



S.A.No.383 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.10.2023

CORAM: The Hon'ble Mr.Justice S.SOUNTHAR

S.A.No.383 of 2017
and
C.M.P.No.8931 of 2017

P.Karupannasamy ...Appellant/2nd Respondent/3rd Defendant

Vs.

1.C.N.Karuppusamy
2.K.Sureshkumar
3.K.Duraisamy

...Respondents 1 to 3/Appellants/Plaintiffs

4.Ponnal
5.Poongodi

...Respondents 4 & 5/Respondents 1 & 3/
Defendants 2 & 4

Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 28.2.2017 passed in A.S.No.35/2016 on the file of the Second Additional Subordinate Court, Erode Partly reversing the Decree and Judgment dated 27.6.2016 passed in O.S.No.3/2013 on the file of the Principal District Munsif Court, Erode by allowing the above second appeal.

For Appellants : Mr.J.Titus Enock

For Respondents : No appearance



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JUDGMENT

The third defendant in the suit is the appellant herein. The respondents 1 to 3 filed a suit for permanent injunction and for mandatory injunction seeking fixation of 'F' line between the properties of the plaintiff and the defendant, with reference to the title deeds and the revenue documents. The suit was dismissed by the trial Court. The appeal filed by the respondents 1 to 3 was allowed in part and a decree was passed directing the parties to place the relevant documents before the qualified surveyor to enable him to fix boundary line in between the properties of the appellant and the respondents. Aggrieved by the same, the appellant is before the Court.

2. According to the respondents 1 to 3, the father of the first respondent and the grandfather of the respondents 2 and 3 purchased the suit property under sale deed dated 08.06.1942. After the death of the original purchaser, the first respondent inherited the suit properties and has been enjoying the same. The Government also issued patta in favour of the first respondent. The appellant and other respondents purchased the properties lying on the eastern side of the suit property and they made an attempt to trespass into the suit property. The appellant and other respondents refused to co-operate with respondent 1 to 3 for fixing the 'F' Line in between their properties and that of the respondents 1 to 3.



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Hence, the above said suit was filed seeking the relief of injunction and mandatory injunction as mentioned above.

3.The appellant herein who was arrayed as the third defendant filed a written statement and the same was adopted by the respondents 4 and 5. The appellant and other respondents denied the averments made in the plaint as if they made an attempt to trespass into the suit property. It was specifically pleaded by the appellant that the correct Re-Survey Numbers for Survey Field Nos.10 B, 11 E and 11 Q is not Re Survey Nos.113/14A, B, C, D as claimed by the plaintiffs. The corrected old survey number for the above mentioned resurvey numbers is old Sy.No.16B. It was also claimed by the appellant that the old Sy.No.16B belongs to him and respondent 4 and 5 and therefore, respondents 1 to 3 have no title or possession over the same.

4.On these pleadings, both the parties went to the trial Court and before the trial Court, the third respondent was examined as P.W.1 and one Murthy was examined as P.W.2. Six documents were marked on behalf of the respondents 1 to 3 as Exts.A1 to A6. The Appellant was examined as D.W.1 and 9 documents were marked on behalf of the Appellant as Exts.D1 to D9.



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5.The trial Court on consideration of the oral and documentary evidence available on record, came to the conclusion that the respondents 1 to 3 were not entitled to any relief and dismissed the suit. Aggrieved by the same, an appeal was filed by respondents 1 o 3 in A.S.No.35 of 2016 on the file of II Additional Sub Court, Erode. The first Appellate Court partly allowed the appeal and granted mandatory injunction for fixing the 'F' Line as prayed for. The portion of the trial Court's decree dismissing the plaintiff's suit with regard to the prayer for injunction was confirmed. Aggrieved by the allowing of the first appeal in part, the third defendant is before this Court by way of this Second Appeal.

6.The learned counsel appearing for the appellant submitted that when there is a dispute over the title of the property, the first Appellate Court ought not to have granted a decree for fixation of 'F' Line. It is the submission of the learned counsel for the appellants that the respondents 1 to 3 failed to prove their title over the suit property and hence, the prayer for fixation of dividing line in between the property of the plaintiffs and the defendants is untenable in law.

7.A perusal of the typed set of papers would suggest that the appellant/third



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defendant in the suit, who was examined as D.W.1 clearly admitted that the parties are neighbors. He has gone to the extent of saying that the respondents 1 to 3/plaintiffs' property is situated on the western side of his property. He has admitted that if both the properties are measured, the dividing line in between the properties of the plaintiff and the defendants can be found. He also deposed that he has no objection for measuring the properties.

8. Therefore, the first Appellate Court without going into the question of possession of the parties in respect of the properties over which they claim title, based on the admission made by the appellant as D.W.1, came to the conclusion that the limited prayer sought for by the plaintiffs seeking fixation of boundary line in between the properties of both the side can be granted. The evidence of appellant clearly establishes that both the parties are neighbors and there is a dispute with regard to the dividing line. In such circumstances, if properties of both the parties are measured with reference to the title deeds of respective parties, certainly the dividing line can be fixed and fixation of dividing line will resolve the dispute between the parties. In such circumstances, the first appellate Court granted the prayer for mandatory injunction by directing both the parties to produce their title documents along with revenue records before a



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qualified surveyor for demarcation of the boundary lines in between the properties of the plaintiffs and the defendants.

9.The finding arrived at by the first Appellate Court is based on the appreciation of controversy in the pleadings and the evidence available on record and the same requires no interference by this Court.

10.I do not find any substantial question of law arising for consideration in this Section Appeal to exercise the jurisdiction of this Court available under Section 100 of CPC. The Second Appeal is accordingly dismissed by

- a) confirming the Judgment and Decree passed by the II Additional Sub Court, Erode in A.S.No.35 of 2016
- b) in the facts and circumstances, there is no order as to costs. Accordingly, the connected miscellaneous petition is closed.

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Index :Yes/No

Internet:Yes/No

Tsg

To:



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1.The Second Additional Subordinate Court,
Erode.

2.The Principal District Munsif Court, Erode.

3.The Section Officer
VR Section, High Court, Madras.

S.SOUNTHAR, J.,



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