



S.A.(MD) No.318 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD) No.318 of 2009

1.S.M.Shajahan

2.Ayisha Begum

... Appellants/Respondents 2 & 3/
Plaintiffs 2 & 3

Vs

1.Mohammed Umer Farooq

2.B.Ambika Ammal

... 1st Respondent/Appellant/
Defendant

... 2nd Respondent/1st Respondent/
1st Plaintiff

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 05.08.2008 made in A.S.No.76 of 2007 on the file of the Principal Sub Court, Tenkasi, reversing the judgment and decree dated 08.03.2007 made in O.S.No.467 of 2004 on the file of the Principal District Munsif's Court, Tenkasi.



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For Appellants : Mr.M.P.Senthil

For R1 : Ms.N.Krishnaveni
Senior Counsel
assisted by
Mr.P.Thiagarajan

J U D G M E N T

1.1. Plaintiffs 2 and 3 are the appellants. The suit was filed for declaration and injunction. The appellants and the second respondent herein filed a suit for declaration that Item-4 of the suit property belonged to the appellants and Item-5 belonged to the second respondent and for a consequential injunction restraining the first respondent from interfering with the right of the appellants over 4th Item and rights of the second respondent over 5th Item. The first respondent filed a counter claim seeking removal of the foundation put up by the appellants and the second respondent in Items-4 and 5 respectively. The trial Court decreed the suit as prayed for and dismissed the counter claim filed by the first respondent. Aggrieved by the same, the first respondent herein filed an appeal in



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A.S.No.76 of 2007. The first appellate Court reversed the findings of the trial Court and dismissed the suit. The counter claim preferred by the first respondent was decreed. Aggrieved by the same, plaintiffs 2 and 3 are before this Court.

1.2. The second respondent/first plaintiff has not filed any second appeal in respect of Item-5. Therefore, the second appeal is confined to Items-2 and 4 alone. Items-2 to 5 of the suit property are part of Item-1. The entire suit property, viz., Item-1 was purchased by the second respondent under Ex.A.1 and Ex.A.2 dated 22.02.1998 and 16.04.1990 respectively. The old survey numbers of the suit property were 195/3E and 195/3F. The new survey numbers of the suit property are T.S.Nos.17 and 18. The second respondent purchased 46 cents under Ex.A.1 and Ex.A.2 in the suit survey numbers. Out of the said 46 cents, the appellants herein purchased 20 cents under Ex.A.3 dated 21.08.2002 from the second respondent. The said 20 cents on the south-western portion purchased by the appellants was shown as Item-2 in the plaint. The remaining 26 cents on the eastern side retained by the second respondent was shown as Item-3.



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1.3. It was further averred in the plaint that the first respondent/defendant owned property on the south of the property purchased by the second respondent under Ex.A.1 and Ex.A.2. The first respondent's property is situated in Old S.No.195/3G, which is equivalent to new T.S.No.16. The appellants and the second respondent wanted to put up a compound wall on the southern extremity of their property and hence, they started digging up pit for laying foundation on the southern extremity of the properties. The property over which foundation work commenced by the appellants is shown as the 4th Item and the portion of the property in which the foundation work is commenced by the second respondent is shown as the 5th Item in the plaint. Since the first respondent claimed right over Items-4 and 5, the appellants and the second respondent were constrained to file a suit for declaration and injunction as prayed for.

2. The first respondent herein filed a written statement denying the title and possession of the appellants and the second respondent over the suit property. The first respondent claimed that Items-4 and 5 were part of



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his property on the southern side. The first respondent claimed that the properties of the appellants and the second respondent were not properly described in the plaint and the southern wall of the small building noted by the Advocate Commissioner appointed by the Court is the southern boundary of the appellants and the second respondent and on further south of the said wall, they had no right. Since the first respondent claimed that the appellants and the second respondent had dug up pit for laying foundation in his property, he sought for mandatory injunction for closure of the foundation pit.

3. The trial Court, on consideration of oral and documentary evidences available on record, came to the conclusion that the appellants and the second respondent proved their right over suit Items-4 and 5 and granted a decree for declaration and injunction as prayed for. The counter claim filed by the first respondent seeking mandatory injunction was dismissed. Aggrieved by the same, the first respondent filed an appeal in A.S.No.76 of 2007 on the file of the Principal Sub Court, Tenkasi. The first appellate Court reversed the findings of the trial Court and came to the



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conclusion that Items-4 and 5 of the suit property lie in S.No.195/3G that belonged to the first respondent and consequently, allowed the appeal and dismissed the suit. The first appellate Court also decreed the counter claim made by the first respondent and granted a decree for mandatory injunction in favour of of the first respondent. Aggrieved by the same, the second and third plaintiffs are before this Court.

4. At the time of admission, this Court formulated the following substantial questions of law:

“(i) Whether the findings of the lower appellate Courts are vitiated by error in consider the evidence of P.W.-1 to P.W.-3 corroborated by documentary evidence Ex.X-1 to X-4 and the report of the Advocate Commissioner Ex.C-1 and C-2? and

(ii) Whether the lower appellate Court is correct in granting the counter claim for mandatory injunction in the absence of any evidence besides in the absence of the relief for declaration of title?”



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5.1. The learned counsel for the appellants submitted that the Advocate Commissioner's report and plan make it clear that if the suit property is measured based on new FMB with reference to new T.S.Nos.16, 17 and 18, the foundation pit dug up by the appellants falls within the survey number of the appellants viz., T.S.Nos.17 and 18. The learned counsel further submitted that if the property is measured based on old FMB with reference to old S.Nos.195/3E, 195/3F and 195/3G, the appellants would get only lesser extent than what they purchased under their title documents. Therefore, it is the submission of the learned counsel that the first appellate Court committed error in not considering the Advocate Commissioner's report and plan along with the title documents of the parties.

5.2. The learned counsel further submitted that whenever there is a conflict between the title documents and revenue documents, the former will prevail over the latter and hence, the first appellate Court ought not to have dismissed the suit of the appellants based on the measurement made with reference to the old survey numbers.



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6.1. The learned Senior Counsel appearing for the first respondent/defendant, by taking this Court to the Advocate Commissioner's report and also evidence of P.W.1, submitted that P.W.1 categorically deposed that the appellants and the second respondent/plaintiffs entitled to only 46 cents in the suit survey numbers and he also deposed that he was not claiming anything more than what the plaintiffs purchased. The learned Senior Counsel further submitted that if the property is measured based on new FMB with reference to new T.S.Nos.16, 17 and 18, the appellants and the second respondent/plaintiffs would get more extent than the 46 cents purchased by them under their title documents.

6.2. The learned Senior Counsel further submitted that the Court cannot grant a larger relief than the one prayed for. In this regard, she relied on the judgment of this Court in *Sreedharan Vs. Union of India* reported in **2002 (2) CTC 408**. Further, the learned Senior Counsel submitted that in a suit for title, the plaintiff has to establish his case on his own strength and he cannot rely on the weakness of the defences. In this regard, the learned



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Senior Counsel relied on the judgment in ***K.S.Krishna Chetty and others Vs. Chinna Pappammal*** reported in ***[2019] 4 MLJ 710.***

7. Heard the arguments of the learned counsel for the appellants and the learned Senior Counsel for the first respondent. Perused the typed set of papers and other records.

8.1. As per the admitted case of the parties, originally the second respondent herein purchased 46 cents in Old S.Nos.195/3E and 195/3F under Ex.A.1 and Ex.A.2. Subsequently, she sold 20 cents to the appellants herein under Ex.A.3. The property covered by Ex.A.1 and Ex.A.2 is shown as suit Item-1. The property covered by Ex.A.3 is shown as suit Item-2. The property that remained with the second respondent after sale under Ex.A.3 is shown as suit Item-3. It is also specifically pleaded by the appellants that the first respondent herein purchased the property on the southern side of their Survey Nos.195/3E and 195/3F viz., S.No.195/3G. It was also specifically pleaded by the appellants that they purchased the property under S.Nos.195/3E and 195/3F and the first respondent purchased



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the property under S.No.195/3G. According to the appellants and the second respondent/plaintiffs, when they attempted to put up compound wall on the southern extremity of their property, viz., Items-4 and 5 of the suit property, the first respondent herein objected the same by laying claim over Items-4 and 5 of the suit property. Therefore, the main issue to be decided in this case is whether Items-4 and 5 of the plaint schedule property fall within the property of the appellants and the second respondent/plaintiffs or in the property of the first respondent. In order to resolve this dispute, an Advocate Commissioner was appointed and he filed his report and plan under Ex.C.1 and Ex.C.2. Pending second appeal also, the warrant was re-issued to the Advocate Commissioner and he filed an additional report and the same is enclosed in the typed set of papers filed by the learned counsel for the first respondent.

8.2. A perusal of the Advocate Commissioner's report and plan would make it clear that if the property is measured with reference to the old FMB and old S.Nos.195/3E, 195/3F and 195/3G, the foundation pit dug up by the appellants and the second respondent falls in the northern portion of old



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S.No.195/3G purchased by the first respondent under Ex.B.1. On the other hand, if the suit property is measured with reference to new T.S.Nos.16, 17 and 18, the dividing line in between the property of the appellants and the second respondent/plaintiffs and the first respondent/defendant get shifted towards the southern side by 4 feet on the western side and 3.5 feet on the eastern side (as per the additional report filed by the Advocate Commissioner). In such case, the foundation pit dug up by the appellants and the second respondent falls within new T.S.Nos.17 and 18 equivalent to old S.Nos.195/3E and 195/3F which belonged to the appellants and the second respondent. If we peruse the title deeds of the parties, the appellants and the second respondent purchased their respective properties under Ex.A.1 to Ex.B.3 with reference to old S.Nos.195/3E and 195/3F. In the title documents of the appellants and the second respondent/plaintiffs, the new survey number is not mentioned. Therefore, it is clear from the title documents of the appellants and the second respondent/plaintiffs that they purchased 46 cents in old S.Nos.195/3E and 195/3F. The same is clearly admitted by P.W.1, husband of the second respondent, when he was examined as a witness before the trial Court. He also said that he is not



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claiming anything more than 46 cents purchased by the plaintiffs.

Therefore, when property is purchased with reference to the old survey numbers, which found place in the title documents of the appellants and the second respondent/plaintiffs, it would be advisable to go by the measurement based on old survey number and old FMB. Merely because in the new FMB, measurements are different and the appellants and the second respondent/plaintiffs would get more extent by shifting of dividing line towards the south in the new town survey plan, the appellants are not entitled to claim more than what they purchased.

8.3. It is the specific case of the appellants that they have not purchased any land in old S.No.195/3G belonged to the first respondent. Therefore, when property is measured with reference to the old survey number, whatever available on the ground for old S.Nos.195/3E and 195/3F alone is deemed to have been purchased by the appellants under their respective title documents. The appellants should be satisfied with the extent that available on the ground, if the property is measured with reference to the old survey numbers.



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8.4. In the case on hand, the Advocate Commissioner's report and plan make it clear that if the property is measured with reference to the old survey numbers, suit Items-4 and 5 viz., the foundation pit dug up by the appellants falls within the survey number of the first respondent viz., S.No. 195/3G. In such circumstances, the first appellate Court is justified in dismissing the suit filed by the appellants and decreeing the counter claim filed by the first respondent.

8.5. As mentioned earlier, if the property is measured with reference to new T.S.Nos.16, 17 and 18, the appellants would get more extent than what they purchased. As held in the decision of this Court in ***Sreedharan Vs. Union of India***, cited *supra*, Court cannot grant a larger relief than the one prayed for by the plaintiffs. It would be appropriate to extract the relevant observation of this Court in the above judgment, which reads as follows:

“16. That apart, it has to be pointed out that the Court cannot grant a larger relief than what is asked for. As already pointed out, there is no claim in the plaint claiming



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title for an extent of 1-60-00 Ha. No petition to amend the plaint was filed by the plaintiffs. What was filed was only a memo purported to be under sections 152 and 153 of Code of Civil Procedure.”

8.6. In the case on hand, P.W.1 clearly admitted that the plaintiffs purchased only 46 cents in old S.Nos.195/3E and 195/3F and the property purchased by the first respondent/defendant lies in old S.No.195/3G. He also had gone to the extent of saying that he is not claiming anything more than what he purchased. In such circumstances, the first appellate Court is justified in dismissing the suit and decreeing the counter claim based on the measurement made by the Advocate Commissioner in his report with reference to old S.Nos.195/3E, 195/3F and 195/3G.

9.1. In view of the discussions made earlier, the substantial questions of law framed at the time of admission, are answered against the appellants and in favour of the first respondent. Accordingly, the second appeal is dismissed by confirming the judgment and decree passed by the first appellate Court.



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9.2. In nutshell, (i) this Second Appeal is dismissed by confirming the judgment and decree passed by the first appellate Court; and (ii) in the facts and circumstances of the case, there will be no order as to costs.

03.03.2023

NCC: Yes/No

Index: Yes/No

Internet: Yes

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To

- 1.The Principal Sub Judge,
Tenkasi.
- 2.The Principal District Munsif,
Tenkasi.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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