



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.06.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.(MD) No.152 of 2011

Kokilam ... Appellant/Appellant/Plaintiff

-vs-

Rajendran (Died) ... 1st Respondent/Respondent/
Defendant

[Sole respondent died. Memo recorded vide order dated 20.06.2011 made in S.A.(MD) No.152 of 2011]

2.Mohanambal

3.Ramesh

4.Sumathi

5.Rama

6.Balaji

... Respondents 2 to 6/
LRs of the deceased R1

[Respondents 2 to 6 - brought on record as LR's of the deceased sole respondent, vide order dated 04.12.2013 in M.P.(MD) Nos.2 and 3 of 2011 in S.A.(MD) No.152 of 2011]

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 06.09.2010 made in A.S.No.17 of 2010 on the file of the Principal Subordinate Court, Kumbakonam confirming the judgment and decree dated 30.10.2009 in O.S.No.260 of 2009 on the file of Principal District Munsif Court, Kumbakonam.

For Appellant : Mr.A.N.Ramanathan
For Respondent-1 : Died
For R2 to R6 : Mr.G.Gomathisankar

JUDGMENT

The plaintiff, who lost her suit for bare injunction successively both before the trial court as well as before the first appellate court has preferred this appeal.

2. The case of the plaintiff is that she is in possession of a plot measuring 14.5 feet East-West x 17 feet North-South over an extent of 5.0 ares with a thatched roof building, bearing Door No.16. The property is a natham property and the plaintiff has been given a

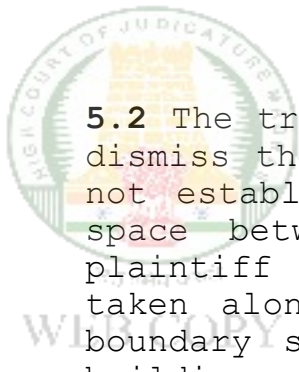


patta, which is evidenced by Ex.A1. The defendant is the adjacent land owner on the west of the plaintiff's property, and he has put up his residential building in his property. When the defendant put up construction in his property, he left no vacant space on the eastern extremity of his property. In other words, he left no inter-space between his property and the plaintiff's property. The plaintiff, however, had left narrow strip of land on the western extremity of her property and the defendant is attempting to trespass into that. Hence, the suit.

3. The defendant in his written statement has contended that the plaintiff's husband and her brother-in-law (husband's brother) were jointly entitled to a plot measuring 29 feet East-West and 125.5 feet North-South. This plot lies to the immediate east of the defendant's property, and the defendant is nowhere interested in the aforesaid plot measuring by 29' x 125.5'. Be that as it may, this defendant purchased his plot measuring 45' East-West x 155' North-South. The vendor of the defendant had obtained title to this plot of land under Ex.B2-sale deed dated 30.09.1953. Ex.B2-sale deed also provides identical boundary measurements. While so, the defendant has put up a residential building after demolishing an existing old structure and has been enjoying the same. He has left some space to the east of the building, but within his property. The plaintiff does not have any construction near the portion left vacant by the defendant. While so, some time in 2005, when the defendant was out of station to undergo a cardiac surgery, the plaintiff had extended her thatched roof structure towards west to occupy the portion covered by the sunshade of the defendant. When this came to the notice of the defendant, he registered his protest with the plaintiff, whereupon the plaintiff had agreed to remove the same. Thereafter, the plaintiff herself applied for surveying the property, that the Surveyor issued notice to both sides and had conducted the survey. The survey proceedings are Ex.X-1. Pursuant to the survey, boundary stones between both the properties too have been fixed.

4. The suit went to trial, and before the trial court, the plaintiff examined herself as P.W.1. Besides, she had also examined two other independent witnesses as P.W.2 and P.W.3. Turning to the defendant, he examined himself as D.W.1 and has also examined four other witnesses as D.W.2 to D.W.5 of them, D.W.5 is the Surveyor through whom, Ex.X1 came to be marked.

5.1 The dispute is about the title over a narrow strip of land between the residential building of the defendant and the thatched roof building of the plaintiff. The plaint does not precisely describe this particular portion of the property, and it only gives the description of the entire property belonging to the plaintiff.



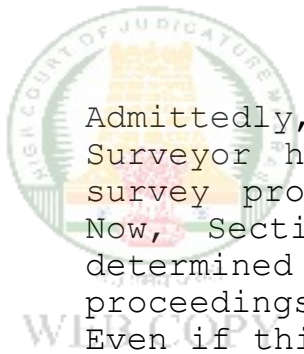
5.2 The trial court, after appreciating the evidence, has chosen to dismiss the suit. Its line of reasoning is that the plaintiff has not established that she is the title holder of the vacant inter space between the two buildings respectively belonging to the plaintiff and the defendant, and that Ex.X-1 survey proceedings taken along with the testimony of D.W.5 would indicate that the boundary stones have been fixed at the western extremity of the building of the plaintiff.

5.3 Aggrieved by the same, the plaintiff preferred a first appeal in A.S.No.17 of 2010 before the Principal Sub Court, Kumbakonam. The Sub Court did not consider it necessary to disturb the finding of the trial court and dismissed the appeal. Hence, the second appeal. The appeal is not yet admitted.

6. The learned counsel for the appellant submitted that even the defendant admits that the plaintiff's husband and her brother-in-law jointly were entitled to a larger land of plot measuring 29' East-West and the plaintiff claims right only to an extent of 14.5' feet East-West which is the western half of the entire plot. This 14.5' lies to the immediate east of the defendant's property. He submitted that a Commissioner has gone to the property and has filed his report in which, he has found that the plaintiff has a road frontage of only 10 feet and not 14.5'. He added that this Commissioner's report is not marked by the trial court and it goes entirely against Ex.X-1 and also the testimony of D.W.5.

7. Heard Mr.G.Gomathisankar, the learned counsel for the respondents. The learned counsel submitted that Ex.X-1 came to be made only pursuant to the plaintiff applying for survey of the property. The Surveyor indeed has made his proceedings Ex.X-1 even prior to the institution of the suit, and has also fixed the boundary stones in continuation of his proceedings, and this has become final as per Sec. 13 of the Tamil Nadu Survey and Boundaries Act, 1923. When this has become final, unless the survey so made is set aside in a manner known to law, the plaintiff cannot try to create an advantage for herself based on the Commissioner's report. He also pointed out that even going by the Commissioner's report, the Commissioner's plan shows the road frontage of 10 feet on the west + followed by another 2½ feet of land, belonging to the plaintiff, to its immediate east with a wall in between. This would imply, that the road frontage of the plaintiff would be 10 feet + 2½ feet + wall thickness. This again would imply that the total frontage would be 12.5 feet + the wall thickness. What is now in dispute is 3 feet, and if the plaintiff's theory were to be accepted, she will end up having 15.5' plus the wall thickness.

8. After carefully considering rival submissions, this court finds that both the courts are in error in ignoring the Commissioner's report. But the point is has it affected their findings in any way?



Admittedly, the property was surveyed as per the Act, that the Surveyor had issued notice and this is not in dispute, and the survey proceedings are completed even before the suit was laid. Now, Section 13 of the Act attaches finality to the boundary determined in terms of the Act. In the face of the survey proceedings, the Commissioner's report may not have much relevance. Even if this is kept aside and the Commissioner's report is perused, as rightly contended by the learned counsel for the respondents, if the 3' inter-space is added to the road frontage of the plaintiff, she then would have at least 15½ feet as her road frontage. It is not adequately clear whether this also takes into account the wall thickness of the plaintiff's property. Therefore, the plaintiff is necessarily got to explain how she would be entitled at least 1 foot more than what she may be entitled to even as per case. In other words, the plaintiff has not come out with a clear case and the effort to prove the same is seen lost all over the place.

9. At the end of the day, these are all aspects on facts, and this Court finds that the conclusion arrived at by the courts below is perverse either. This Court therefore, does not find a case for interfering with the finding on fact by the courts below under Section 100 of Civil Procedure Code. This would mean the plaintiff will not be entitled to any decree of injunction *vis-a-vis* anything to the west of her western wall, or the west of the boundary stone now fixed by the surveyor. So far as the property commencing from her western wall where the Surveyor has planted the survey stones and to its east, the plaintiff is entitled to protect her possession. So far as this property is concerned, the defendant does not raise any objection and hence there is no cause of action for the suit so far as the property to the east of the boundary stone. All this Court now does is to record the statement of the defendant that the defendant would not be interfering with the title or possession of the plaintiff to any property to the east of the boundary stones fixed by the Surveyor. Subject to what is stated above, the appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

abr

To
1.The Principal Subordinate Judge,
Kumbakonam.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Principal District Munsif,
Kumbakonam.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.G.GOMATHISANKAR, Advocate (SR-24923[F]
dated 09/06/2022)

+1 CC to M/s.AN.RAMANATHAN, Advocate (SR-25024[F]
dated 10/06/2022)

S.A. (MD) No.152 of 2011
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