framed the necessary issues. The plaintiff examined herself as P.W.1. Ex.A1 to Ex.A6 were marked. The defendant examined herself as D.W.1. Ex.B1 to Ex.B3 were marked. After consideration of the evidence on record, by judgment and decree dated 28.02.2006 decreed the suit as prayed for. Aggrieved by the same, the defendant filed A.S.No.105 of 2006 before the II Additional Sub Court, Tiruchirappalli. By the impugned judgment and decree dated 30.07.2009, the decision of the trial court was confirmed and the appeal was dismissed. Challenging the same, the second appeal came to be filed. The second appeal was admitted on 12.07.2010 on the following substantial questions of law:-

"(i) Whether immovable properties described in the sale deeds can be presumed to be either same or situate adjoining without any reference to the boundaries and extent?

(ii) Whether the origin of title to the suit property need not be proved as pleaded?



(iii) Whether presumptions can be made in the matter of boundaries without there being any evidence?

(iv) Whether the doctrine that boundaries prevail over extent will be applicable even where two equal extents admeasuring 2,976 sq.feet are said to constitute a smaller extent of 3,405 sq.feet (Ex.A1)?”

3. The learned counsel appearing for the appellant reiterated the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the impugned judgment and decree and dismiss the suit.

4. Per contra, the learned counsel appearing for the respondent submitted that the impugned judgment and decree do not call for any interference.

5. I carefully considered the rival contentions and went through the evidence on record.

6. The case of the plaintiff was that the suit property including the adjacent site originally belonged to one Sabapathi Ayyar. The said Sabapathi Ayyar purchased a piece of property under Ex.A1 dated 25.01.1936 from one Mottai Udayar. The said Sabapathi Ayyar had a son by name Kailasam Ayyar. The said Kailasam Ayyar had two sons namely Umakanthan and Sabapathi (for easy reference junior). There was oral partition between the said junior Sabapathi and Umakanthan. The junior Sabapathi sold what was allotted to him in favour of Kulunthayi Ammal under sale deed-Ex.A2 dated 23.07.1979. The portion allotted to Umakanthan was purchased by the plaintiff under sale deed-Ex.A3 dated 22.12.1987. However, the defendant managed to occupy the property purchased by the plaintiff under Ex.A3. Therefore, the plaintiff had to file the said suit for declaration and recovery of possession.

7. The courts below accepted the stand of the plaintiff and decreed the suit as prayed for. The learned counsel appearing for the appellant pointed out that under Ex.A1, senior Sabapathi had purchased a piece of land. He highlighted the dimensions of the said property. He pointed out that if the sales made by his grandsons namely Umakanthan and junior Sabapathi are added, that would certainly go beyond the dimensions of the property covered under Ex.A1. He also pointed out that the suit property is actually a grama natham. It was the defendant who is in possession and enjoyment of the same. Grama natham belongs to the person who is in occupation of the same. In order to prove her possession, the defendant had marked the house tax receipts for the same. In fact, recognizing her possession, the revenue authorities also made an assignment in her favour. The assignment was later erroneously



suit. The suit as well as the first appeal had suffered dismissal. The defendant has filed the second appeal before this Court. The learned counsel appearing for the appellant called upon this Court to defer hearing this appeal so that both appeals could be heard together.

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8. I am not persuaded by the submission of the learned counsel appearing for the appellant. I do not find any merit in the contention that if the sales made by the grandsons of senior Sabapathi are taken into account, they would go beyond what was actually purchased under Ex.A1. I went through the contents of Ex.A1. The property description given therein is quite significant. The piece of land purchased under Ex.A1 dated 25.01.1936 from one Mottai Udayar was bounded on two sides by the other lands owned by senior Sabapathi. Therefore, the validity of the sale made in favour of the plaintiff herein cannot be tested with reference to the dimensions of the land covered under Ex.A1.

9. More than anything else, the description of the property covered under Ex.A2 is significant. As already pointed out, the appellant's mother-in-law Kulunthayi Ammal is the purchaser under Ex.A2. It states that the property purchased under Ex.A2 is lying to the north of the site belonging to Umakanthan. Umakanthan is none other than the brother of junior Sabapathi. The appellant cannot wriggle out of the said boundary description. The property referred to in Ex.A2 as southern boundary was purchased by the plaintiff under Ex.A3 dated 22.12.1987.

10. The courts below have taken note of the fact that the appellant herein already filed O.S.No.405 of 1987 seeking injunction against the plaintiff. Though the said suit was decreed, it was reversed in A.S.No.15 of 1992. The judgment and decree made in A.S.No.15 of 1992 has been marked as Ex.A5 & Ex.A6 dated 31.07.1996. The courts below have anchored their decision on the said exhibits. The courts below have correctly appreciated the boundary descriptions set out in the title documents namely Ex.A1, Ex.A2 & Ex.A3. The substantial questions of law are answered against the appellant. I do not find any ground to interfere. The impugned judgment and decree are confirmed. The second appeal is dismissed. No cost.

Sd/-

Assistant Registrar (CS-III)

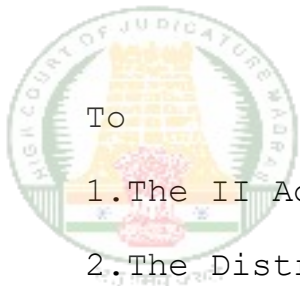
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Sub Assistant Registrar(CS)

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To

1.The II Additional Subordinate Judge, Tiruchirappalli.

2.The District Munsif cum Judicial Magistrate, Lalgudi.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.J. MARIA ROSELINE, Advocate (SR-17863[F] dated
11/04/2022)

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