



S.A.(MD) No.20 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.20 of 2012

and

M.P.(MD) Nos.1 and 2 of 2012

1.S.Sundara Raja (Died)

... 1st Appellant/Appellant/
Defendant

2.S.Jeyalakshmi

3.S.Subbulakshmi

4.P.Vijaya Lakshmi

5.S.Pandimurugan

6.P.Murugeswari

7.S.Sekar

8.S.Senthilkumar

9.S.Pootchammal

... Appellants 2 to 9/
LRs of deceased 1st Appellant

-vs-

G.Kottairaj

... Respondent/Respondent/
Plaintiff

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree of the District Munsif Court, Sivakasi in O.S.No. 215 of 2005 dated 17.08.2010 of the which has been confirmed by the Sub Court, Sivakasi in A.S.No.39 of 2010 dated 22.07.2011.



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For Appellants : Mr.Lakshmi Gopinathan
For Respondent : Mr.M.Kannan
for Mr.M.Vinoth Singh Misra

J U D G M E N T

The defendant in O.S.No.215 of 2005 on the file of the District Munsif Court, Sivakasi, is the appellant herein. The suit was laid for declaration of plaintiff's title and for mandatory injunction. The suit came to be decreed and aggrieved by the said decree, the defendant preferred A.S.No.39 of 2010 before the Sub Court, Sivakasi, which concurred with the finding of the trial court and dismissed the suit.

2. The facts, to a very large extent are not in dispute. They are now summarised:

- On 20.12.1963, under Ext.A3, a certain Sadaiyandi Chettiar purchased a piece of vacant land from a certain Gurusamy Chettiar and others. This plot is a rectangular plot that measures



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63' East-West x 57' North-South. After purchase, Sadaiyandi Chettiar put up a residential building on the eastern portion of his plot, and left a vacant space measuring 39' East-West x 57' North-South.

- After the demise of Sadaiyandi Chettiar, his sons sold the western 39' x 57' vacant land to the plaintiff's father under Ext.A2-sale deed, dated 30.05.1979. On his demise, the property devolved on the plaintiff.
- In the plot that the plaintiff's father had purchased under Ext.A2, some residential houses were constructed in the south. In the plaint, the plaintiff describes the property covered under Ext.A-2 as three separate plots. The whole property covered under Ext.A2 is described as Item-1; the portion occupied by his building measuring 25 feet North-South is described as Item-2; Then a narrow strip of land to its immediate north having a width of 7 feet x 39 feet is described as Item-3 property; and the balance extent of 39 feet x 25



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feet is described as Item-4 property. These plots from 2 to 4 proceed from the southern boundary of the plaintiff's property and towards north successively.

According to the plaintiff, the defendant is attempting to encroach into Item-4 property and has put up some casuarina poles in Item-4 and hence, he has laid the suit for declaration of his title and for mandatory injunction.

3.1. Turning to the defendant's case, he admittedly own a piece of property in the north. His parent title document is Ext.A5, dated 30.06.1958. Under this document, one Karuppannan had purchased a plot measuring 30.5 feet x 25.5 feet. In the context of the case, the southern boundary description of Ext.A5 gains significance. Ext.A5 provides the southern boundary of the property dealt with thereunder as the property belonging to one Alaguchokku Chettiar. This Alaguchokku Chettiar is a co-executant of Ext.A3-sale deed under which the present plaintiff claims right.



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3.2. The above referred Karuppannan was survived by his son Krishnan. Krishnan's widow is one Anthonyammal and they have two children. After the demise of Krishnan, Anthonyammal along with her children executed Ext.B1-sale deed dated 20.09.2004 in favour of the defendant. The southern boundary in Ext.B1 is noted neither as Alaguchokku Chettiar's property, as it was originally stated in Ext.A-5, nor that of Sadaiyandi Chettiar, the purchaser under Ext.A3, nor as the plaintiff's father's property, who has purchased the property under Ext.A2, but is described as a pathway.

3.3. The defendant's contention is that the property that was purchased under Ext.A5 stretches up to the pathway, which portion is described in the suit as Item 3.

4. The dispute essentially pertains to whether the defendant is entitled to any extent up to the northern boundary of Item-3. The dispute went to trial and before the trial court, the plaintiff examined himself as P.W.1 and also



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examined his vendors as P.W.2 and P.W.3. The documents produced on his side are already introduced. For the defendant, he examined himself as D.W.1 and he had produced his title deed Ext.B1. The trial court also appointed a Commissioner for local inspection, whose report and plans came to be marked as Ext.C1 to Ext.C3. Of these, Ext.C3 is stated to be a survey plan. On appreciating the evidence, the trial court chose to decree the suit. Its line of reasoning is essentially founded on the boundary discrepancy in providing the southern boundary to the defendant's property as could be gathered from Ext.A5 and Ext.B1. This has already been explained above. Aggrieved by the same, the defendant preferred a first appeal, which as already mentioned, came to be dismissed. Hence, the second appeal, at the instance of the defendant. The plaintiff has also filed an application for appointment of Commissioner in M.P.(MD) No.2 of 2012.

5. The appeal was admitted for considering the following substantial questions of law:

“i. Whether the Courts below are correct in decreeing the suit when the survey records shows the third and



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fourth item of suit property as common pathway in the revenue records for more than 12 years? and

ii. Whether a relief of declaration and injunction shall be granted in respect of a public pathway, that too, without impleading the revenue authorities as parties?"

6. The learned counsel for the appellants forcefully argued that the courts below have egregiously erred in failing to note that the Commissioner has not measured the defendant's property. Secondly, it also failed to note that Item-3 property, which according to the plaintiff, though claimed to be his property, indeed is part of public pathway as per the survey plans. Indeed, as per survey, Item-3 falls under S.No.510/21 and has a width of 15 feet. Thirdly, the survey plan shows that to the south of the plaintiff's house, some vacant space is left and this has not been measured by the Commissioner and if that vacant space is measured, it would show where exactly Alaguchokku Chettiar's property would come.



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7. In response, the learned counsel for the respondent adopted the line of reasoning of the trial court and emphasised that the defendant has not raised any objection to the Commissioner's report. But they appeared to have relied on the same during trial and hence, it is impermissible for the appellant to question the Commissioner's report at this distant point of time.

8. The dispute is largely related to what the plaintiff describes in his plaint as Item-4. This would lead to the next question where exactly 57 feet North-South property lies. It should not be forgotten that 57 feet North-South property dealt with under Ext.A2 by which the plaintiff claims title is only the western portion of the larger property covered by Ext.A3. While the burden is on the plaintiff to establish his title, he had by examining his vendors and also by taking out a commission has subdivided his plot measuring 57 feet North-South x 39 feet East-West. Item-3 property whose character is questioned in the course of the argument as a pathway lies somewhere in the middle of this larger plot of 57 feet x 39 feet. Here the



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defendant needs to get his strategies correct. But his designs in defending the suit appears to have gone awry notwithstanding the valiant efforts of his counsel. They can be bullet pointed:

- He has to explain the southern boundary description in parent document *vis-a-vis* his own title document in Ext.B1.
- If he had difficulty in understanding where the southern boundary has to be fixed, then he necessarily should have examined his vendors to rebut the evidentiary value of P.W.2 and P.W.3.
- He had all the opportunity to require the Commissioner either before the trial court or before the first appellate court to note down some of the points that he wanted to have.
- He has not challenged Ext.C1 and Ext.C2, but indeed, has relied on it as could be gathered from the cross examination of P.W.1. Indeed the line of cross examination essentially revolved along survey numbers



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but neither side in their pleading relied on survey numbers to build their case.

Apparently, the appellant is now caught in an awkward situation where he can now hope to succeed only if his own strategy in defending the suit is abandoned. And, it is too late for him to abandon either.

9. So far as the dispute pertains to the character of Item-3 is concerned, that issue may have to be left open, for the issue involved in this case is not so much about the character of Item-3, but where exactly the dividing line between the plaintiff's property and the defendant's property would be. As has already been explained, the defendant cannot claim title to any property to the north of Item-3 irrespective of the width of Item-3. It is in this context, the aforesaid boundary mis-description of southern boundary of defendant's property in Ext.B1 as compared to Ext.A5 gains significance.

10. On perusing the judgments of the courts below, this Court does find that the line of approach of the courts below to the issue before them cannot be



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faulted. Since it is a question of fact and the appreciation of evidence by the courts below is not found to be faulty, this Court does not find a reason to interfere with the judgment of the first appellate court under Section 100 of Civil Procedure Code. In fine, this Court considers the appeal is devoid of merits. The second appeal is dismissed. The right of the defendant to have his boundary demarcated is left open. No costs. Consequently, connected Civil Miscellaneous Petitions are also dismissed.

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Internet: Yes
Index: Yes/No

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To

1. The District Munsif Court,
Sivakasi.
2. The Sub Court,
Sivakasi.



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N.SESHASAYEE, J.

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