



WEB COPY



A.S.Nos.56 and 57 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2023

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

A.S.Nos.56 and 57 of 2011

A.S.No.56 of 2011:-

1. V.B.Karunagiri (died)
2. K.V.Alalasundaram
3. K.V.Shanmugasundaram
4. Yasodha
5. K.B.Kirubagiri
6. Uma Sridharan
(Appellants 2 to 6
represented by their mother
and Power Agent,
V.B.Karunagiri
the 1st Plaintiff)
(Appellant 2 to 6 LR's of the
deceased 1st appellant
viz., V.B.Karunagiri as per
memo dated 21.10.2021
CSR 31314 vide Court order
dated 22.10.2021 made in
A.S.No.56 of 2011)

...Appellants

-Vs-

1. S.Veeraraghavan
2. R.Shamugaraj
3. Murugesu Naicker

... Respondents



A.S.Nos.56 and 57 of 2011

Prayer: First Appeal filed under Section 96 of CPC praying to allow the appeal by setting aside the judgment and decree dated 12.07.2010 in O.S.No.1785 of 2004 on the file of the Additional District Judge, Fast Track Court-V, Chennai with costs.

For Appellants : Mr.K.Sakthivel
For R1 : No appearance
For R2 and R3 : Mr.S.Balasubramaniam

A.S.No.57 of 2011:-

1. S.M.Gandhi (died)
2. S.P.Rajah
(A2 brought on record
as LRs of the deceased
sole appellant viz., S.M.Gandhi
vide Court order dated
28.07.2022 made in
C.M.P.No.12326 of 2022
in A.S.No.57 of 2011) ...Appellants

-Vs-

1. S.Veeraraghavan
2. R.Shamugaraj
3. Murugesu Naicker ... Respondents

Prayer: First Appeal filed under Section 96 of CPC praying to allow the appeal by setting aside the judgment and decree dated 12.07.2010 in O.S.No.1786 of 2004 on the file of the Additional District Judge, Fast Track Court-V, Chennai with costs.

For Appellants : Mr.K.Sakthivel
For R1 : No appearance
For R2 and R3 : Mr.S.Balasubramaniam



A.S.Nos.56 and 57 of 2011

WEB COPY

COMMON JUDGMENT

These appeal suits have been filed to set aside the Judgment and Decree dated 12.07.2010 in O.S.Nos.1785 and 1786 of 2004 passed by the Additional District Judge, Fast Track Court-V, Chennai, thereby dismissed the suits filed for declaration and recovery of possession.

2. Both the suits were filed by different plaintiffs as against the same defendants in respect of different plot numbers. The Trial Court passed a common judgment in both the suits and dismissed the suits filed for declaration and recovery of possession. Therefore, this Court is inclined to pass a common judgment in both the appeal suits.

3. The appellants are the plaintiffs and the respondents are the defendants. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court.

4. The case of the plaintiffs in O.S.No.1785 of 2004 is that the suit property ad-measuring 3680 sq.ft bearing Plot No.12, Bhuvaneswari Nagar and property is the part of a vast land which was originally owned by one



A.S.Nos.56 and 57 of 2011

Krishnamani. He laid out plots and sold the plots to various persons. The suit property was sold out in favour of one Seethalakshmi by a registered Sale deed dated 18.05.1971. In turn, she had sold out the same in favour of her husband and plaintiffs 2 to 6 by the registered sale deed dated 09.07.1982. While being so, during the last week of the month of March 2004, the second defendant trespassed into the house plot and claimed ownership of the said plot. Therefore, the plaintiffs lodged a police complaint and issued notice. However, the defendants 1 and 2 sold out the said property in favour of the third defendant. Hence, the suit.

5. The case of the plaintiffs in O.S.No.1786 of 2004 is that the suit property ad-measuring 3480 sq.ft bearing Plot No.11, Bhuvaneswari Nagar is the part of a vast land which was originally owned by one Krishnamani. He laid out plots and sold the plots to various persons. The suit property was sold out in favour of one Seethalakshmi by a registered Sale deed dated 18.05.1971. In turn, she had sold out the same in favour of her husband and plaintiffs 2 to 6 by the registered sale deed dated 09.07.1982. While being so, during the last week of the month of March 2004, the second defendant trespassed into the house plot and claimed ownership of the said plot. Therefore, the plaintiffs lodged a police complaint and issued notice. However, the defendants 1 and 2 sold out



A.S.Nos.56 and 57 of 2011

the said property in favour of the third defendant. Hence, the suit.

WEB COPY

6. Resisting both the suits, the defendants 1 and 2 filed their written statement stating that the suit properties are the vacant house plots in S.No.317/1. Originally, it belonged to one Krishnasamy Iyer and his sons K.Gopalasamy and Subramaniam. The said Krishnasamy Iyer bequeathed his share in the joint family to his wife one Parvathi Ammal by the Will dated 12.06.1935. She died on 20.12.1938, leaving behind her Will dated 17.12.1938 bequeathing her share in S.No.317/1 in favour of her daughter one Mahalakshmi. Thereafter, they divided their share by metes and bounds by a Memorandum of Agreement registered under a Partition Deed dated 29.09.1958. She sold out her share ad-measuring 7 acre and 8 cents to the first defendant by the registered sale deed vide Document No.1862 of 1973. Thereafter, the said land was sub divided as S.No.317/1 A2-A1 part and patta also stands in favour of the first defendant. The second defendant being the Power of Attorney of the first defendant, was authorized to sell the suit property. Thereafter, the property was sold out and no approval was obtained and the suit properties were sold out as unapproved plots to the third defendant. The plaintiffs' land is located on the eastern side of the first defendant's land and it is an approved land. In fact the suit properties are lying vacant till now.



A.S.Nos.56 and 57 of 2011

The revenue authorities measured the properties as per FMB and informed to the plaintiffs that the suit properties are located on the eastern side of the land owned by the first defendant. In fact, the boundaries of the suit properties and the land owned by the first defendant are also completely different. All the documents were duly produced before the concerned Police Station, on the complaint lodged by the plaintiffs and they were advised to approach the Civil Court for appropriate relief. They also concluded that there is mistaken identity of the property. The first defendant, authorised the second defendant by way of the Power of Attorney to sell the house Plot Nos.9 to 13, ad-measuring 12,400 sq.ft.

7. The third defendant also filed a separate written statement in both the suits stating that he had purchased the Plot Nos.11 to 13 ad-measuring 2656 sq.ft, 2672 sq.ft and 2268 sq.ft respectively, in total 7596 sq.ft in Bhuvaneswari Nagar, Velachey. Thereafter, he had put up a hut and obtained electricity service connection.

8. After completion of pleadings, the Trial Court framed the following issues:-

“ 1.Whether the plaintiffs in O.S.No.1785 and 1786/04



A.S.Nos.56 and 57 of 2011

are entitled to declaration of title as prayed for in the respective suits?

2. Whether the defendants in the suits O.S.No.1785 and 1786/04 are liable to hand over vacant possession to the plaintiffs in the respective suits?

3. Whether the plaintiffs have proved the identification of property in their suits?

4. To what relief?"

9. On the side of the plaintiffs, they had examined P.Ws.1 and 2 and marked Exs.A1 to 15. On the side of the defendants, they had examined D.W.1 and marked Exs.B1 to 8. On perusal of oral and documentary evidence, the Trial Court dismissed the suit. Hence, these Appeal suits.

10. The learned counsel for the plaintiffs would submit that there is mistaken identity of the suit property. Therefore, an Advocate Commissioner was appointed by the Trial Court. However, the Advocate Commissioner was not assisted by the Surveyor to identify the suit property. To that extent he had filed his report. Even then, the Trial Court dismissed the suits. He further submitted that at least now an Advocate Commissioner may be appointed to identify the suit properties. The plaintiffs produced their respective registered sale deeds and they also proved their title over the property as per the registered sale deeds. Their vendors were also having title over the property and there is no cloud over the property. Even then, the second defendant trespassed into the properties and sold out the same in favour of the third defendant. The suit



A.S.Nos.56 and 57 of 2011

properties purchased by the plaintiffs are approved one and it was categorically admitted by the defendants.

11. Having regard to the pleadings, evidence and submissions made by the learned counsel appearing on either side, the only point for consideration arise in this appeal is that whether the plaintiffs are entitled for the relief of declaration and injunction when they failed to identify their property?

12. The suit property, along with other properties, were owned by one Krishnamani and his two sons viz., K.Gopalasamy and Subramaniam. After the demise of the said Krishnamani, his wife got her share and she bequeathed her share in favour of her daughter. Subsequently, the legal heirs partitioned the suit properties by way a registered partition deed, dated 02.09.1958, which was marked as Ex.B1. Thereafter, the first defendant purchased the entire share of Mahalakshmi Suryanarayana Iyer by the registered sale deed dated 10.07.1973, which was marked as Ex.B2. After purchase of the entire properties, it was subdivided as 317/1 A2-A1 part. The first defendant executed a Power of Attorney in favour of the second defendant dated 07.05.2002, which was marked as Ex.B4. In order to develop the same, the entire extent of the property was laid out into house plots as Plot Nos.9 to 13. As far as the suit properties purchased



A.S.Nos.56 and 57 of 2011

by the plaintiffs are concerned, it were located on the eastern side of the property owned by the defendants. Though the plaintiffs contended that the suit properties are approved plots, they failed to produce any document to show that the suit properties were approved one. In the lay out plan they simply mentioned DTCP number without any records. It does not contain any seal or signature from the authority concerned for approval. That apart, even according to the plaintiffs the suit properties are situated in S.No.317/1. It was admitted by P.W.1. Pending suit, an Advocate Commissioner was appointed. It is also to be noted that the extent of the property which is possessed by the third defendant and the suit property differs. Therefore, the suit property is no way connected with the property which is in possession and enjoyment of the third defendant. The boundaries are also different in both the properties from the respective exhibits. That apart, the patta also issued in the name of the first defendant insofar as the property purchased by the first defendant from his vendor. However, no patta was issued in favour of the plaintiffs, though she purchased the suit property in the year 1982. The suit is filed for declaration and injunction and as such, the burden is on the plaintiffs to prove her case. When the plaintiffs failed to discharge her burden, the defendants could probabalize the defence by filing documents on their side. Therefore, the plaintiffs are not entitled for any relief.



A.S.Nos.56 and 57 of 2011

WEB COPY

13. A perusal of the Advocate Commissioner's report revealed that he could not identify the property, since the Surveyor was not available. He had noted the physical features and found that the third defendant had put up a hut and obtained electricity service connection and he is in possession and enjoyment of the property.

14. The learned counsel for the appellants/plaintiffs contended that the defendants admitted that the suit properties are approved one and as such, the admitted fact need not be proved. In support of his contention, he relied upon the Judgment of the Hon'ble Division of this Court reported in ***CDJ 2023 MHC 2411*** in the case of ***Boomathi (died) and other Vs Murugesan (died) and others.***

15. Even assuming that the defendants admitted certain facts, the suit property itself are not identified by the plaintiffs. In order to identify the property, the suit for declaration and injunction cannot be entertained. In fact, the defendants averred that already the property belong to the defendants were duly identified and they are in possession and enjoyment of their properties. Therefore, the plaintiffs failed to identify their property with the help of revenue authorities. After identifying the property, if there is any dispute over the same,



A.S.Nos.56 and 57 of 2011

the Court can very much interfere and identify the property with the help of the Surveyor. Whereas, in the case on hand, the defendants identified their property and the first and second defendants sold out the property in favour of the third defendant and he is in possession and enjoyment of the property. Therefore, the Judgment cited by the learned counsel for the plaintiffs is not helpful to the case on hand.

16. The further case of the plaintiffs is that they had purchased their respective plots from Seethalakshmi by the registered sale deed in the year 1982. While being so, in the month of March, 2004, the second defendant trespassed into the property and had put up a hut. However, the plaintiffs did not take any steps to register any FIR as against the defendants. That apart, except the sale deed and notices which were exchanged between the plaintiffs and the defendants, the plaintiffs failed to produce any evidence to prove their possession and enjoyment of the suit properties. Further, the plaintiffs also failed to examine any revenue authorities in order to prove that the property which is in possession of the third defendant is the suit property. In fact, the third defendant had put up a compound wall in and around the house plots which were purchased by him and there are nine huts put up by separate persons and they are in possession and enjoyment of the same, after obtaining electricity



A.S.Nos.56 and 57 of 2011

service connection.

WEB COPY

17. Therefore, the plaintiffs miserably failed to prove their case and the point arose in this appeal is answered in favour of the defendants. Therefore, this Court finds no infirmity or illegality in the common Judgment and Decree dated 12.07.2010 in O.S.Nos.1785 and 1786 of 2004 passed by the Additional District Judge, Fast Track Court-V, Chennai and these appeal suits are liable to be dismissed. However, the plaintiffs are at liberty to identify their properties as per their sale deeds and proceed in accordance with law.



WEB COPY



A.S.Nos.56 and 57 of 2011

18. Accordingly, these Appeal Suits are dismissed. No costs.

13.12.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

mn

To

The Additional District Judge, Fast Track Court-V, Chennai.



WEB COPY



A.S.Nos.56 and 57 of 2011

G.K.ILANTHIRAIYAN. J.

mn

A.S.Nos.56 and 57 of 2011

13.12.2023