



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON :06.12.2023

PRONOUNCED ON :22.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.103 of 2017

Kasi Venkatesan

...Appellant

Vs.

1.R.Bhavani

2.R.Natarajan

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of Sub Court, Mayiladuthurai passed in A.S.No.68 of 2013 dated 21.07.2014, reversing with the judgment and decree of the Additional District Munsif, Mayiladuthurai passed in O.S.No.96 of 2010, dated 19.08.2013.

For Appellant : Mr.V.Anand

For Respondents : Mr.S.Sethuraman for R1
No Appearance for R2



JUDGMENT

The plaintiff in the suit is the appellant. The suit is for declaration of title and recovery of possession. The suit was decreed by the trial Court and the findings of the trial Court were reversed by the first Appellate Court. Aggrieved by the same, the plaintiff is before this Court.

2. According to the plaintiff, he laid the present suit for declaration of title and recovery of possession in respect of two items of property, the first item of property is 460 sq.ft of land in T.S.No.249/1 marked as A, B, C, D, E, F in the plaint plan. The suit item No.2 is 201 sq.ft of land in T.S.No.180 (new No.180/3) marked as G, H, I, J in the plaint plan. It was the case of the appellant/plaintiff that the suit property was originally belonged to one Thangammal, w/o.Venkataramar Iyer. She sold 3049 sq.ft on the western side of T.S.No.180 (now sub-divided as 180/1) in favour of one Vaithyanatha Iyer. She sold 5210 sq.ft of land in T.S.No.180 in favour of first defendant on 05.08.1974. The above said Thangammal sold 11,614 sq.ft of land in favour of plaintiff's father viz.,



Kasi Viswanatha Iyer on 22.04.1981. The said property includes 7120 sq.ft in town S.No.249/1 and 218 sq.ft in T.S.No.249/2 and 4,284 sq.ft in T.S.No.180. In respect of 4284 sq.ft in T.S.No.180, the plaintiff's father filed a suit against one Natarajan and others for bare injunction in O.S.No.356 of 1999 on the file of the Additional District Munsif Court, Mayiladuthurai. The said suit was decreed in favour of plaintiff's father after contest and the appeal filed against the said judgment and decree was also dismissed. The appellant's father executed a gift deed dated 21.01.2005 in favour of appellant settling the property purchased by him under sale deed dated 22.04.1981. The second defendant claiming himself as power agent of first defendant executed a sale deed on 25.01.2010 conveying 425 sq.ft of land in T.S.No.249/1 and second item of the suit property in favour of 3rd defendant. Since the above document was executed to defeat the right of the plaintiff, a legal notice was issued to defendants on 18.02.2010 calling upon to execute a rectification deed. After issue of notice by the plaintiff, 3rd defendant fenced the above mentioned property and attempted to alienate the suit property. Though under sale deed dated 25.01.2010, 3rd defendant purchased only 425 sq.ft from power agent of first defendant, he is in occupation of 460 sq.ft in T.S.No.249/1, therefore, the present suit is



laid for the said extent.

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3. The 3rd defendant filed a written statement and the same was adopted by the first defendant. It was claimed by the defendants that 5210 sq.ft of land in T.S.No.180 was conveyed by Thangammal in favour of first defendant by a registered document dated 05.08.1974. Portion of the said property was conveyed by first defendant in favour of 3rd defendant through her power agent second defendant. Thus, the 3rd defendant has been in possession and enjoyment of the suit property in T.S.No.180. Further said Thangammal executed the consent deed on 06.08.1974 in favour of first defendant admitting her right to enjoy poromboke lane in T.S.No.251. It was specifically claimed by the defendants that the appellant/plaintiff had no title over the suit properties and the suit had been filed with ulterior motive.

4. It was further averred that the plaintiff wanted to develop the property purchased by him into housing plots, since there was no access to his land, in order to create an access, the present suit has been filed seeking right over the property, which was not purchased by the plaintiff. Thus, the title of the plaintiff over the suit property had been



specifically denied.

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5. Before, the trial Court, the appellant/plaintiff was examined as PW.1 and Surveyor was examined as PW.2, on behalf of the appellant thirteen documents were marked as Exs.A1 to A13. The husband of first respondent was examined as DW.1 and three documents were marked on behalf of the respondents as Exs.B1 to B3. The report and plan of Advocate Commissioner were marked as Exs.C1 and C2. The report and plan of surveyor were marked as Exs.C3 and C4.

6. The trial Court on consideration of oral and documentary evidence available on record, came to the conclusion that the appellant/plaintiff proved his right over the suit property and consequently granted a decree in his favour as prayed for. Aggrieved by the same, the respondent preferred an appeal in A.S.No.68 of 2013 on the file of the Principal Subordinate Court, Mayiladuthurai. The First Appellate Court on re-appreciation of evidence available on record, came to the conclusion that the plaintiff failed to prove his title over the suit properties based on the documents filed by him and consequently reversed the findings of the trial Court and allowed the appeal. Aggrieved by the same, the appellant is



before this Court.

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7. At the time of admission, this Court formulated the following substantial questions of law by order dated 13.02.2017:

(i) *Whether the first appellate Court is correct in law in concluding that the boundaries in the title deeds of the appellant/plaintiff are different from those mentioned in the plaint, discarding without any lawful reason, the Commissioner's report and plan in Exs.C1 and C2 which prove the boundaries in the title deeds of the appellant/plaintiff?;*

(ii) *Whether the first Appellate Court is correct in law in finding that the boundaries in the title deeds of the plaintiff are different from those mentioned in the plaint against the settled position of law that in case of rival disputes in title, the Court should see that who was established a better title to the suit property?;*

(iii) *Whether the first appellate Court is correct in law in coming to a conclusion that the plaintiff has not established title to the property in view of the discrepancy in the boundaries when*



actually the defendants have not raised the question of boundaries or disputed the identity of the property but make a rival claim for title?.

8. The learned counsel appearing for the appellant submitted that the document filed by the appellant namely Exs.A1 to A4 clearly proved that the appellant purchased the suit properties which are narrow strip of land along with the larger extent of land on the western side. The learned counsel further submitted that the discrepancies pointed out by the First Appellate Court with regard to the boundary description found in the title documents of the appellant and the present boundaries on ground can be ignored taking into consideration the passage of time. The learned counsel by taking this Court to the parent document of appellant namely Ex.A1, whereunder, the appellant's father purchased the suit properties submitted the word “வால்வீச்சு” used in description of the property in Ex.A1 would indicate purchase of suit narrow strip of land.

9. The learned counsel further submitted that the projection of narrow strip of land which is part of the larger extent on the western side is



referred to as “வால்வீச்சு” in the said document.

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10. The learned counsel appearing for the respondents by taking this Court to the judgment passed by the First Appellate Court contended that the four boundaries mentioned in Ex.A1 and A2 were properly appreciated by the First Appellate Court and based on the boundary description in the title documents of the appellant, the First Appellate Court came to a factual conclusion that the suit property was not purchased by the appellant and hence he was not entitled to decree for declaration and possession.

11. A perusal of the records would indicate under Ex.A1, appellant's father Kasiviswanathan purchased property in T.S.No.249/1 with an extent of 7120 sq.ft and 210 sq.ft of land in town S.No.249/2 and 4284 sq.ft in T.S.No.180, totally 11,614 sq.ft. The suit has been laid in respect of 460 sq.ft in 249/1 and 201 sq.ft in T.S.No.180. Now the question to be decided is whether 460 sq.ft described in S.No.249/1 and 201 sq.ft described in S.No.180 are part of the properties purchased under Ex.A1. In the plaint 249/1 (item No.1) was described as follows:

(i) North of common lane;



(ii) South of T.S.No.180/3;

(iii) East of property in possession of plaintiff in

S.No.249/1;

(iv) West of common lane.

However, in Ex.A1, the larger extent purchased in 249/1 was described as follows:

(i) South of S.No.180;

(ii) East of Vaithyanatha Iyer house;

(iii) West of Savithri Ammal house;

(iv) North of Agraharam Street.

12. The eastern boundary and southern boundary mentioned in item 1 of the suit property are not tallying with the boundaries mentioned in Ex.A1. If the description of item 1 of plaint is compared with the Advocate Commissioner's plan, the Advocate Commissioner has not shown any common lane on the southern side of item 1. The land in T.S.No.250/1A, 250/2A and 251 were shown as southern boundary in Advocate Commissioner's plan. As per Commissioner's report and plan, the item No.1 in T.S.No.249/1 is surrounded by T.S.No.250/1A, T.S.No.205/2A



and T.S.No.251. The lane portion lies on south eastern side of T.S.No.251.

In these circumstances, there is nothing on record to show that item 1 was part of the property purchased by appellant/plaintiff's father under Ex.A1.

13. The four boundaries of the item 2, as per the plaint description reads as follows:

(i) South of East-West common pathway and Lakshminarayana Perumal Punjai in S.No.181;

(ii) East of S.No.180 (New No.180/2) in possession of plaintiff;

(iii) West of common lane;

(iv) North of defendant's property in S.No.180/3.

However the boundaries for larger extent of properties purchased in S.No.180 was mentioned as follows in Ex.A1:

(i) East of Vaithyanatha Iyer house and backyard;

(ii) South of Lakshmi Narayana Perumal Punjai ;

(iii) West of Madhurathammal house and backyard;

(iv) North of second item sold under the document.



In Ex.A1, southern boundary is shown as second item sold to the appellant/plaintiff. However, in the plaint schedule southern boundaries shown as defendants' property. Likewise, in Ex.A1 eastern boundary is shown as Madhurammal house and backyard, whereas, in the plaint eastern boundary is mentioned as common lane. In Ex.A1 northern boundary is mentioned as Lakshmi Narayana Perumal Punjai, but in the plaint schedule northern boundary is mentioned as East, West common pathway and Lakshmi Narayana Peruaml Punjai. The First Appellate Court by taking into consideration the fixed boundaries like common lane, street etc., rightly came to the conclusion that the appellant/plaintiff failed to establish that the suit items 1 and 2 were part of the larger extent of the property purchased by his predecessor in interest under Ex.A1. It is settled law, in a suit for declaration of title and recovery of possession, the plaintiff has to win on his own strength and he cannot pick holes in the defence. Merely because the defendants failed to establish that the suit properties were part of the property purchased by them, the plaintiff is not entitled to automatic declaration of



title. When a person who purchased a larger extent files a suit for a small portion of the land and claims suit property was part of the larger extent purchased by him, it is for him to prove that the small extent over which, he claims right was part of the larger extent covered by his title deed. He has to lead necessary evidence for correlating the boundaries of the smaller extent with that of the larger extent. In the case on hand, the appellant as a plaintiff miserably failed to lead any convincing evidence to establish that the narrow strip of land, over which he claimed right under Exs.A1 and A2 were really part of the larger extent purchased by him under the said document. As rightly pointed out by the First Appellate Court failure of the defendants to establish his right over the suit property is not a ground to declare the title of the appellant.

14. In view of the discussion made earlier, all the substantial questions of law framed at the time of admission are answered against the appellant.



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15. In nutshell:

(a) The second appeal is dismissed by confirming the judgment and decree passed by the Courts below;

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

22.12.2023

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

1. The Sub Court, Mayiladuthurai
2. The Additional District Munsif, Mayiladuthurai.



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S.SOUNTHAR, J.

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Pre-delivery order made in
S.A.No.103 of 2017