



S.A.No.1341 of 2011
& M.P. No.1 of 2011

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.1341 of 2011
and M.P. No.1 of 2011

C.Elumalai

...Appellant

Vs.

Mani

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 30.03.2011 passed in A.S. No.9 of 2010, on the file of the Sub Court, Gingee, upholding the decree and judgment dated 14.12.2009 passed in O.S. No.247 of 2004, on the file of the Principal District Munsif Court, Gingee.

For Appellant : Mr.T.Dhanasekaran

For Respondent : Mr.G.Rajan

JUDGMENT

The unsuccessful plaintiff before both the Courts below has filed the present second appeal.



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2.The appellant/plaintiff filed a suit in O.S. No.247 of 2004, before the Principal District Munsif, Gingee for declaration of his title to the suit property and for a mandatory injunction directing the defendant to remove the compound wall measuring North - South 60 feet in the suit property. The suit properties are described under two heads. 'A' schedule property is a vacant site measuring East - West 7 feet and North - South 50 feet in New S.No.216/13 and 216/4 (Old S.No.162/4) of Kallapuliyur Village, Gingee Taluk, Thiruvannamalai District and 'B' schedule property is the compound wall measuring North - South 60 feet.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

4.The case of the plaintiff in nutshell is as follows :

- i. The plaintiff and his brother Kulandhai Gounder owned 3½ cents each in S.No.216/13 and 216/4 of Kallapuliyur Village, Gingee Taluk, Thiruvannamalai District and subsequently the plaintiff



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WEB COPY purchased 3½ cents from his brother Kulandhai Gounder through a registered sale deed dated 09.03.2001 (Ex.A1).

ii. The defendant's property is situated on the eastern side of the property purchased by the plaintiff from his brother through Ex.A1.

iii. The defendant purchased his property through a registered sale deed dated 17.05.1999 (Ex.A2) from one Narayanasamy and his son Balachander.

iv. There is a vacant site measuring 7 feet in between the house of the plaintiff and the defendant and since the defendant attempted to put a sunshade protruding into the plaintiff's property, he (the plaintiff) filed a suit in O.S.No.196/2002 before the District Munsif, Gingee. The defendant in the said suit filed a written statement admitting the plaintiff's title on the northern side of his property. Therefore, the plaintiff withdrew the suit. However, the defendant constructed a compound wall in the property of the plaintiff. Therefore, the plaintiff was constrained to file the present suit.



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5. The suit was resisted by the defendant on the following grounds :

- i. The defendant is entitled to 3 feet vacant site on the western side of the wall of his house.
- ii. In fact the defendant purchased 2520 sq.ft. in S.No.162/4 from Narayanasamy Gounder and his son Balachander vide registered sale deed dated 17.05.1999 (Ex.B2) and constructed a tiled house in the said plot. He also put up a compound wall leaving 2½ feet between his house and the compound wall. Hence, the compound wall is within the boundaries of the defendant's property.
- iii. The plaintiff has no manner of right over the said property. He therefore prayed for dismissal of the suit.

6. On the basis of the above pleadings, the trial Court framed the following issues :

- i. "Whether the plaintiff is entitled for a declaration to 'A' schedule property ?
- ii. Whether the plaintiff is entitled for recovery of possession as



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iii. To what relief the plaintiff is entitled ?

7. In the trial Court, the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A7. On the side of the defendant, the defendant examined himself and two other witnesses and marked Ex.B1 and Ex.B5. An Advocate Commissioner was appointed by the trial court and he filed his report and plan which were marked as Ex.C1 and Ex.C2 respectively.

8. After full contest, the learned Principal District Munsif, Gingee, dismissed the suit filed by the plaintiff on the following grounds:- :

- i. The plaintiff through the sale deed Ex.A1 had purchased only 1526 sq.ft. from his brother. The East - West measurement is not indicated as 6 meters in the said sale deed.
- ii. The patta Ex.A7 is issued only to an extent of 3.3 cents.
- iii. The plaintiff did not adduce any documentary evidence to show



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that he and his brother owned 7 cents of land in New S.No.216/13 and 216/4 (Old S.No.162/4).

- iv. Ex.A7 patta was issued only in respect of S.No.216/14. No patta was issued in respect of S.No.216/13.
- v. In the plaint, the plaintiff had stated that he and his brother owned only 3¼ cents and during the course of cross examination, the plaintiff as PW1 admitted that patta was issued only for this extent.
- vi. The plaintiff's brother was examined as PW2. Both the plaintiff and PW2 did not adduce the patta issued in their favour in respect of their property and no evidence was adduced to show that there was a partition in their family.
- vii. Though the surveyor had shown the properties of the plaintiff and the defendant lying in a straight line, the Advocate Commissioner's report Ex.C2 shows it the other way. They are not placed so as per the Advocate Commissioner's report.
- viii. The Advocate Commissioner did not indicate that the defendant constructed his compound wall encroaching the land of the plaintiff. Moreover in the 'A' schedule, the East - West



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measurement is indicated only as 7 feet and it has not been specifically mentioned that the northern side measurement is different from the southern side measurement. Therefore, it is clear from the Advocate Commissioner's report as well as documentary evidence adduced by the defendant that the defendant had not encroached the property of the plaintiff and that the plaintiff has not also established his title over the disputed property.

ix. The trial court, therefore, dismissed the suit filed by the plaintiff vide his decree and judgment dated 14.12.2009.

9. Aggrieved over the decree and judgment passed by the trial court, the plaintiff filed an appeal in A.S. No.9 of 2010, before the Sub Court, Gingee. The learned Subordinate Judge, Gingee, after analysing the oral and documentary evidence adduced on both sides, upheld the findings recorded by the trial court vide his decree and judgment dated 30.03.2011, as against which the present second appeal is filed.



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10. The second appeal is admitted on the following substantial questions of law by my learned predecessor.

- i. "Is the lower courts erred in holding that there is an encroachment on the norther side of plaintiff's property and dismissing the suit?
- ii. Is the lower court correct in disbelieving Ex.A1 sale deed ?
- iii. Is the lower court correct in dismissing the suit without going through FM book?"

11. Heard Mr.T.Dhanasekaran, learned counsel for the appellant and Mr.G.Rajan, learned counsel for the respondent.

12.Mr.T.Dhanasekaran, learned counsel for the appellant contended that both the courts below had failed to appreciate the oral and documentary evidence adduced on both sides and that the first appellate court without discussing the various aspects, had simply upheld the findings of the trial court. His specific contention is that the plaintiff has adduced Ex.A1 which is a sale deed executed in his favour by his brother which shows that the plaintiff is entitled to the entire extent of A



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schedule property and that the defendant does not have any inch of land on western side of his house. He therefore, prayed for allowing the present second appeal.

13. Per contra Mr.G.Rajan, learned counsel for the respondent contended that both the Courts below, after analysing the oral and documentary evidence adduced on both sides, had given concurrent findings and therefore, the scope of this Court is very limited under Section 100 CPC.

14. The plaintiff claims title to 'A'schedule property which, according to him, measures East - West 7 feet and North - South 60 feet in New S.No.216/13 and 216/4 (Old S.No.162/4) of Kallapuliyur Village, Gingee Taluk, Thiruvannamalai District. According to the plaintiff, the defendant had encroached this portion of the property by constructing a compound wall measuring North - South 60 feet. In order to establish that the plaintiff is the owner of the entire extent of suit 'A' schedule property, the plaintiff relied on the sale deed (Ex.A1) dated 09.03.2001



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executed by his brother in his favour. He also relied on the patta Ex.A7 bearing patta No.56 for S.No.216/14. In the first appeal the plaintiff filed another patta for S.No.216/14 and the same was marked as Ex.A8. Apart from the above three documents he also relied on house tax receipts and the same were marked as Ex.A4 to Ex.A6. In Ex.A1, 1526 sq.ft. of vacant site was conveyed to the plaintiff by his brother in New S.No.216/14. East - West measurement in the said sale deed is indicated as 6 meters. Ex.A7 patta is issued in respect of S.No.216/14 in which the measurement of the property is indicated as 3.3 cents. Ex.A8 patta is also for the same S.No.216/14. It is pertinent to point out that in the plaint schedule the plaintiff had mentioned the Survey Numbers as 216/4 and 216/13. The plaintiff had further averred that he and his brother owned $3\frac{1}{4}$ cents of vacant site only. In the evidence the plaintiff as PW1 had deposed that both he and his brother owned 7 cents of land. The plaintiff's brother who executed Ex.A1 in favour of the plaintiff was examined as PW2 and he admitted that patta issued to him after Resurvey of lands was not filed before the Court. The Advocate Commissioner in his report and plan had indicated that the property of the plaintiff and the



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defendant are not lying in a straight line. It is further seen from the Advocate Commissioner's report that on the western side of the compound wall the defendant has 3/4 feet of land on the northern side and the plaintiff has 3/4 feet of land on the southern side of the compound wall. However, the plaintiff has indicated the East - West measurement of 'A' schedule property as 7 feet. It is not the case of the plaintiff that this East - West measurements varies on the northern side and southern side. This was taken into account by the first appellate court which strangely had held that the plaintiff has encroached the property of the defendant and the defendant also had encroached in the property of the plaintiff. According to the first appellate court, the encroachment made by the defendant is comparatively lesser and negligible than the encroachment made by the plaintiff in the land of the defendant. However, it was further held that the plaintiff had not adduced any acceptable evidence to show that he is entitled to the entire extent of 'A' schedule property. The findings recorded by both the courts below are based on oral and documentary evidence adduced on both sides. Therefore, I do not see any reason to interfere with the same. Thus, the



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substantial questions of law are answered against the appellants.

15. It is pertinent to point out here that Section 100 CPC is a jurisdiction confined to substantial questions of law only. In the decision in **Madamanchi Ramappa and Another Vs Muthalur Bojjappa** reported in **(1964) 2 SCR 673**, the Apex Court observed as follows:

"12.The admissibility of evidence is no doubt a point of law, but once it is shown that the evidence on which courts of fact have acted was admissible and relevant, it is not open to a party feeling aggrieved by the findings recorded by the courts of fact to contend before the High Court in second appeal that the said evidence is not sufficient to justify the findings of fact in question. It has been always recognised that the sufficiency or adequacy of evidence to support a finding of fact is a matter for decision of the court of facts and cannot be agitated in a second appeal. Sometimes, this position is expressed by saying that like all questions of fact, sufficiency or adequacy of evidence in support of a case is also left to the jury for its verdict. This position has always been accepted without dissent and it can be stated without any doubt that it enunciates what can be properly



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If in reaching its decisions in second appeals, the High Court contravenes the express provisions of section 100, it would inevitably introduce in such decisions an element of disconcerting unpredictability which is usually associated with gambling and that is a reproach which judicial process must constantly and scrupulously endeavour to avoid."

16. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is also dismissed.
- ii. The decree and judgment dated 30.03.2011 passed in A.S. No.9 of 2010, on the file of the Sub Court, Gingee, and the decree and judgment dated 14.12.2009 passed in O.S. No.247 of 2004, on the file of the Principal District Munsif Court, Gingee, are upheld.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
bga

To

1. The Sub Court, Gingee.
2. The Principal District Munsif Court, Gingee.
3. The Section Officer, VR Section, High Court, Madras.

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