



S.A.No.57 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.57 of 2021

and

C.M.P.No.1370 of 2021

M.Sumathi

... Appellant

Vs.

1.Subramani
2.Rukumaniammal
3.V.Nandhakumar
4.V.Senthilkumar

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 30.04.2019 in A.S.No.15 of 2018 on the file of the Additional Sub Court, Chengalpet, confirming the judgment and decree dated 13.07.2010 in O.S.No.108 of 2008 before the District Munsif Court, Tambaram.

For appellant : M/s.Hema Sampath,
Senior Counsel
for M/s.R.Meenal

For respondents : Mr.K.Elango



JUDGMENT

The plaintiff, who was unsuccessful in challenging the judgment and decree passed by the learned District Munsif, Tambaram in O.S.No.102 of 2008 in A.S.No.15 of 2018 on the file of the Additional Sub Court, Chengalpet, is the appellant before this Court.

2. The parties are referred to in the same rank as before the Trial Court in the narration of the case which is given below.

FACTS OF THE CASE:

3. The plaintiff has filed the suit in question for bare injunction restraining the defendants, their men, agents, servants or anyone acting under them or claiming through them from in any manner interfering with her peaceful possession and enjoyment of the schedule property.

4. The suit schedule property is described as a land measuring 6,798 sq.ft. situated in Nuthencheri, Tambaram Taluk, Kanchipuram



S.A.No.57 of 2021.

comprised in Survey.No.17/1 bounded on north by Bajanai Koil Street, south by Devan's and Mani's land, east by defendants' land and west by Bajendra Naidu's land.

5. It is the case of the plaintiff that the suit property is a Grama Natham and she had purchased this property from the legal heirs of one Seethapathy under a registered sale deed dated 26.12.2003 and that, from the date of her purchase she has been in absolute possession and enjoyment of the property. She would further submit that originally a part of the property was possessed and enjoyed by Seethapathy and thereafter, he had purchased the property to the west of his property in the year 1941 from one Krishnasamy measuring an extent of 3,581 sq.ft. Thereafter, his wife Andalammal had purchased the property to the east of his property in the year 1941 measuring an extent of 1,596 sq.ft. from one Krishnaswamy Naidu.

6. It is the further case of the plaintiff that the properties covered under these two sale deeds and the property already possessed



by Seethapathy, which is west of the suit property, totally measuring an extent of 6,798 sq.ft were enjoyed by Seethapathy and his wife and after their lifetime, by their legal heirs. Thereafter, in the year 2003, under the registered sale deed dated 26.12.2003, the legal heirs had sold the property to the plaintiff herein.

7. While so, the defendants who have property to the east of the suit property and who are total strangers to the suit property are attempting to disturb the possession of the plaintiff and also attempted to grab the same. If they succeed in their attempt, the plaintiff would be put to great prejudice. The defendants had made an attempt on 20.03.2008 which was successfully prevented by the plaintiff with the help of the relatives and local elderly people. The defendants are highly influential persons and therefore, the plaintiff had come forward with the suit in question.

8. The defendants had entered appearance and filed a written statement *inter alia* contending that the properties purchased by the



vendors of the plaintiff viz., Seethapathy was to an extent of 3,581 sq.ft.

from Krishnasamy and his wife purchased an extent of 1,596 sq.ft.

from Krishnaswamy Naidu thereafter. Further, under these two sale deeds, Seethapathy and his wife had purchased 19*84 sq.ft. in Survey No.17/1 i.e.,an extent of 3,192 sq.ft. in addition to the extent of 19*84 sq.ft. Seethapathy, under the sale deed of the year 1941, had purchased two further items. The first item was to an extent of 545 sq.ft and the second item was to an extent of 1,440 sq.ft. Therefore, he would submit that under the two sale deeds, the plaintiff was entitled to only to an extent of 5,177 sq.ft. whereas the suit was filed for a larger extent of 6,798 sq.ft.

9. The defendants would further contend that as against the measurement of 38 feet east-west, the plaintiff is now claiming right to an extent of 57 feet east-west. This extent in excess belongs to one Venugopal Naidu from whom the defendants 2 to 4 inherited the property. The defendants would submit that the plaintiff is fraudulently attempting to grab the property. Further, the plaintiff's husband had



filed a suit in O.S.No.81 of 2008 on the file of the very same Court staking a claim over the property which is situated to the south of the suit property. It is clear from the description of the property in the suit in O.S.No.81 of 2008 and the sale deed dated 26.12.2003 that the plaintiff and her husband attempted to grab another piece of land belonging to Venugopal Naidu. The defendants would further submit that the description of the property is absolutely false and therefore, there is no cause of action for filing the suit, as the alleged attempt to encroach dated 20.03.2008 had never taken place.

TRIAL COURT:

10. The Trial Court had framed the following issue:

“(a) Whether the plaintiff is entitled for permanent injunction as prayed for?”

“(b) What are the other reliefs the parties are entitled to?”



11. The plaintiff had examined one Mani as P.W.1 who is none other than her husband and one Mythili as P.W.2 and marked Exs.A1 to A9. On the side of the defendants, the third defendant had examined himself as D.W.1 and Janakiraman Naidu as D.W.2 and marked Exs.B1 to B7. It appears that Exs.B6 and B7 are the contempt petition and the affidavit and counter therein.

12. The learned Judge has dismissed the suit on the ground that the plaintiff has proved her right only to the extent covered by Exs.A1 and A2 and there are no documents with reference to the extent prayed for.

LOWER APPELLATE COURT:

13. Aggrieved by this judgment and decree, the plaintiff had filed an appeal in A.S.No.15 of 2018 on the file of the Additional Subordinate Judge, Chengalpattu. The learned Judge had also confirmed the judgment and decree of the Trial Court. Aggrieved by the same, the plaintiff has filed the above second appeal.



14. The second appeal has been admitted on the following substantial questions of law by an order dated 06.02.2023.

(a) Whether in law the Courts below are right in failing to correlate the boundary descriptions in the sale deeds which would show that the ancestral property of the vendors was sandwiched between the items purchased by them under Exs.A1 and A2 and coming to a perverse conclusion that the vendors sold to the appellant an extent in excess of what they owned?

(b) Whether in law the lower appellate Court was right in dismissing the application filed for receipt of additional documents when they are necessary to deliver proper judgement as contemplated under Order XVI Rule 27 of C.P.C.?



15. Mrs.Hema Sampath, learned Senior Counsel appearing on behalf of the learned counsel for the plaintiff/appellant would base her arguments primarily on the description of the eastern boundary of the property in Ex.A1. She would submit that in Ex.A1, which is the sale deed under which Seethapathy had purchased the property in the year 1941, the eastern boundary has been described as “உன் மனை” (your property) which clearly shows that to the east of the property conveyed under Ex.A1, Seethapathy had owned properties and it is this extent which is now the disputed property. She would further contend that D.W.1, in his cross-examination, has clearly admitted that their property is to an extent of 16 feet and beyond that 16 feet, they own no other property. This would clearly confirm the fact that Seethapathy, vendor of the plaintiff, had property to the east of the property conveyed under Ex.A1 and to the west of the property of the defendants. She would therefore, submit that this factor has not been considered by both the Courts below and this had resulted in the dismissal of the suit.



16. Per contra, Mr.Elango, learned counsel appearing on behalf of the respondents/defendants would submit that the plaintiff has not proved her case that Seethapathy, one of her vendors, had property beyond properties conveyed under Exs.A1 and A2. He would further submit that the plaintiff is trying to make a case out based on a mere boundary description not backed by any evidence. He would further submit that the Courts below had considered the evidences in detail and passed the orders and no exception can be taken to the same and consequently, this appeal deserves to be dismissed.

17. Heard the learned counsel on either side and perused the materials available on record.

DISCUSSION:

18. The suit is filed in respect of the property measuring an extent of 6,798 sq.ft. The plaintiff has based the entire case on the description of the property to the east of the property conveyed under Ex.A1. There is no other evidence to show the actual enjoyment of



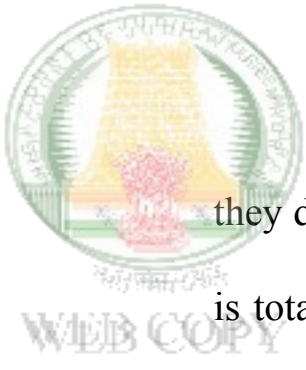
S.A.No.57 of 2021.

property by the plaintiff to that extent of land. The property that is covered under Exs.A1 and A2 together measures an extent of 5,177 sq.ft.

18.1. Under Ex.A1, Seethapathy had purchased three items of properties, one measuring an extent of 19 sq.ft. east-west and 84 sq.ft. north-south and further, an extent of 545 sq.ft. and another, an extent of 1,440 sq.ft. The east-west boundary has been clearly specified.

18.2. Likewise, under Ex.A2 – sale deed, under which Seethapathy and his wife Andalammal had purchased 1,095 sq.ft. whose measurement has been clearly provided as 19 ft. east-west and 84 ft. north-south. Therefore, the plaintiff has title to the property which measures 38 ft. east-west which totally measures an extent of 5,177 sq.ft. There are no other documents that have been filed to prove otherwise.

19. The contention of the plaintiff that D.W.1 has admitted that



S.A.No.57 of 2021.

they do not own any land beyond their house property measuring 16 ft. is totally incorrect, since there is no such admission from a reading of the evidence of D.W.1. That apart, a perusal of Ex.A3 - sale deed under which the plaintiff has purchased the property from the legal heirs of the late Seethapathy and Andalammal clearly shows that the legal heirs are selling the properties which belong to them ancestrally and the same has been further explained as follows:

“பல்லாவரம் சார் பதிவக பத்திரம் எண்கள்.811/1941

மற்றும் 1464/1950 விவரப்படிக்கு பதிவு செய்யப்பட்டதாகும்”

20. Therefore, from a reading of this recital, it is clear that the properties which have been conveyed are the subject matters of Exs.A1 and A2. The Courts below correlated the boundary description and there is no error in their judgments. Therefore, the substantial question of law (a) is answered against the plaintiff/appellant.

21. Both the Courts below had rightly rejected the application for receiving the additional documents as the documents were ready



S.A.No.57 of 2021.

only after the disposal of the suit and just prior to the filing of the appeal suit and therefore, the substantial question of law (b) is also answered against the plaintiff/appellant.

Accordingly, this second appeal is dismissed. Consequently, connected C.M.P. stands closed. No costs.

19.10.2023

Index : Yes/No
Speaking order/non-speaking order
ssa

To

1. The Additional Sub Judge,
Chengalpattu.

2. The District Munsif,
Tambaram.

3. The Section Officer, V.R. Section, High Court, Madras.



WEB COPY



S.A.No.57 of 2021

P.T.ASHA, J.,

ssa

S.A.No.57 of 2021
and
C.M.P.No.1370 of 2021

19.10.2023