



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.679 of 2010

WEB COPY

Viswanathan

... Appellant/first respondent/
Plaintiff

vs.

1.Syamala
2.Ajitha Mary
3.Sutha Mary

...Respondents 1 to 3/Appellants /
Defendants 1 to 3

4.Muthan Sabarimuthan

...4th respondent/2nd respondent /
4th defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 18.12.2009 passed in A.S No.56 of 2007 on the file of the Subordinate Judge, Kuzhithurai reversing the judgment and decree dated 22.02.2007 passed in O.S No.210 of 2003 on the file of the II Additional District Munsif, Kuzhithurai.

For Appellant : Ms.J.Anandavalli
For R1 to R3 : Mr.C.K.M.Appaji
For R4 : No appearance

JUDGMENT

The plaintiff in O.S No.210 of 2003 on the file of the II Additional District Munsif Court, Kuzhithurai is the appellant in this second appeal. The case of the plaintiff is that the suit property originally belonged to one Gnanaprakasam. Following his demise, it devolved on his son Muthan Sabarimuthan. The said Muthan Sabarimuthan married one Thirasammal. Thirasammal obtained maintenance decree against Muthan Sabarimuthan in O.S No.385 of 1984. She filed EP No.8 of 1990 for enforcing the decree. The suit property was sold in court auction sale. The plaintiff purchased the same. Sale deed was executed and delivery was taken on 22.01.1998. Since the second wife and children of the said Muthan Sabarimuthan were interfering with the plaintiff's possession and enjoyment, the present suit came to be laid. Muthan Sabarimuthan was also shown as the fourth defendant. In order to have a comprehensive relief, the suit for declaration of title and possession and consequential enjoyment was filed. Muthan Sabarimuthan remained exparte while his second wife and children contested the suit. They filed written statement claiming that the property belonged to Sesumariyayi, the mother of Muthan Sabarimuthan and that the purchase by the plaintiff was in respect of some other



property. According to them, the suit property belonging to Sesumariyayi was not purchased in the court auction sale. Based on the divergent pleadings, the trial court framed the necessary issues. The plaintiff examined himself as PW.1. Thirasammal was examined as PW.2. D1 and D2 examined themselves as DW.1 and DW.2. Exs.A1 to A5 were marked on the side of the plaintiff and Exs.B1 to B20 were marked by the defendants. After consideration of the evidence on record, the trial court by judgment and decree dated 22.02.2007 decreed the suit as prayed for. Aggrieved by the same, the contesting defendants filed A.S No.56 of 2007 before the Sub Court, Kuzhithurai. By the impugned judgment and decree dated 18.12.2009, the first appellate court reversed the decision of the trial court and allowed the appeal and dismissed the suit. It also allowed the plaintiff to mark additional evidence. Challenging the same, this second appeal has been filed. The second appeal was admitted on 05.08.2010 by framing the following substantial questions of law :

"1.Is the first appellate court is correct and justified in modifying the decree of the trial court when the same issue has already been decided in an earlier proceedings is not the defence taken by the defendants/respondents herein is barred by Section 11(d) of the Civil Procedure Code (ie.,) constructive resjudicata?

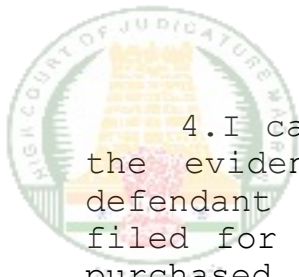
2.Is the first appellate court is correct and justified in coming to a different conclusion having found that there is no dispute regarding the identity of the property?

3.Is the first appellate court is correct in dismissing the suit that when the auction has become final under Ex.A1 and Ex.A2 and delivery was taken on 22.01.1997 itself and the plaintiff has become the owner of the property from the said date ?

4.Is the first appellate court is correct in modifying the decree having coming to the conclusion that the wrong mentioning of the survey number is not fatal when the properties are rightly identified by boundaries and the boundaries will prevail over the extent?"

2.The learned counsel appearing for the appellant reiterated all 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 restore the decision of the trial court.

3.Per contra, the learned counsel appearing for the contesting respondents submitted that the impugned judgment and decree do not call for any interference. He reiterated the reasoning of the first appellate court in support of his contentions.

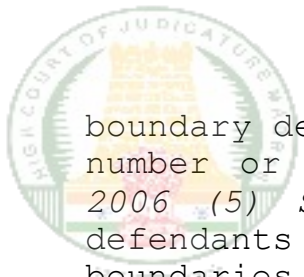


4.I carefully considered the rival contentions and went through the evidence on record. There is no dispute that the fourth defendant suffered a maintenance decree and E.P No.8 of 1990 was filed for enforcing the same. The present appellant/plaintiff had purchased the property that was brought to sale in court auction. The question is whether the suit property was purchased by the appellant in the said court auction sale. The stand of the contesting respondents is that the suit property originally belonged to Sesumariyayi, the mother of the fourth defendant and that it was not the subject matter of court auction sale. Ex.A1 is the sale certificate. It states that the plaintiff Viswanathan purchased four items mentioned therein. Item no.1 is comprised in Resurvey No.313/6 in Old Survey No.1831 in Killiyoor Village measuring eight cents. The four boundaries have been mentioned as follows :

"West of Mayilakothuvillai, North of Plot of Araidhasankandam, East of Rafeal and others and South of Vaaikaal".

5.In the plaint, the plaintiff had mentioned the Resurvey Number as 313/2A. The contention of the learned counsel appearing for the contesting respondents is that the property bearing Survey No.313/2A was sought to be charged in the maintenance suit but later exempted from charge on the ground that the property belongs to Sesumariyayi and not to Muthan Sabarimuthan. Though this is a formidable contention, the fact remains that the court auction sale was subsequently put to challenge in O.S No.112 of 1997 on the file of the First Additional District Munsif Court, Kuzhithurai. The suit was instituted by the daughters of Sesumariyari. One of the issues framed is whether the court auction sale proceedings are valid. Vide judgement and decree dated 23.11.2005, the suit was dismissed and the validity of the court auction sale was upheld. It is relevant to note that Muthan Sabarimuthan figured as the fourth defendant while the present plaintiff figured as the third defendant. According to the first respondent herein, Sesumariyayi had bequeathed the suit property in her favour under Ex.B9 Will. Later, the first defendant had settled the same in favour of D2 and D2 her daughters under Ex.B15. It is relevant to mention that Sesumariyayi was very much a party to the maintenance suit in O.S No.385 of 1984. She did not chose to challenge the court auction sale. The Will was made in favour of the daughter-in-law only after the maintenance decree was passed.

6.As rightly contended by the learned counsel appearing for the appellant, the appellant is entitled for the land mentioned in the sale certificate. The boundaries mentioned in Ex.A1 sale certificate and the boundaries mentioned in the plaint are one and the same. The extent is also one and the same. There is only a discrepancy in the matter of R.S Number. It is well settled that four boundaries will prevail over any error in R.S Number. It was held in the decision reported in 2012 LW.(3) 946 (*S.Uttamchand vs R. Anjugam*) that the



boundary description will prevail over the misdescription of survey number or extent. The judgment of Hon'ble Apex Court reported in 2006 (5) SCC 466 (Subhaga v. Shobha) was followed. Though the defendants have produced some title documents Ex.B3 and B5, the boundaries mentioned therein do not tally with the suit four boundaries. The learned trial Judge correctly approached the issue. The first appellate court went by the discrepancy in the matter of R.S number alone. The substantial questions of law are answered in favour of the appellant. The impugned judgment and decree passed by the first appellate court is set aside. The decision of the trial court is restored.

8.The second appeal is allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

skm

To

1.The Subordinate Judge, Kuzhithurai.

2.II Additional District Munsif, Kuzhithurai.

3.The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.C.K.M.APPAJI, Advocate (SR-9652[F] dated 03/03/2022)

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-9525[F] dated 02/03/2022)

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01.03.2022

SP(CO)

KB(23.03.2022) 4P 7C