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S.A.No.1314 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**S.A.No.1314 of 2007 &
M.P.No.3 of 2007**

Chinnaih Chetty (died)

1.Pattammal (deceased)

2.Sarasu

3.Nagammal

4.Saroja

... Appellants/Plaintiffs

(Appellants 2 to 4 brought on record as LRs of the deceased first Appellant viz., Pattammal vide Court Order dated 04.08.2021 made in S.A.No.1314 of 2007)

Vs

1.Mani

2.Pazhani

3.Arumugham

4.Radhammal

5.Chinna Ponnu alias Kotiammal

... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Code of Civil Procedure against the decree and judgment passed by the Additional District Judge, Fast Track Court No.V of Thiruvallur in A.S.No.59 of 2004 on 30.11.2006 in reversing the decree and Judgment passed by the District Munisf Court, Thiruvallur in O.S.No.103 of 1991 dated 18.03.2003.



For Appellants : Mr.A.Palaniappan

For Respondents : Mr.M.S.Subramanian

JUDGMENT

The plaintiffs who succeeded before the trial court, but lost before the lower appellate court are the appellants before me.

2. The parties are referred to in the same manner as in the suit. The plaintiffs filed a suit for declaration and injunction. The defendants happened to be the neighbour of the plaintiffs. According to the plaintiffs, Deivaniammal, the vendor had sold the property to the first plaintiff on 21.01.1960. She had got the property by way of a registered sale deed on 01.02.1937. According to them, there is an existence of a tiled house with an opening to Vanniyar Street.

3. The property concerned is a strip of land abutting on the northern side by Dharmaraja Koil Street and on the southern side by Vanniyar Street. There is no dispute on the northern and southern boundaries. There is no



dispute on the western boundary also. The only dispute is a strip of land between the plaintiffs' property and the defendants' property. The plaintiffs claim title by way of Ex.A1 and Ex.A2. According to them, Ex.A1 and Ex.A2 would correlate to the strip of land found under Ex.C3.

4. Demolishing the case of the plaintiffs, the defendants would file Ex.B1 which is an anterior sale deed of the year 1957 which is dated 24.11.1957. The document dated 01.02.1937 shows that on the Eastern side of the property purchased by the plaintiff belongs to one Mottaikan. The boundaries as per Ex.B1 would show that on one side Vanniyar Street and the other side Dharamaraja Koil Street and on the Eastern side, Irular street. The document of the year 1957 would show that there is Irular street on one side and on the other side, there is the property belonging to the Vanniya Chetty on the western and northern sides. Pending the suit, the plaintiffs appointed an Advocate Commissioner who submitted his report under Ex.C1 and Ex.C2.

5. The trial court was not happy with the report and directed the Commissioner to revisit the property and examine along with the assistance



of the Surveyor. The Surveyor has examined the same and has submitted his report under Ex.C3. The Advocate Commissioner under Ex.C4 has stated that his first report has stated that on the re issue of the warrant, the surveyor plan with measurements has been filed by me under Ex.C3.

6. At the time of admission, the following substantial question of law was framed:

"Whether the findings of the first appellate court is sustainable in law that sale deed dated 24.11.1957, Ex.B1 is prior to Ex.A1 dated 02.01.1960 by a period of three years and hence allowed the appeal without considering the specific finding of the trial court that the prior title deed Ex.A7 parent document dated 01.02.1937 pertaining to the said suit property in favour of the appellant's predecessor in title and in the light of the specific finding of the trial court that both Ex.A1 and Ex.A7 schedule clearly pertains to the same property and that the said documents true, worthy and prevail over Ex.B1?"

7. I have gone through the evidence of PW2 who instead of deposing that the first plaintiff was the owner of the property on the western side till



Dharamaraja Temple, has deposed that she is not aware of who the owner is.

Apart from that she is not aware of the measurements and extent of the property which is the subject matter of the dispute. The difference in level of the land between the plaintiffs' property and the defendants' property is also admitted by PW2. This shows that it has been in separate enjoyment and construction on both sites were also separate.

8. On perusal of the plan filed under Ex.C3 shows that a gap of three feet running north-south to an extent of twenty six feet in length and three feet in breadth between the plaintiffs' property and the defendants' property. The plaintiffs' anterior sale deed shows the boundaries of the property as it belonging to the vendor of the defendants. This statement in the schedule of the property would estopped the plaintiffs from claiming any right over an inch of land beyond the boundaries.

9. The trial court had placed the burden on the defendants to disprove the case of the plaintiffs which had been rightly reversed by the lower appellate court.



10. I do not find any perversity in the order of the lower appellate court which requires interference under section 100 of the Code of Civil Procedure. The substantial questions of law raised does not arise for consideration because of the sale deeds of the plaintiffs and the defendants tallying with the surveyor's report. To put it in otherwords, the surveyor's report tallies with Ex.B1, Ex.A1 & Ex.A2. The commissioner report and the surveyor report was not objected by either of the parties. Therefore, I consider it as evidence under Order 26 Rule 10(2) of the Code of Civil Procedure. Accordingly, the second appeal is **dismissed**. For the sake of clarity, the Surveyor's plan/Advocate Commissioner's plan filed under Ex.C3 shall form part of this decree. As the issue involved is a very narrow lane, no cost is awarded. Consequently, connected miscellaneous petition is closed.

06.04.2023

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Index : Yes/No

Speaking/Non speaking orders

Neutral citations : Yes/No



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To

1. The Additional District Judge, Fast Track Court No.V of Thiruvallur.
2. The District Munisf Court, Thiruvallur.



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V.LAKSHMINARAYANAN, J.

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