



S.A.No.884 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.884 of 2023

Manoharan

... Appellant

Vs.

1. Dilli

2. Ramesh

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 01.11.2021 made in A.S.No.7 of 2015 on the file of the Principal Sub Judge's Court, Ponneri, dismissing the said appeal and confirming the judgment and decree dated 24.11.2014 passed in O.S.No.350 of 2008 on the file of District Munsif's Court at Ponneri.

For appellant

: Mr.N.R.Gopaalan

For respondents

: No appearance



JUDGMENT

The plaintiff, who has unsuccessfully contested the suit for declaration and permanent injunction against the defendants/respondents, is the appellant before this Court.

2. The facts of the case are set out hereinbelow and the parties are referred to in the same rank as before the Trial Court.

FACTS OF THE CASE:

2.1. It is the case of the plaintiff that he is the grandson of one Govinda Nayudu who is a native of Pudukuppam. The said Govinda Nayudu was the son of Venkatasamy Nayudu and his brothers were Rajavelu Nayudu alias Rajulu Nayudu and Chinnappa Nayudu. Govinda Nayudu had three sons viz., Nadhamuni Nayudu, Sundara Nayudu and Rathina Nayudu. Nadhamuni Nayudu, in turn, had only one son viz., Kannaya Nayudu whose only son was Bakthavachalam Nayudu. Bakthavachalam Nayudu died soon after his marriage and his wife got some properties after his demise. Nadhamuni Nayudu also



had daughters and his eldest daughter was one Saroja, whose sons are the defendants in the suit. They were brought up by Kannaya Nayudu after the death of his son Bakthavachalam Nayudu. The other daughters of Kannaya Nayudu were married and living with their respective in-laws. Sundara Nayudu died as a bachelor and Rathina Nayudu had two wives viz., Rukmani Ammal and Duraisani Ammal. Venugopal is the son of Rathina Nayudu through his first wife Rukmani Ammal and he had married one Kanthammal. The plaintiff is the only son of Venugopal and Kanthammal. Rathina Nayudu had a son viz., Perumal Nayudu and three daughters through his second wife.

2.2. It is the case of the plaintiff that Govinda Nayudu and his two brothers were possessed of Grama Natham property at Pudupakkam. This land measured east to west 84 ft. and north to south 120 ft. This property is on the northern side facing the road. The brothers had orally partitioned the property uniformly. Govinda



Nayudu was allotted the western portion of the property measuring east to west 28 ft., the middle portion of similar measurement was allotted to Rajavelu Nayudu and the eastern portion of the land was allotted to Chinnappa Nayudu. Chinnappa Nayudu sold his portion to a 3rd party. From that 3rd party, Nadhamuni Nayudu and Kondasami had purchased the said eastern portion.

2.3. After Govindasamy Nayudu's demise, his sons were enjoying the possession of the property which is situated in the west side. Sundara Nayudu died issueless and since Nadhamuni Nayudu is the eldest brother and is also residing in that property itself, this property is also considered as the property of Nadhamuni Nayudu.

2.4. In the year 1945, Rathina Nayudu purchased Rajavelu Nayudu's land from his son Gengappa Nayudu and since Rathina Nayudu's first wife Rukmani Ammal's son Venugopal was working in the Postal Department, it was unanimously decided that Duraisani



Ammal, the second wife of Rathina Nayudu, must have the ownership of the property purchased from Rajavelu Nayudu's son and she enjoyed the possession of the property and sold the same to the wife of Venugopal viz., Kanthammal. After a series of transactions which included a will written by Kannaya Nayudu and his wife Bayyammal on 22.07.1992, the plaintiff was stated to be the sole owner of the properties purchased, which included the suit schedule property sold by Gengappa Nayudu.

2.5. When the first defendant tried to encroach the suit schedule property in the 2nd week of December 2007, the plaintiff had issued a legal notice dated 17.12.2007 to which the defendants had sent a reply notice dated 15.01.2008. In their reply notice, the defendants had contended that they do not deny that land measuring 35 ft. east to west was given to Kannayya Nayudu by them in writing. The defendants had attempted to construct a house in the eastern wall, at which point in time, the plaintiff had warned them not to construct



on the eastern side wall, despite which, the defendants had constructed a house with the main entrance door. Since the plaintiff was working at Tambaram and residing at Selaiyur, he has come forward with the present suit seeking title and permanent injunction against the defendants.

2.6. The first defendant had filed a written statement which was adopted by the second defendant. They would deny the oral partition said to have been executed by the three brothers and the statement that Chinnappa Nayudu had sold his portion to the 3rd party. The plaintiff has to prove the above statements as well as the purchase by Nadhamuni Nayudu and Kandasami Nayudu from Chinnappa Nayudu.

2.7. It is the case of the defendants that in the year 1927, Sundaran Nayudu had entered into an agreement of sale with Kannaya Nayudu and had sold his share of the property which measures 16 ft. from east to west and 120 ft. from south to north. Therefore, the



statement that it was equally partitioned is not true in nature. The plaintiff is bound to prove his statement that the said property was purchased in the name of Kanthammal which include the property of Kannaya Nayudu.

2.8. It is the further case of the defendants that the plaintiff is put to strict proof of the statement that the portion measuring 28 ft. east to west was vested equally between Nadhamuni Nayudu and Rathina Nayudu and the same had been partitioned orally under which Kannaya Nayudu got allotted 16 ft. and the plaintiff's mother was allotted 12 ft. This fact has been established. It is their specific case that there is no 12 ft. land adjacent to the pathway to the east. Even 50 years ago, the said Kannayya Nayudu had constructed a shack and lived in it. The said shack became dilapidated over a period of time and what remains is only a wall at one side. Thus, only the defendants have the right of usage of the passage and the plaintiff has the road as the access which situates on the south side and he cannot claim any



right on the pathway on the west side.

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2.9. The defendants would submit that they are living on the west side of the plaintiff's house and this property was purchased by them in a Court Auction. They are the ones who are using this 12 ft space as their pathway. The defendants would submit that they are in the possession of the property and therefore, there is no question of they encroaching into the suit property. That apart, the plaintiff had not approached the Court with clean hands and hence, they sought for the dismissal of the suit for title and permanent injunction.

TRIAL COURT:

3. The Trial Court, based on the pleadings, had framed the following issues:

“(a)Whether the plaintiff is entitled for Declaration of Title?

(b)Whether the plaintiff is entitled for permanent injunction as prayed for?



(c)To what other reliefs?”

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4. The plaintiff has examined himself as P.W.1 and marked Exs.A1 to A5. The defendants have examined three witnesses and marked Exs.B1 to B8. The Advocate Commissioner's Report and sketch have been marked as Exs.C1 and C2 and the 3rd party documents have been marked as Exs.X1 to X4.

5. Ultimately, the Trial Court, on considering the evidence on record, had dismissed the suit.

LOWER APPELLATE COURT:

6. Challenging the same, the plaintiff had filed an appeal in A.S.No.7 of 2015, on the file of the Court of Principal Subordinate Judge, Ponneri. The learned Judge also concurred with the finding of the Trial Court and dismissed the appeal.

7. Aggrieved by the same, the plaintiff has filed this second



appeal.

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8. Heard the learned counsel appearing for the appellant and perused the materials available on record.

DISCUSSION:

9. The genesis for filing this suit, according to the plaintiff, is the partition that had been entered into between Govinda Nayudu, Rajavelu Nayudu alias Rajulu Nayudu and Chinnappa Nayudu. The plaintiff has not proved by material evidence the partition and the measurements of each share that has been partitioned.

10. A perusal of Ex.B4 would show that the measurement is 20*80 ft. and not 28*120 ft. as alleged in the plaint. Once the partition is in doubt, the plaintiff cannot by any stretch of imagination give exact measurements in respect of the suit property. The Courts below have found how the plaintiff has been manipulating the measurements



in his pre-litigation notice and in his plaint. The patta that has been brought by the plaintiff is in respect of the property purchased by him and in respect of the suit property. The defendants are contending that the suit property has been used as a passage. The plaintiff has neither disputed the will nor the statement of the defendants that they are using the suit property as a passage.

11. The measurement found in Exs.B1, B2, B4 and B5 would clearly show that the measurement pleaded by the plaintiff is totally incorrect and the plaintiff has not been able to rebutt the above statement by producing documents. Ex.B8 proves that the defendant is in possession of the suit property. The Trial Court had not relied on the Advocate Commissioner's report and plan Exs.C1 and C2, as there is no details as to how and on what basis the Commissioner had measured the properties. The Trial Court has also highlighted the discrepancies in Exs.C1 and C2 to Ex.X4. The Lower Appellate Court has also concurred with this finding. The plaintiff who has come forward with the suit for declaration and permanent injunction has to



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prove his title to the property. The plaintiff has not been able to identify the suit property properly and the documents filed on the side of the defendants would show that the description given by the plaintiff is not correct.

12. Both the Courts below have rightly rejected the suit and I see no reason to differ with the concurrent judgment and decree, particularly, when the plaintiff has not been able to explain the same in this Court. The plaintiff has also not made out any substantial question of law.

Accordingly, this second appeal stands dismissed. No costs.

14.12.2023

Index : Yes/No
Speaking order/non-speaking order
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To

1. The District Munsif, Ponneri.
2. The Sub Judge, Ponneri.

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3.The Section Officer, V.R.Section, High Court, Madras.

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P.T.ASHA, J.,

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