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S.A.No.359 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.359 of 2017
and
CMP.No.14077 of 2017

V.Thangarajoo (Deceased)

T.Senthilkumar

...Appellant

(Legal heir of deceased sole
appellant is brought on record
as per order dated 14.02.2017
made in MP.Nos.3 to 5/2014 in
SA.SR.No.82260/2012)

Vs.

M.Elumalai

...Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 16.09.2011 made in A.S.No.451 of 2010 on the file of the learned III Additional Judge, City Civil



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Court, Chennai, reversing the judgment and decree dated 02.03.2010 made in OS.No.4515 of 2006 on the file of the learned II Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.K.Sellathurai

For Respondent : Mr.W.M.Abdul Majeed

JUDGMENT

The appellant herein filed a suit for bare injunction. The suit was decreed by the trial Court and the judgment and decree passed by the trial Court was reversed by the First Appellate Court. Aggrieved by the same, the plaintiff has come by way of this Second Appeal.

2. According to the plaintiff, he purchased the suit property under a registered sale deed dated 30.03.1982. The respondent/defendant purchased the property on the eastern side of the suit property during March 2006. Thereafter, the respondent attempted to encroach a portion of the property purchased by the plaintiff on the eastern side of the property with a south-west measurement at 5 feet and north-east measurement at 50 feet. Denying the title



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and possession of the respondent over the above mentioned space in between, the appellant has filed the present suit seeking injunction.

3. The respondent/defendant filed a written statement specifically denied the title, interest and possession of the appellant/plaintiff over the suit property. The respondent in his written statement specifically disputed the correctness of the boundary description of property covered by the appellant's title deed. The defendant in his written statement has asserted that he purchased 1272 ¼ sq.ft of land in T.S.Nos.50, 51 & 52 and he has been in possession and enjoyment of the same ever since the date of purchase. The respondent further claimed that his vendor got the above said property under settlement deed and sale deed dated 24.12.1986. Denying the title and possession of appellant/plaintiff over the suit property, the respondent sought for dismissal of the suit.

4. Before the trial Court, the plaintiff was examined as PW1 and six documents were marked as Ex.A1 to A6. The defendant was examined as DW1 and 11 documents were marked as Ex.B1 to B11.



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5. The trial Court on appreciation of oral and documentary evidence came to the conclusion that the plaintiff proved his right and possession over the suit property, which was purchased under Ex.A1 and consequently, decreed the suit. Aggrieved by the same, the respondent filed an appeal in A.S.No.451 of 2010 on the file of the III Additional City Civil Court, Chennai, and the First Appellate Court reversed the findings of the trial Court and allowed the appeal. Aggrieved by the same, the plaintiff is before this Court.

6. The learned counsel for the appellant submitted that the suit property was purchased by the appellant/plaintiff in the year 1982 and the plaintiff has been in possession and enjoyment of the property from the date of purchase. The respondent/defendant is the subsequent purchaser. Having purchased the same in the year 2005, he is not entitled to dispute the title of the appellant over the suit property.

7. The learned counsel for the appellant further submitted that the vendor of the defendant got the suit property under a Sale Deed and



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Settlement Deed dated 24.12.1986 marked as exhibits B2 & B3. According to the learned counsel for the appellant, the total extent of property covered under Ex.B2 and Ex.B3 comes about 957 sq.ft only. However, the vendor of the respondent sold 1272 $\frac{1}{4}$ sq.ft to the defendant more than what he had. Therefore, it is the specific case of the learned counsel for the appellant that the defendant though purchased 1272 $\frac{1}{4}$ sq.ft under Ex.B1, his vendor had no title to convey the said extent to the respondent. In such circumstances, the First Appellate Court ought not to have reversed the well considered findings of the trial Court and allowed the appeal by relying on the documents produced by the respondent.

8. The learned counsel for the respondent submitted that the appellant came to the Court asserting possession over the suit property under Ex.A1. The description of the property found in Ex.A1 is not correct. Being the plaintiff, it is the duty of the appellant to prove that the disputed strip of land lies within the property purchased by him under Ex.A1.

9. It is specifically submitted that the appellant failed to prove that the disputed portion of the suit property lies within the property purchased



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by him covered under Ex.A1. Therefore, the First Appellate Court rightly negatived the prayer for bare injunction.

10. Pending Second Appeal, the appellant also filed an application in CMP.No.14077 of 2017 seeking amendment of the description of the property in the plaint. By virtue of the amendment sought for, the appellant/plaintiff wants to describe the disputed suit property as a strip of land lies on the eastern side of the plaintiff's house instead of western side of the plaintiff's house as mentioned in the original plaint.

11. In the affidavit filed in support of the amendment application it is averred by the appellant/plaintiff that the suit property is inadvertently described as strip of land lies on the west of the plaintiff's property in the plaint instead of east of the plaintiff's property. Therefore, it is the case of the appellant that the wrong description in the plaint due to inadvertent typographical error should be allowed to be amended.

12. The property purchased by the appellant is described in Ex.A1 as follows:



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SCHEDULE

The storeyed house with vacant site bearing New door No.19 (Old No.1/1), Razack Garden Street, (Old Corporation Division No.91), Sandrorpalayam, Arumbakkam, Madras – 29, measuring totally 4000 square feet in Survey No.163-Part, T.S.No.16, Block 18.

*(80 Feet - East to West; and
50 Feet - North to South) with a well
and coconut tree, bounded on the:-*

*North by : Public Lane;
East by : Razack Garden Street,
South by : House belonging to
Panchalammal
West by : the house of kanni and his brothers.*

13. In the boundary description found in Ex.A1 the eastern boundary of the property purchased by the appellant is shown as Razack Garden Street, and the western boundary of property is shown as the house of Kanni and his brothers. The said Kanni is the predecessor in title of one Kuppan, who sold the property to the respondent/defendant. Therefore, even in the boundary description found in the title document of the plaintiff, the property of the respondent is shown as if it lies on the west of the plaintiff's property. However, the plaintiff wants to amend the pleadings as if the property of the defendant lies on east of his property and the plaintiff is not entitled to seek amendment against the boundary description found in his own title document.



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14. In such circumstances, the amendment sought for by the plaintiff cannot be accepted. The plaintiff has come to the Court seeking injunction based on his title document Ex.A1. As discussed earlier the boundary description found in Ex.A1 is not correct. When the boundary description of the suit property is not properly given in the title deed of the plaintiff, it is not open to the plaintiff to maintain the suit for bare injunction without rectifying his title document.

15. The learned counsel appearing for the appellant submitted that the vendor of the plaintiff is no more and the whereabouts of the legal representatives are not known to the plaintiff. Even in such circumstances, when there is a serious discrepancy with regard to the boundary description in the title document of the plaintiff, he is not entitled to maintain the suit for bare injunction based on the said document. If the plaintiff is not able to get proper rectification deed from his vendors, it is for him to file a suit for declaration and other consequential reliefs. When there is a serious cloud over the title of the plaintiff due to the mistake in the boundary description, the suit for bare injunction filed by the plaintiff is not maintainable.



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16. Under Ex.A1 the plaintiff purchased the property situated in T.S.No.16, which is not in dispute. The relevant New Survey number for Old T.S.No.16 is T.S.No.49/1. The defendant said to have purchased the property in New Survey Numbers T.S.Nos.50, 51 & 52 under Ex.B1. Therefore, both the parties have purchased the property in different Survey numbers. However, no attempt was made to prove before the Courts below that the disputed strip of land which lies in between the properties of the plaintiff and defendant falls in New T.S.No.49/1, which belongs to the plaintiff.

17. In such circumstances, the First Appellate Court non suited the appellant mainly on the ground that he failed to prove that the disputed strip of land lies within the Old T.S.No.16 and New T.S.No.49/1 by leading proper evidence. I do not find any perversity in the findings rendered by the First Appellate Court. I do not see any substantial questions of law in this Second Appeal to enable this Court to interfere with the findings of the First Appellate Court and hence, this Second Appeal stands dismissed. It is always open to the plaintiff to file a suit for declaration and other appropriate consequential relief and establish his right over the suit property.



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S.SOUNTHAR, J.

dna

18. a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the First Appellate Court.

b) In the facts and circumstances of the case, there shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

06.10.2023

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

- 1.The II Assistant Judge, City Civil Court, Chennai.
- 2.The III Additional Judge, City Civil Court, Chennai.

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and

CMP.No.14077 of 2017