



S.A(MD).No.180 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A(MD).No.180 of 2013
and M.P(MD).Nos.1 and 2 of 2013

Rathinapandi

.... Appellant/Appellant/Plaintiff

Vs.

Chinnathukkamuthu

... Respondent/Respondent/ Defendant

Prayer : Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 15.03.2012 passed by the Sub Court, Thoothukudi in A.S.No.38 of 2011 confirming the judgment and decree dated 28.10.2010 passed by the District Munsif Court, Srivaikuntam in O.S.No.154 of 2008 and set aside the same.

For Appellant : Mr.G.Prabhu Rajadurai
For Respondent : M/s.K.Abiya

J U D G M E N T

The plaintiff, who had suffered dismissal of his suit in O.S.No.154 of 2008 successively both before the trial Court and the First Appellate Court, is the appellant herein.



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2. The facts fall within a narrow campus. The suit property is described as a plot measuring 10 cents in S.No.303/9 of Keelpidagai, Varatharajapuram Village in Srivaikundam Taluk. (The details pertaining to the village is not given in the plaint, but it is gathered from Ext.B1).

3. According to the plaintiff, this property along with the properties comprised in S.Nos.300 and 301 was purchased by certain Arumugam Nadar under Ext.A.1, sale deed, dated 10.03.1909. After the demise of Arumugam Nadar, the property devolved successively on his son Rathnavel Nadar and thereafter to the latter's son Shanmugasundaram Nadar. The plaintiff is the son of Shanmugasundaram Nadar. The plaintiff claimed that in a family partition between his siblings, the suit property came to be allotted to his share. He further pleads that sometime in the year 2000 the defendant was inducted as a permissive occupant of the suit property. As he faced some obstruction to his title, he laid the suit for declaration of his title over the suit property and recovery of possession.

4. The defendant admits the title to the suit property of the plaintiff's father Shanmugasundaram Nadar. He claims that under Ext.B.1/Ext.B.2, dated



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20.02.2003, Shanmugasundaram had sold 10 cents in S.No.301 within specified boundaries and ever since he is in possession of the property and resisted the suit.

5. The dispute went to trial, before which both sides have produced oral and documentary evidence. Both the trial Court and first appellate Court accepted the genuineness of Ext.B.1, sale deed, in favour of the defendant and dismissed the suit. Hence, the second appeal at the instance of the plaintiff.

6. The appeal was admitted on 13.03.2013 for considering the following substantial question of law:

“Whether the Courts below are correct in law in placing the entire burden of proving the case upon the plaintiff when the document of title of the defendant Ext.B.1 does not contain the Survey Number of the suit property?”

7. The learned counsel for the appellant argued that under Ext.A.1, Arumugam Nadar became entitled to the properties in three survey numbers, namely, S.Nos.300, 301 and 303. The suit property is covered under S.No. 303/9, whereas the property covered under Ext.B.1 is S.No.301. He argued



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that the Courts below have wrongly construed that the property covered under Ext.B.1 is the same as the property described in the plaint.

8. Per contra, the learned counsel for the respondent argued that the plaintiff indeed had accepted that the defendant is in actual physical possession of the property. However, he did not plead that the defendant is in possession of a property which is different from the one which he had purchased under Ext.B.1, but goes to allege that the defendant is the permissive occupant of the suit property. Now, if the boundary description of the suit property and that which is covered under Ext.B.1 is compared, except the eastern boundary, the boundaries on all the three sides reconcile. Only the eastern boundary varies. Whereas in the plaint, the plaintiff gives the eastern boundary as the property of certain Pandia Nadar, in Ext.B.1, it is given as a pathway. The burden is on the plaintiff to establish that the property covered under Ext.B.1 and the one which the defendant is in actual physical possession are different, but the plaintiff did not attempt to do so.

9. This Court finds considerable merit in the submission of the learned counsel for the respondent/defendant. The plaintiff is on the back foot when he asserts that the defendant is the permissive occupant and not as one



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claiming title to the property based on a certain sale deed executed by his father. As rightly contended, it is not the case of the plaintiff that the defendant is in occupation of some 10 cents plot, which is different from the one he purchased under Ext.B.1. It is true that the eastern boundary of the property covered under Ext.B.1 and the suit property varies, but the plaintiff still may have to establish how the entire property look, and in relation to S.No.301, where exactly S.No.303/9 is located. This is not explained.

10. To conclude, this Court finds hardly any material worthy of requiring an interference with the judgment of the Courts below. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

01.08.2022

Index : Yes/No

Internet: Yes/No

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To

- 1.The Sub Judge, Subordinate Court, Thoothukudi.
- 2.The District Munsif, Srivaikuntam.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SESHASAYEE, J.,

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