



S.A.No.88 & 89 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 88 & 89 of 2018

1.R.Ramachandran

2.R.Periyadurai

...Appellants in both S.A's.

Vs.

1.R.Kannan

2.K.Santhi

...Respondents in both S.A's.

PRAYER in S.A.No.88 of 2018: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the decree and judgment made in A.S.No.50 of 2008 dated 13.12.2010 passed by the learned Sub-Ordinate Judge, Kanchipuram and reversing the decree and judgment made in O.S.No.317 of 2001 dated 28.02.2008 on the file of the learned Principal District Munsif Court at Kanchipuram.

PRAYER in S.A.No.89 of 2018: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the decree and judgment made in A.S.No.51 of 2008 dated 13.12.2010 passed by the learned Sub-Ordinate Judge, Kanchipuram and confirming the decree and judgment made in O.S.No.383 of 2001 dated 28.02.2008 on the file of the learned Principal District Munsif Court at Kanchipuram.



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For Appellants in both S.A's. : Mr.D.Ravichander

For Respondents in both S.A's. : Mr.B.Singaravelu
for M/s.P.P.Shanmugasundaram

COMMON JUDGEMENT

S.A.No.88 of 2018 is arising out of O.S.No.317 of 2001. The respondents herein filed a suit for bare injunction restraining the appellants from interfering with enjoying the southern boundary mentioned as ABCD in plaint plan by putting up any construction. The suit was dismissed by the Trial Court and on appeal filed by the respondents, the findings of the Trial Court were reversed and appeal was allowed. Aggrieved by the same, the unsuccessful defendants have come by way of second appeal.

2. S.A.No.89 of 2018 is arising out of suit in O.S.No.383 of 2011. The suit was filed by the appellants seeking injunction restraining the respondents from interfering with appellants' peaceful possession and enjoyment of the suit property. The appellants also sought for mandatory injunction directing the respondents to remove the partially put up structure in the suit property on the



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southern side of suit properties. The suit was decreed by the Trial Court and on appeal filed by the respondents, the findings of the Trial Court were reversed and appeal was allowed. Aggrieved by the same, the unsuccessful plaintiffs have come by way of second appeal.

3. For the sake of convenience, the parties are referred to as per their ranking in O.S.No.383 of 2001.

4. According to the appellants/plaintiffs, the suit property originally belonged to one Elangovan and he purchased the same from one Athivarathan and formed layout. The said Elangovan after forming layout of housing plots retained the suit property for putting up shopping complex. The suit property was sold by Elangovan to one Sivasankari on 16.09.1985. The plaintiffs purchased the suit property from Sivasankari on 15.07.1996. Since then, the plaintiffs have been in possession and enjoyment of the suit property. The defendants are owners of adjoining property on the South of the present suit property. They purchased Plot No.16 on the southern side of the suit property from the common vendor. The defendants made an attempt to encroach the suit property and filed a suit in O.S.No.317 of 2001 for injunction and attempted to



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put up construction. In these circumstances, the plaintiffs were constrained to file a suit for bare injunction and also mandatory injunction seeking removal of partially put up structure in the suit property.

5. The said suit was resisted by defendants by filing a written statement wherein it was contended by them that they purchased Plot No.16 from one Chandru and Thambidurai under sale deed dated 03.05.2001. It was also averred by the defendants that suit property originally belonged to one Elangovan and he formed a layout in DTCP.No.59 of 1975 and sold Plot No.16 in favour of one K.O.Sivasankaran under registered sale deed dated 04.05.1984. The said Sivasankaran sold the property to one Parameswari and Thambidurai under two separate sale deeds dated 25.06.1998. The defendants purchased the above said property from son of Parameshwari, Chandru and Thambidurai under document dated 03.05.2001. It was also claimed by the defendants that at the time of formation of layout, the promoter got approval for a road on the northern side of the plot. The vendor of the Plaintiffs had no *locus standi* to sell the property which was earmarked as road in the approved plan. Thus, denying the right of the plaintiffs over the said strip of land on the southern side of main road, the defendants sought for dismissal of the suit. It was also claimed by the



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defendants that without praying for declaration, suit for bare injunction was not maintainable.

6. As stated earlier, the defendants also filed a suit for bare injunction in O.S.No.317 of 2001 by showing the strip of land allegedly purchased by appellants on immediate South of main road as ABCD and sought for injunction. In the said suit also, the defendants denied the right of plaintiffs and their vendor over the property earmarked as a road. The said suit was resisted by the plaintiffs in O.S.No.383 of 2001, who were arrayed as defendants in that suit by reiterating the very same averments in their plaint in O.S.No.383 of 2001.

7. Since both the suits are between the very same parties and the dispute is in respect of the very same strip of land, as per the memo filed by both the parties, a joint trial was conducted and evidence was recorded in O.S.No.383 of 2001.

8. The 1st Plaintiff in O.S.No.383 of 2001 was examined as P.W.1 and original promoter of the layout Elangovan was examined as P.W.2. On behalf of the plaintiffs, 6 documents were marked as Ex.A1 to Ex.A6. The 1st plaintiff in



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O.S.No.317 of 2001 was examined as D.W.1 and two other witnesses were examined as D.W.2 and D.W.3. On behalf of the defendants, 16 documents were marked as Ex.B1 to Ex.B16.

9. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that plaintiffs in O.S.No.383 of 2001 established their right over the suit property and the plaintiffs in O.S.No.317 of 2001 failed to establish their right. Therefore, the Trial Court decreed the suit filed by the appellants/plaintiffs and dismissed the suit filed by the respondents/defendants. Aggrieved by the same, the respondents/defendants preferred two appeals in A.S.No.50 of 2008 and A.S.No.51 of 2008. The first appellate court reversed the findings of the Trial Court and allowed the appeals. Challenging the said judgment and decree, the plaintiffs in O.S.No.383 of 2001 and defendants in O.S.No.317 of 2001 have come by way of these second appeals namely S.A.No.89 of 2018 and S.A.No.88 of 2018.

10. The learned counsel for the appellants submitted that it was the specific case of the respondents that disputed strip of land on immediate South of 40 ft road was earmarked for road in approved layout plan marked as Ex.B1



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and the promoter of the layout was not entitled to sell the land earmarked for road. The learned counsel, by producing the copy of Ex.B1, layout plan, submitted that there is nothing on record to suggest that it was approved by the competent authority. When the layout in question was not approved by the competent authority, the respondents were not entitled to claim that vendor of the plaintiffs in O.S.No.383 of 2001 was not entitled to convey the suit property. Therefore, the learned counsel submitted that the findings rendered by the First Appellate Court as if the predecessor in title of appellants/plaintiffs in O.S.No.383 of 2001 could not convey good title to the appellants in respect of the land earmarked for road purpose is vitiated by non consideration of material fact that the layout was unapproved.

11. Though the submission made by the learned counsel for the appellants appears to be attractive, the same will not lend any help to him in the light of description of property found in title documents of the respondents/defendants in O.S.No.383 of 2001.

12. The respondents/defendants in O.S.No.383 of 2001 purchased Plot No.16 from Parameshwari's son Chandru and Thambidurai under Ex.B5 and



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Ex.B8 dated 03.05.2001. The said Parameswari executed a settlement in favour of Chandru regarding portion of the property purchased by her under Ex.B7 dated 21.02.1999. The above said parameswari and Thambidurai purchased Plot No.16 from Sivasankaran under Ex.B3 dated 25.06.1998. The said Sivasankaran purchased Plot No.16 from original promoter Elangovan under Ex.B2 dated 14.05.1984. Therefore, the sale deed by original promoter Elangovan in favour of Sivasankaran (predecessor in interest of respondents/defendants in O.S.No.383 of 2001) is the earliest document filed by the parties (14.05.1984). The appellants/plaintiffs in O.S.No.383 of 2001 purchased suit property from Sivasankari under Ex.A3 dated 16.09.1985. From said Sivasankari, the appellants /plaintiffs in O.S.No.383 of 2001 purchased suit property under Ex.A1 dated 15.07.1996. Therefore, earliest document filed by appellants is dated 16.09.1985. Therefore, it is clear that the respondents' predecessor in title is the earliest purchaser of Plot No.16 under Ex.B2 dated 14.05.1984.

13. Now, let us examine the boundary description found in Ex.B2, earliest document in favour of respondents' predecessors in title. Under the said document, he purchased Plot No.16 situated in Survey No.592/1 and 593/1 with following boundaries:-



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- i) West of Rajeswari plot.
- ii) South of road.
- iii) North of Plot No.17 retained by vendor.
- iv) East of road to be formed.

14. A perusal of Ex.B2 would suggest that respondents purchased Plot No.16 and the said property was described as South of road. Therefore, the property on the South of road has been purchased by him as early as 14.05.1984. Thereafter, the very same vendor/promoter namely Elangovan was not entitled to sell a strip of land on immediate South of road to some other person namely vendor of the appellants Sivasankari on 16.09.1985. Having parted with the entire land on the South of road in favour of K.O.Sivasankaran under Ex.B2 as early as 14.05.1984, the very same vendor is not entitled to convey portion of the very same property namely a strip of land on immediate South of road in favour of appellants' vendor Sivasankari subsequently on 16.09.1985.

15. It is settled law that the sale deed which is anterior in time will prevail



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over the subsequent sale deed. In the case on hand, the earliest document relied on by the appellants is sale deed dated 16.09.1985 executed by Elangovan. The earliest document relied on by the respondents is the sale deed dated 14.05.1984 executed by very same Elangovan in favour of respondents' predecessor in title, K.O.Sivasankaran. In these circumstances, Ex.B2 will prevail over Ex.A3 relied on by the appellants. Therefore, being an earlier purchaser, the respondents/defendants in O.S.No.383 of 2001 is entitled to claim right over the Plot No.16 which lies on immediate South of road. In such circumstances, when there is a serious cloud over the title of the appellants who purchased the property subsequently, the suit for bare injunction filed by them is not maintainable and consequently, I do not find any reason to interfere with the final conclusion of the First Appellate Court though I concur with the final conclusion on different reasons.

16. As far as the suit for bare injunction filed by the respondents is concerned, as discussed earlier being a prior purchaser, they are entitled to have precedence over the appellants document. The respondents also produced revenue documents in support of their claim of possession over the suit property. In such circumstances, the respondents are entitled to injunction in the suit filed



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by them in O.S.No.317 of 2001. The First Appellate Court, on appreciation of evidence available on record correctly, came to the conclusion that the respondents were entitled to maintain a suit for injunction and accordingly granted a decree for injunction in O.S.No.317 of 2001.

17. In view of the discussions made earlier, I do not find any substantial question of law to interfere with the conclusion reached by the First Appellate Court and consequently, both the second appeals are dismissed. However, it is made clear that findings rendered in this second appeal is only a *prima facie* finding with regard to the right of the respective parties to dispose of the suit for bare injunction. The findings in this second appeal will not prevent the appellants from establishing their right or title over the suit property by filing a comprehensive suit for declaration of title and for appropriate consequential reliefs.

18. With these observations, both the second appeals are dismissed.

a) by affirming the judgment and decree passed in A.S.No.50 of 2008 and A.S.No.51 of 2008 dated 13.12.2010 on the file of the learned Sub-Ordinate Judge, Kanchipuram reversing the decree and judgment made in O.S.No.317 of 2001 and O.S.No.383 of 2001 dated 28.02.2008 on the file of the learned



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Principal District Munsif Court at Kanchipuram.

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b)In the above facts and circumstances of the case, there will be no order as to costs.

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Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

1. The learned Sub-Ordinate Judge, Kanchipuram
2. The Principal District Munsif Court, Kanchipuram.



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