



S.A.(MD) No.640 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.640 of 2012

1.Ramalingam
2.Kasiammal (Died) ... Appellants 1 & 2/Appellants/
Defendants 2 & 3
3.M.Kondappan
4.M.Kannanbabu ... Appellants 3 & 4/
LRs of deceased 2nd Appellant
*[Appellants 2 & 3 – Brought on record as LR of the deceased
2nd appellant vide order dated 26.11.2021 made in C.M.P.(MD)
Nos.6998, 6999 & 4700 of 2021 in S.A.(MD) No.640 of 2012]*

Vs

1.Perumal ... 1st Respondent/1st Respondent/
Plaintiff
2.Sebastian ... 2nd Respondent/2nd Respondent/
1st Defendant
3.Revenue Divisional Officer,
Sub Collector Office Road,
Dindigul. ... 3rd Respondent/3rd Respondent/
4th Defendant

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 28.01.2012 made in A.S.No.30 of 2010 on the file of the Additional Sub Court, Dindigul, confirming the judgment and decree dated 19.01.2010 made in O.S.No.517 of 2006 on the file of the



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Additional District Munsif Court, Dindigul.

For Appellants : Mr.P.Thiagarajan
For Respondents : Mr.S.Muniyandi for RR1 & 2
: Ms.Christy Theboral
Additional Govt. Pleader for R3

JUDGMENT

Defendants 2 and 3 in a suit for declaration of title and couple of ancillary reliefs of prohibitory injunction in O.S.No.517 of 2006 on the file of the Additional District Munsif Court, Dindigul, are the appellants. The suit was decreed and so was the outcome of the appeal in A.S.30 of 2010 that they preferred before the Additional Sub Court, Dindigul. For narrative convenience, the parties are referred to by their rank before the trial Court.

2. The property in this litigation is described as two plots of 8 cents each comprised in Sy.No.154/3A and Sy.No.154/2C. These plots lie contiguously and form a single plot of 16 cents. According to the plaintiff, this property belonged to the first defendant, who vide Ext.A-1, dated 14.11.1997,



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entered into a sale agreement with the plaintiff for the sale of the suit property for a total consideration of Rs.6,000/- and that on 08.01.1998, vide Ext.A-2 sale deed, the property was conveyed to the plaintiff. Following this, mutation in the revenue record was also came to be done and Ext.A.3-patta was also issued in the name of the plaintiff. When the plaintiff found some obstruction to his title, he laid the suit.

3.1 In all, there are four defendants. The line of the first defendant's case is as below:

- The suit property is part of a larger extent of 1.03 acres and it belonged to the first defendant. This 1.03 acres is spread over three survey numbers: (a) 38.05 cents in S.No.154/2; (b) 63 cents in S.No. 154/3A; and (c) 2 cents in S.No.154/4A. He obtained this property under Ext.B1 settlement deed, dated 05.05.1980. Subsequently, on 16.05.1980, under Ext.B.2, he obtained another extent of 5 cents in S.No.154/3A.



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- While so, the first defendant had sold 20.5 cents in S.No.154/2 to the second defendant vide Ext.B.12-sale deed, dated 23.11.1994 and he had sold another 80.5 cents vide Ext.B.13-sale deed even dated to the third defendant. Thus the first defendant had exhausted the entire extent which he had obtained under Ext.B-1 and Ext.B-2 settlement deeds.
- According to the first defendant, during the UDR Scheme, it was found that S.No.154/2 has an excess extent of 8 cents. In other words, contrary to the hitherto understood position, S.No.154/2 has an extent of 46.5 cents and not 38.5 cents as was originally believed. Indeed the property was surveyed on 21.11.1996 officially, and the surveyor had found that there lies an additional 16 cents within the boundaries covered in S.Nos.154/2, 154/3A and 154/4A.
- The first defendant would plead that he approached defendants 2 and 3 and negotiated with them for sale of the excess extent of 16 cents as



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is stated to be in S.No.154/2 as per the UDR Scheme and negotiated with defendants 2 and 3 for sale of the same to the latter. An oral agreement accordingly was entered into between the first defendant on the one side and defendants 2 and 3 on the other. This agreement later came to be substituted by another agreement, and defendants 2 and 3 relied on Ext.B.5 and Ext.B.7 to substantiate that agreement. As defendants 2 and 3 did not show interest to honour the commitment, he sold the property to the plaintiff under Ext.A.2, dated 08.01.1998.

3.2 In the written statement filed by defendants 2 and 3/appellants 1 and 2 herein, they plead that both Ext.A.1-sale agreement and Ext.A.2-sale deed in favour of the plaintiff claimed to have been executed by the first defendant are fraudulent and collusive. They have been created based on certain entries in the revenue record and not on the basis of the ground reality. Indeed the first defendant is entitled to a combined extent of 1.085 acres jointly in S.Nos.154/3A and 154/2C and not a square inch beyond that, and



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that whatever he had possessed he had already conveyed it to these defendants under Ext.B.12 and Ext.B.13-sale deeds dated 23.11.1994. Ever since these defendants have come into possession of the entire property within the boundaries shown in Ext.B.12 and Ext.B.13. While so, the first defendant had issued Ext.B.11-notice dated 11.01.1995 wherein, he had admitted that he had only 1.08 acres. It is thereafter, the first defendant and the plaintiff have joined to bring into existence Ext.A.1-sale agreement and Ext.A.2-sale deed. The suit is plainly speculative, adventurous and vexatious.

4. The dispute went to trial and before the trial Court, the plaintiff examined himself as P.W.1. The plaintiff also examined P.W.2 to speak about the survey alleged to have been done on 21.11.1996. He had produced Ext.A.1 to Ext.A.5 of which Ext.A.1 and Ext.A.2 have already been referred to. Ext.A.3 is a patta issued in the name of the plaintiff. On the side of the defendants, the first defendant, who positioned himself against defendants 2 and 3 and supported the plaintiff, examined himself as D.W.1. Defendants 2



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and 3 examined themselves respectively as D.W.2 and D.W.3. The first defendant had produced Ext.B.1 to Ext.B.11 and defendants 2 and 3 have produced Ext.B.12 to Ext.B.18. Of the documents produced by the first defendant, Ext.B.9 dated 05.08.1996 is a challan copy showing the remittance of survey fee. The documents produced by defendants 2 and 3 have substantially been introduced in the narrative earlier.

5.1 The trial Court while appreciating the evidence, appeared to have focused more on Ext.B.5 and Ext.B.7. Ext.B.5 is dated 24.11.1994. This is styled as a letter of assurance/undertaking cum receipt executed by the second defendant and certain Kondappan in favour of the first defendant. This document was executed on the very next day of the registration of Ext.B.12 and Ext.B.13-sale deeds on 23.11.1994. Defendants 2 and 3 state that the first defendant was insisting that there are additional extent available within the boundaries shown in Ext.B.12 and Ext.B.13 and that these defendants have offered to buy any such extent, if so available at Rs.1,105/- per cent and upon surveying the property. Ext.B.7 was executed



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a year later on 25.02.1996 to be precise, and this was executed by the second defendant alone substantially narrating the earlier assurance contained in Ext.B.5. It appears that Ext.B.7 came to be executed because nothing happened pursuant to Ext.B.5. Then comes Ext.B.9 and thereafter, comes Ext.A.1-sale agreement dated 14.11.1997 executed as between the first defendant and the plaintiff followed by a sale deed based on Ext.A.2 dated on 08.01.1998.

5.2 Turning to the line of reasoning of the trial Court, it believed on Ext.B.5 and Ext.B.7, and has held that there existed 16 cents additionally and that since defendants 2 and 3 did not come forward to honour the commitment in terms of Ext.B.5 and Ext.B.7, the first defendant was constrained to sell the property to the plaintiff under Ext.A.2, and decreed the suit. Aggrieved by this decree, defendants 2 and 3 approached the first appellate Court in A.S.No.30 of 2010. The first appellate Court did not find any reason to disturb the findings of the trial Court and dismissed the appeal. Hence, the second appeal by defendants 2 and 3.



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6. The appeal was admitted on 16.10.2012, for considering the following substantial question of law:

“Whether both the Courts below have not considered the evidence both oral and documentary in their proper perspective and failed to appreciate that the plaintiff has to prove his case and is not entitled to pick holes in the case of the defendants?”

The substantial question of law, in essence tries to project a point that the findings of the Courts below are perverse.

7.1 Heard both sides. The substantial facts in this case are document based and therefore, sequence of events as disclosed by the documents would be adequate to arrive at a conclusion. They can now be bullet pointed:

- To start with, the case of the first defendant is that he had only 1.085 acres spread over S.Nos.154/2, 154/3A and 154/4A. This he had fully sold to defendants 2 and 3 under Ext.B.12 and Ext.B.13.
- After the sale in favour of defendants 2 and 3 under Ext.B.12 and Ext.B.13, the first defendant suddenly realised that there existed an



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additional 16 cents within the boundaries of the properties covered under Ext.B.12 and Ext.B.13. Ext.B.5, a document admitted by defendants 2 and 3, does disclose that these defendants were not immediately enchanted by this assertive representation of the first defendant about the existence of an additional extent of property. This is evident from Ext.B.5, where it is stated that the property is required to be measured to ascertain the availability of the excess extent as alleged by the first defendant. Ext.B.7, though was executed only by the second defendant, is also along the same lines. Indeed, these documents also stipulate that if, upon survey if it is found that the extent actually available on lie is less than the combined extent stated in Ext.B.12 and Ext.B.13, then the first defendant should repay the differential amount received at the rate of Rs.1,105/- per cent. On the other hand, if it is found to be in excess then the defendants 2 and 3 would pay the first defendant the differential consideration payable at the same rate. Ext.B.5 and Ext.B.7 together would indicate that what the parties ought to have done prior to the execution of Ext.B.12 and Ext.B.13 was sought to



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be done after the sale in favour of defendants 2 and 3.

- Here, the first defendant comes out with a case that he had remitted survey charges as evidenced by Ext.B.9 dated 05.08.1996 and asserts that survey indeed had taken place on 21.11.1996. However, no notice issued by the survey authorities under Sec. 9 of the Tamil Nadu Survey and Boundaries Act, 1923, which is a mandatory requirement in law before the surveying officials enter upon any property to survey, was produced. Not even the subsequent proceedings of the survey officials was produced.

7.2 It could be deduced from the above facts that availability of an additional extent of 16 cents as asserted by the first defendant is not established before this Court. This is the crux of the issue and this Court finds that both the Courts have terribly missed this aspect. Now, it is in this background, the first defendant, on an unilateral assertion of availability of an additional extent of 16 cents, had first entered into Ext.A.1-sale agreement and followed it up with Ext.A.2-sale deed. What is of interest to this Court is that while Ext.B.5 and Ext.B.7 stipulate that if there were any



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different extent available within the boundaries of the entire block of property covered under Ext.B.2 and Ext.B.3, then the price have to be adjusted at Rs.1,105/- per cent whereas, the same defendant had executed Ext.A.2-sale deed in favour of the plaintiff for a meagre sum of Rs.6,000/- for 16 cents. Is there then a fraud on the statute? But what is of immediate concern to this Court is whether there is an additional extent of 16 cents and whether what the revenue authorities have discovered during the UDR Scheme is true. No Commissioner was appointed by the trial Court, nor any official Surveyor was examined. Necessarily, this exercise cannot be dispensed with, which implies the matter has to go back to the first appellate Court for finding if at all there exists any excess extent of 16 cents.

8. Having stated thus, this Court finds that the evidence on record does make it possible for this Court to infer that the plaintiff could not be in possession of any specific plot of 16 cents. After all, this extent now remains undetected and its existence continues to be in doubt, and if at all this additional extent is to be found, then it must have to be found within the boundaries shown in Ext.B.12 and Ext.B.13-sale deed, and not outside it.



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And if defendants 2 and 3 have already come into possession of the property within the boundaries shown in Ext.B.12 and Ext.B.13, then it is illogical to presume that the plaintiff could have come into possession.

9.1 In fine, this Court allows this Second Appeal, sets aside the decree of the first appellate Court dated 28.01.2012 made in A.S.No.30 of 2010 on the file of the Additional Sub Court, Dindigul, and remands the matter back to the first appellate Court, which will now appoint a Commissioner to be assisted by an official Surveyor to measure the entire property within the boundaries mentioned in Ext.B.12 and Ext.B.13, and ascertain if there is any additional extent of 16 cents available within it. If it is not available, then that will settle the issue for the plaintiff. If however, any extent excess of 1.085 acres is found, then the only right of the plaintiff will be to seek partition. This the plaintiff can do by seeking additional relief to his present prayer of declaration of his title, or can work out by a separate suit.

9.2 Turning to the decree for prohibitory injunction granted by the Courts below is concerned, this Court has found that the evidence on record



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preponderates the probability that the plaintiff could not be in possession.

Now the plaintiff has to be injuncted and not the defendants 2 and 3. To preserve the *status quo* till disposal of the case by the first appellate Court pursuant to the current order of remand now being passed, this Court injuncts the plaintiff from interfering with the possession of defendants 2 and 3. No costs.

10. Both sides are directed to appear before the lower appellate Court on 05.09.2022.

05.08.2022

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N.SESHASAYEE, J.

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To

- 1.The Additional Sub Court, Dindigul.
- 2.The Additional District Munsif Court, Dindigul.
- 3.The Revenue Divisional Officer,
Sub Collector Office Road, Dindigul.
- 4.The Section Officer, VR Section,
Madurai Bench of Madras High Court.

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