



S.A.No.1072 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.No.1072 of 2022

Poongavanam

.. Appellant

Vs.

Ayyammal

.. Respondent

Prayer: Second Appeal filed under Section 100 of Code of Civil Procedure, praying to set aside the judgment and decree dated 13.02.2019 in A.S.No.61 of 2013 on the file of the Sub-Court, Kallakurichi, confirming the decree and judgment dated 07.03.2013 in O.S.No.556 of 2008 on the file of the I Additional District Munsif Court, Kallakurichi and allow the second appeal.

For Appellant : Mr.V.Ayyapparaja

JUDGMENT

This second appeal is directed as against the judgment and decree dated 13.02.2019 passed in A.S.No.61 of 2013 on the file of the Sub-Court, Kallakurichi, thereby decreed the suit in O.S.No.556 of 2008 on the file of the I Additional District Munsif Court, Kallakurichi.



S.A.No.1072 of 2022

2. The appellant is the defendant in the suit filed by the respondent herein for bare injunction.

3. The case of the respondent is that the total extent of the property comprised in Survey No.10/1 is 1 acre and 68 cents which belong to one Kulandhai Gounder and others. By two registered Sale Deeds dated 28.08.1986, an extent of 0.39 cents out of 1.68 cents comprised in Survey No.10/1 was purchased by the plaintiff and thereafter on 9.10.1990 an extent of 1.57 acres comprised in Survey No.10/1 by showing correct boundaries by a registered Sale Deed. After purchasing the said property, the respondent is in possession and enjoyment of the suit property and revenue records were mutated in his name. While being so, the appellant herein owned a property comprised in Survey No.10/2C and attempted to trespass into the suit property. Hence the suit.

4. Resisting the same, the appellant filed a written statement stating that the respondent used the suit property as cattle shed and he is in possession and enjoyment of the suit property. Though the respondent purchased an extent of 1.57 acres he registered the said property only to the extent of 0.25 cents. Therefore, the appellant also disputed the title over the property.



S.A.No.1072 of 2022

WEB COPY

5. On the side of the respondent he had examined PWs 1 and 2 and marked EXs.P1 to 8 and on the side of the appellant Dws1 to 3 were examined and EXs.D1 to 4 were marked and the Advocate Commissioner's report and rough sketch were marked as EXs.C1 and 2.

6. On perusal of oral and documentary evidence, the trial Court decreed the suit in favour of the respondent herein. Aggrieved by the same, the appellant preferred an appeal suit and the same was also dismissed confirming the judgment and decree passed by the trial Court. Hence, the second appeal.

7. The following substantial questions of law are raised in this appeal;

“ a) Whether the Courts below are correct and justified in decreeing the suit for bare injunction in the absence of a relief of declaration of title, when a title to the suit property is under cloud?

b) Whether the Courts below are right in granting the decree for bare injunction which are not in Exhibits – A3 to A8 Revenue Records which are not in consonance with the title deeds Exhibits – A1 to A2?



S.A.No.1072 of 2022

c) Whether the findings of the Courts below with regard to the possession of the suit property by the plaintiff on the basis of Exhibits – A3 to A8 which are emerged just prior to filing of the suit and after the filing of the suit, are right and justified in law?

d) Have not the Courts below misread and misinterpreted the evidences of DWs, while decreeing the suit and if the evidence is properly understood lead to one and only inference that the plaintiff was not in possession of the suit property as on the date of filing of the suit?

e) Whether the Courts below are correct and justified in decreeing the suit for bare injunction by overlooking the settled principle that the plaintiff has to succeed his/her case on the strength of plaintiff and not on the weakness/loopholes in the defendant's case?

f) Whether the judgment and decree of the Courts below are perverse?”

8. The learned counsel for the appellant would submit that when the appellant created a cloud over the property, the respondent ought to have filed a suit for declaration. Even according to the respondent, he had purchased the



S.A.No.1072 of 2022

property ad-measuring 1.57 acres out of 1.68 acres. However, the suit was filed only for 28 cents. Therefore, the respondent failed to prove the title over the property. That apart, the Ex.A1 and A2 boundaries mentioned are not correlated to the boundaries of the suit properties. Therefore, the respondent failed to prove his title over the property.

9. On perusal of records revealed that admittedly the respondent purchased the suit property by registered Sale Deeds dated 28.8.1986 and 09.10.1990 both were marked as Exs.A1 and A2. Pursuant to the Sale Deeds they were issued patta which was marked as Ex.P3 and Village Administrative Officer issued Adangal which was marked as Ex.P4 extracted in respect of the suit property in favour of the respondent it was marked as Ex.A5. However, the appellant failed to prove that he is in possession and enjoyment of the suit property. Further, admittedly, the appellant owned the property comprised in Survey No.10/2C. The appellant disputed the possession and enjoyment of the suit property. Pending suit, an Advocate Commissioner was appointed and he inspected the suit property and noted down the physical features of the suit property along with rough sketch.

10. A perusal of rough sketch which was marked as Ex.C2, revealed that



S.A.No.1072 of 2022

the suit property bounded with clear boundaries. The boundaries of the property are 10/1A, 10/1C, 10/2C and 26/1. Therefore, the respondent clearly proved his case and as such the Court below rightly decreed the suit. Therefore, this Court finds no infirmity or illegality in the order passed by the Court below and no substantial question of law involved in this appeal.

11. Accordingly, the second appeal stands dismissed without being admitted. There shall be no order as to costs.

12.01.2023

Speaking/Non-speaking order
Index : Yes/No
ata

To

- 1.The Sub-Court,
Kallakurichi.
- 2.The I Additional District Munsif Court,
Kallakurichi



WEB COPY



S.A.No.1072 of 2022

G.K.ILANTHIRAIYAN.J,

ata

S.A.No.1072 of 2022

12.01.2023