



S.A.No.460 of 2000

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 15.11.2022

CORAM: JUSTICE N.SESHASAYEE

S.A.No.460 of 2000

1.Lakshmiammal (Died) ...Appellant/Appellant/Plaintiff
2.D.Murugan
3.D.Mariappan ...LR's of the first appellant

[Appellants 2 and 3 are impleaded as LR's of the deceased sole appellant vide order dated 25.03.2009 made in M.P(MD).No.3 of 2006 in S.A.No.460 of 2000]

Vs.

1.Navamani Nadar (Died)
2.Kanagarathinam Ammal
3.Gnana Jacob Moni (Died) ...Respondents/Respondents/Defendants
4.N.Gnana Selva Mani
5.N.Gnana Jeya David ...LRs of the first respondent
6.C.Sutha
7.C.Gnana Kingsly
8.C.Gnana Stanley ...LRs of the third respondent

[Respondents 2 and 3 who are already on record are recorded as LR's of the deceased 1st respondent vide order dated 01.11.2016 made in M.P(MD).No.4 of 2014 in S.A.No.460 of 2000]

[Memo presented before the Court on 29.03.2022 is recorded as R3 died and R2 who is already on record is recorded as LR of the deceased R3 vide order dated 29.03.2022 made in S.A.No.460 of 2000]

[2nd respondent who is already on record is recorded as LR of the deceased 3rd respondent vide order dated 08.11.2022 made in



S.A.No.460 of 2000

C.M.P(MD).Nos.7801 and 7804 of 2022 in S.A.No.460 of 2000]

[Respondents 4 and 5 are brought on record as Lrs of the deceased 1st respondent vide order dated 17.03.2022 made in M.P(MD).Nos.1 to 3 of 2014 in S.A.No.460 of 2000]

[Respondents 6 to 8 are brought on record as Lrs of the deceased third respondent vide order dated 08.11.2022 made in C.M.P(MD).Nos.7801 and 7804 of 2022 in S.A.No.460 of 2000]

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 28.08.1998 by the Subordinate Court, Tuticorin in A.S.No.54 of 1992 confirming the judgment and decree dated 21.01.1992 made in O.S.No.531 of 1989 on the file of the Additional District Munsif Court, Tuticorin.

For Appellants : Mr.M.P.Senthil

For Respondent : Mr.K.Govindarajan
for R2
R1 and R3-Died
No appearance for R4 to R8

J U D G M E N T

The plaintiff who successively lost before the trial Court and also before the First Appellate Court in her suit for injunction is the appellant herein.

2. The case of the plaintiff is that she had purchased 4.545 acres under Ext.A.1, sale deed, dated 26.08.1986, Ext.A.2 and Ext.A.3, sale deeds both dated 29.08.1986. She would further state that she had developed a substantial



S.A.No.460 of 2000

portion on the east of the property that she had purchased and left vacant 38 acres or 84 cents to the west of the property which she developed. Apprehending certain threat to her peaceful possession, she laid the suit.

3. Refuting the plaint allegations, the defendants deny the plaintiff's title to the suit property and also dispute that she had never enjoyed the same. The defendants do not know the purchase of 4.545 acres by the plaintiff under Ext.A.1 to Ext.A.3, sale deeds and she is under the burden to establish the same. The further allegation of the plaintiff is that she has left certain vacant portion to the west of the property that she had developed is also denied. Indeed, the plaintiff does not even know where her property is and it is her son Mariappan who had purchased and developed the property by misusing his official position. In survey field No.1405, both the plaintiff and one Subbu Nadar had properties to the east of the property of the defendants. Indeed, the defendants have 9.10 acres in Survey field No.1405. This apart, a certain Chellaiya Konar has 4.545 acres and the aforesaid Subbu Nadar has 3.70 acres. They are necessary parties to the suit. So far as the properties of the defendants are concerned, a block of 9.10 acres was jointly purchased vide Ext.B.2, sale deed dated 05.04.1944 by the first defendant, his father and his sister. The first defendant's father had released his share in the property to his daughter vide



S.A.No.460 of 2000

Ext.B.3, relinquishment deed dated 24.03.1944. Subsequently, the first defendant's sister had settled her share in the property in favour of the defendants 2 and 3 vide Ext.B.4 dated 01.06.1977. Ever since, the defendants are in continuous enjoyment of the property and are carrying out agricultural activities. These defendants are not aware of any sub-division of the property which is said to have been purchased by the plaintiff. If at all it was done, it was done without any notice to the defendants.

4. The dispute went to trial and before the trial Court, one Murugan, the plaintiff's son was examined on her behalf. Besides, she also examined two other witnesses as P.W.2 and P.W.3. For the defendants, the first defendant entered the box as D.W.1 and he too examined two other witnesses as D.W.2 and D.W.3. The plaintiff has produced Ext.A.1 to Ext.A.8 whereas the defendants have produced Ext.B1 to Ext.B5. Some of the documents based on which the parties claimed their respective title to their respective properties have already been introduced in the narration above. This apart, the trial Court also appointed an Advocate Commissioner whose report and the plan were taken on record as Ext.C1 and Ext.C2.



S.A.No.460 of 2000

5. On appreciating the evidence before it, the trial Court chose to dismiss the suit. Its line of reasoning is that the Commissioner has found that the defendants have encroached into some 32 cents of the plaintiff's property and also some 87 cents belonging to some other party. Since the suit is laid for injunction and since the Commissioner has noted that this portion has been encroached by the defendants, it declined to grant the relief to the plaintiff. When the matter reached the first appellate Court, it met with a similar fate. Hence, this appeal.

6. This appeal was admitted for considering the following substantial question of law:-

1. Whether on the face of Ex-A-1 to A-5 the title deeds marked and admitted by DW-1 that the title of the plaintiff had been proved against the defendants for Survey No.1405/-

2. Whether in the absence of specific pleading, schedule property is covered under the holdings of the defendants in the face of finding that it is part of Survey No.1405/2 by the Commissioner. The Court below were within their jurisdiction to go against the pleading for holding the findings against the plaintiff?

7. The learned counsel appearing for the appellants submitted that it is not in dispute that the plaintiff and the defendants are adjacent owners of the



S.A.No.460 of 2000

properties. While the plaintiff has purchased about 4.545 acres under Ext.A1 to Ext.A3 and the defendants also claim title vide Ext.B2 to Ext.B4, it may be that there may be others who have got some shares in the survey field. Indeed, the defendants also admit that the plaintiff has property to the west of their property. The Advocate Commissioner has identified both the properties developed by the plaintiff and also the vacant portion which the plaintiff has left to the west of the property developed by her. However, the Commissioner has gone a step further and stated that these 32 cents are in possession of the defendants. The Commissioner indeed cannot make a statement as to the possession of the property. The Courts below have given an excess weightage to the Commissioner's report *vis-a-vis* his statement as to possession of the property.

8. Per contra, the learned counsel appearing for the respondents argued that the property of the defendants is an agricultural property wherein they have been carrying on agricultural activities and therefore, the Commissioner has not exceeded his authority in making a statement regarding the character of the property and the nature of possession. He also highlighted the fact that the plaintiff is uncertain about the property in relation to which she seeks the relief. In the plaint, she says that the vacant area left by her after developing a



S.A.No.460 of 2000

portion of the property that she had purchased is 38 acres but converts the same into 84 cents whereas it should be 93 cents. Now, the Commissioner finds that only 32 cents are available as vacant site. So the plaintiff is obviously uncertain about the area in relation to which she is seeking injunction. Indeed, she has not deposed to her knowledge by examining herself as she examined only her son.

9. After weighing the rival contention, it becomes adequately clear that the dispute between the parties cannot be resolved with a suit for bare injunction. A close reading of the pleadings on either side would indicate that both the plaintiff and the defendants own properties in Survey No.1405 and both claim title to their properties. The plaintiff claims title to the property in Survey No. 1405/2 whereas the defendants plead that they are not aware of the aforesaid sub-division. Going by the description of the property, the property of the defendants lies to the west of the plaintiff's property. Going by Ext.C2, Commissioner's plan, the plaintiff's property is in Survey No.1405/2 and to the south of the plaintiff's property, Survey No.1405/7 lies. The property to the west of Survey Nos.1405/2 and 1405/7 is in Survey No.1405/1. However, the defendants dispute this revenue sub-division as conclusive since the sub-division might have taken place without notice to them.



S.A.No.460 of 2000

WEB COPY

10. This Court concurs with the submissions of the learned counsel appearing for the respondents that the plaintiff was not clear about the property in relation to which she seeks relief in the suit. Whether it is 38 acres or 87 cents or 32 cents needs to be addressed.

11. Ideally, the plaintiff has to go for a suit for declaration based on her title deeds along with a suit for demarcation of her boundary from the adjacent owners. However, if the revenue sub-division of Survey No.1405 is done correctly and has become final, there may not be any need for seeking demarcation of boundary since the revenue sub-division boundaries will take care of the same.

12. After all, there is no dispute between both the parties that both own some properties in Survey No.1405. It is only in locating the property the dispute has arisen. The Commissioner report filed in the present case cannot even be a conclusive piece of evidence, if at all the plaintiff chooses to institute a suit for declaration of her title.



S.A.No.460 of 2000

13. So far as the present appeal is concerned, this Court does not find any merit in the same and the same is dismissed. The judgment and decree dated 28.08.1998 made in A.S.No.54 of 1992 on the file of the Subordinate Court, Tuticorin confirming the judgment and decree dated 21.01.1992 made in O.S.No.531 of 1989 on the file of the Additional District Munsif Court, Tuticorin, is hereby confirmed. The plaintiff is at liberty to file a comprehensive suit as indicated above if they are so desirous. No costs.

15.11.2022

ssb

To

1. Subordinate Court, Tuticorin
2. District Munsif Court, Tuticorin.
3. The Section Officer, VR Section,
Madurai Bench of Madras High Court.



WEB COPY



S.A.No.460 of 2000

N.SESHASAYEE., J.

ssb

S.A.No.460 of 2000

15.11.2022