



WEB COPY



S.A.No.850 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.850 of 2017
and
CMP.No.21314 of 2017

P.Muthusamy

... Appellant

Vs.

1.Lakshmi
2.Kurunchivendan
3.Vaiyapuri
4.Pradeep Kumar
5.Rajkumar

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 06.01.2017 passed in A.S.No.15 of 2013 on the file of the Sub-Court, Dharapuram, confirming the judgment and decree dated 20.12.2012 passed in OS.No.467 of 2004 on the file of the District Munsif Court, Kangeyam, Erode District, in so far as it relates to the negating the relief of bare injunction sought for is concerned.



WEB COPY



S.A.No.850 of 2017

For Appellant : Mr.K.Govi Ganesan
For Respondents : Mr.P.Navaneetha Krishnan
for R4 & R5

JUDGMENT

The plaintiff in the suit is the appellant. He filed a suit for declaration of title and injunction restraining the respondents from removing boundary fence laid in his property taking advantage of wrong boundary description in the title document. The suit was decreed in part by granting a relief of declaration. However, the suit was dismissed in respect of prayer for injunction. Aggrieved by the same, the plaintiff preferred an appeal and the same was also dismissed. Challenging the concurrent findings against him in respect of relief of injunction, the plaintiff has come up with this Second Appeal.

2. According to the appellant/plaintiff, he purchased the suit property from one N.N.Muthusamy under a registered sale deed dated 21.01.2002. It is further stated that on the western side of the suit property there is one itteri belongs to the respondents/defendants which lies in



S.A.No.850 of 2017

east-west direction with 15 feet width. It was averred by the appellant that the respondents attempted to cut the northern and western side fences of the suit property and made an attempt to encroach the suit property. Therefore, the appellant was constrained to file a suit for declaration of title and permanent injunction.

3. The respondents herein filed a written statement denying the possession and enjoyment of the suit property by the appellant. It was the case of the respondents that in S.F.No.1034/2 only 2.00 acres on eastern side was conveyed to the appellant and on the western side of the said property, the property of defendants is situated and in between there is a fence and the respondents had been in possession and enjoyment of the portion on the western side along with the fence.

4. Before the trial Court, the appellant herein was examined as PW1 and 13 documents were marked as Ex.A1 to Ex.A13. On behalf of the respondents/defendants, the respondents 2 & 4 were examined as DW1 & DW2 and yet another witness was examined as DW3. On behalf of the respondents, no documents were marked. It is also seen that the trial Court



S.A.No.850 of 2017

appointed an Advocate Commissioner, whose report and plan were marked as Ex.C1 to Ex.C4.

5. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the appellant is entitled to declaration of title as prayed for. However, in respect of prayer for injunction is concerned, the trial Court found that the fence portion mentioned in the plaint prayer (b) is situated in the land belonging to the respondents/defendants and hence the appellant was not entitled to get an injunction against the true owner. Therefore, the suit was dismissed in respect of prayer for injunction.

6. Aggrieved by the same, the appellant preferred an appeal in A.S.No.15 of 2013 on the file of the Sub-Court, Dharapuram. The first Appellate Court affirmed the findings of the trial Court and dismissed the appeal. Aggrieved by the concurrent findings, the appellant is before this Court.



S.A.No.850 of 2017

7. The learned counsel for the appellant submitted that when the

Courts below found that the appellant was entitled to declaration of title in respect of 2.00 acres on the eastern side of the land in S.F.No.1034/2, they erred in negating the prayer for injunction restraining the respondents from cutting and removing the boundaries on the western side of his property. The learned counsel for the appellant has also taken this Court to the evidence of DW1 and submitted that the admission of DW1 in his cross examination has not been taking into consideration by the Courts below.

8. The plaintiff in his prayer portion clearly admitted that the boundaries mentioned in the documents are not correct and taking advantage of the same, the respondents attempted to remove the fence and disturb their possession. When DW1 was examined he clearly deposed that the respondents sold the property to vendor of the appellant N.N.Muthusamy under Ex.A1. It was also clearly deposed by him that western boundary of the property sold to the appellant in S.F.No.1034/2 was itteri with a width of 15 feet. The Courts below on appreciation of oral and documentary evidence available on record came to the factual conclusion that the appellant has got title over 2.00 acres on the eastern side of land in S.F.No.1034/2 and the said findings of the trial



S.A.No.850 of 2017

Court was reached not only based on the evidence available on record but the trial Court also pointed out PW1 himself had admitted the same in his cross examination. The trial Court also by taking into consideration, Ex.C1 to Ex.C4 the Advocate Commissioner's report and surveyor's plan (marked as Ex.C3) came to the conclusion that fencing in question lies on the property of the respondents and therefore, the appellant is not entitled to claim any right over the same. Consequently, the Courts below came to the conclusion that the appellant are not entitled to maintain the suit for injunction against the true owner, namely the respondents, in respect of fence.

9. The learned counsel for the appellant is unable to point out any error in the factual findings reached by the Courts below that fencing portion lies on the western side of the appellant's property is in the land belonged to the respondents/defendants. In such circumstances, the Courts below are correct in negating the prayer for injunction on the ground that the appellant is not entitled to maintain a suit for injunction as against the true owners. I do not find any substantial questions of law arising for consideration in the Second Appeal to interfere with the said factual findings rendered by the Courts below and consequently, the Second Appeal is dismissed.



S.A.No.850 of 2017

WEB COPY

10. a) In the result, the Second Appeal stands 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. Consequently, connected Miscellaneous Petition is closed.

09.11.2023

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

To

- 1.The Sub-Court, Dharapuram.
- 2.The District Munsif Court, Kangeyam, Erode District.



WEB COPY



S.A.No.850 of 2017

S.SOUNTHAR, J.

dna

S.A.No.850 of 2017
and
CMP.No.21314 of 2017

09.11.2023