



S.A.(MD) No.289 of 2005

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD) No.289 of 2005

Palanisamy

... Appellant/Appellant/Plaintiff

Vs

1.S.Vadivel

2.S.Lakshmi

... Respondents/Respondents/
Defendants

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 17.11.2004 made in A.S.No.103 of 2003 on the file of the Principal District Court, Karur confirming the judgment and decree dated 24.06.2003 made in O.S.No.938 of 1999 on the file of the Additional District Munsif's Court, Karur.

For Appellant : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates

For Respondents : Mr.T.R.Rajaraman



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JUDGMENT

1.1. The plaintiff in the suit is the appellant. The suit is for injunction restraining the respondents/defendants from interfering with the peaceful possession of the appellant over suit 'A' Schedule property and also for injunction restraining the respondents from cutting and removing the live fence which is described as 'B' Schedule property. The suit was dismissed by the trial Court. The findings of the trial Court were confirmed by the first appellate Court. Hence, aggrieved by the concurrent findings against him, the plaintiff is before this Court.

1.2. According to the appellant/plaintiff, suit 'A' Schedule property belonged to him exclusively. There was a poramboke pathway on the southern side of suit 'A' Schedule property which turns towards north on the eastern border of 'A' Schedule property and after some distance, it turns towards north-west direction. The pathway that lies on the south-eastern side of suit 'A' Schedule property was shown as 'AB' in the plaint and there is a live fence that runs towards the 'AB' line. According to the plaint



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averments, 'AB' pathway is separated with the 'A' Schedule property by a live fence on the western direction. The live fence on the western side of 'AB' portion of the pathway, it shown as suit 'B' Schedule property. The appellant claims prescriptive title over suit 'A' Schedule property. It is the specific case of the appellant that suit 'B' Schedule fence which lies on the north-eastern side of 'A' Schedule property also belongs to him. It was further averred by the appellant that the respondent tried to obliterate the fence in 'B' Schedule property and tried to encroach the suit 'A' Schedule property and hence, he was constrained to file a suit for bare injunction as mentioned above.

2. The respondents filed a written statement and claimed that the plaintiff and his father Ramasamy Goundar along with his grandfather executed a sale deed dated 20.10.1965 in favour of the respondents' predecessors in title. A strip of land with an extent of 20 cents was sold to the respondents' predecessors in interest. Thereafter, a misunderstanding arose between the appellant and the respondents with regard to the demarcation of said 20 cents and hence, the respondents put up a fence on



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the western side of 20 cents leaving distance of 10 feet on the western side for maintaining the fence. Therefore, it is the claim of the respondents that the 'B' Schedule fence exclusively belonged to them and the appellant had no right or title over the 'B' Schedule fence. It was also specifically pleaded by the respondents that the appellant cannot claim right over 97 acres of land in S.No.461 after selling 20 cents to the respondents' predecessors in title. The averment made by the appellant in the plaint that the 'B' Schedule fence lies within his property was specifically denied in the written statement of the respondents.

3. The trial Court on appreciation of oral and documentary evidences, came to the conclusion that the father of the appellant settled only 2 acres and 15 cents under Ex.B.4 in favour of the appellant as against the appellant's claim of 2 acres and 39 cents (97 ares) in S.No.461. The trial Court came to the conclusion that the appellant failed to prove his right over the entire 'A' Schedule property. The trial Court also found that the appellant failed to prove his right and enjoyment over suit 'B' Schedule fence and consequently, dismissed the suit. Aggrieved by the same, the



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appellant had preferred a first appeal in A.S.No.103 of 2003 on the file of the Principal District Court, Karur. The first appellate Court concurred with the findings of the trial Court and dismissed the first appeal. Aggrieved by the said judgment of the first appellate Court, the plaintiff/appellant is before this Court.

4. At the time of admission of the second appeal, this Court formulated the following substantial question of law:

“Whether in law the judgment and decree of the courts below which is contrary to the settled principle in law that four boundaries will prevail over the extent and survey number is sustainable?”

5. The learned counsel for the appellant, elaborating the substantial question of law framed at the time of admission, submitted that in the document executed by the appellant, his father and his grandfather in favour of the respondents' predecessors in interest selling 20 cents land in S.No. 461, there is a recital that both the parties shall maintain a fence in between the properties of the appellant and 20 cents sold to the respondents'



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predecessors in interest. Therefore, the learned counsel for the appellant submitted that when existence of fence was noted in the title deed of the respondents' predecessors in interest under Ex.B.1 even in the year 1965, the Courts below ought not to have negated the second prayer in the suit viz., injunction restraining the respondents from obliterating the fence.

6. A perusal of the recitals in Ex.B.1 would make it clear that there is no reference about the existence of fence in between the property of the appellant and 20 cents sold by the appellant to the respondents' predecessors in interest. It only directs both the parties to maintain a fence in between the properties. It may even be with reference to the fence agreed to be put up by the parties in a future date. Therefore, from the recitals found in Ex.B.1, we cannot come to a definite conclusion that there was a fence in between the properties of the appellant and the respondents.

7. The appellant/plaintiff filed a suit for bare injunction with a specific plea claiming right over 2.39 acres of land in S.No.461. A perusal of the averment found in the plaint would make it clear that the appellant



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only pleaded prescriptive title. However, Ex.B.4 marked on the side of the respondents would make it clear that the father of the appellant settled 2.15 acres of land in the suit survey number in favour of the appellant as against his claim of 2.39 acres. Therefore, there is no evidence available on record to show that the appellant/plaintiff has right or possession over the entire 'A' Schedule property. In fact, the appellant has not prayed for any declaration of prescriptive title. In these circumstances, the Courts below are correct in negating the first prayer for injunction in respect of 'A' Schedule property.

8. As far as the second prayer in respect of 'B' Schedule fence is concerned, the appellant/plaintiff has come to the Court with a specific plea that 'B' Schedule fence is situated within his property. On the other hand, the respondents in their pleadings claim that 'B' Schedule property was put up by them well within their property leaving a space of 10 feet on the western side. Therefore, there is a controversy in the pleadings with regard to the exact lie of 'B' Schedule fence. However, the appellant as a plaintiff has not taken any steps to measure the properties of both the parties with



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reference to their respective title deeds. In these circumstances, we cannot come to a definite conclusion that 'B' Schedule property stands within the property of the appellant covered under Ex.B.4. Therefore, the Courts below are justified in negating the second prayer for injunction in respect of suit 'B' Schedule fence, as the appellant failed to prove that the 'B' Schedule fence stands within his property.

9. In view of the discussions made above, the substantial question of law framed at the time of admission, is answered against the appellant and the second appeal is dismissed. In the facts and circumstances of the case, there will be no order as to costs.

09.02.2023

NCC: Yes/No

Index: Yes/No

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To

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



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S.SOUNTHAR, J.

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