



S.A.(MD) Nos.476 and 477 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD) Nos.476 and 477 of 2015

S.A.(MD) No.476 of 2015:

M.Ponnayyan ... Appellant/Appellant/Plaintiff

Vs

R.Christopher ... Respondent/Respondent/
Defendant

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 26.03.2015 made in A.S.No.92 of 2012 on the file of the Sub Court (Camp Court), Padmanabhapuram, confirming the judgment and decree dated 02.08.2011 made in O.S.No.134 of 2006 on the file of the Principal District Munsif's Court, Padmanabhapuram.

S.A.(MD) No.477 of 2015:

M.Ponnayyan ... Appellant/Appellant/Defendant

Vs



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R.Christopher

... Respondent/Respondent/
Plaintiff

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 26.03.2015 made in A.S.No.25 of 2013 on the file of the Sub Court (Camp Court), Padmanabhapuram, confirming the judgment and decree dated 02.08.2011 made in O.S.No.167 of 2009 on the file of the Principal District Munsif's Court, Padmanabhapuram.

In both cases

For Appellant : Mr.C.Godwin

For Respondent : Mr.T.Pon Ram Kumar

COMMON JUDGMENT

1.1. S.A.(MD) No.476 of 2015 is arising out of a suit for declaration of title, permanent injunction and also for demarcation of boundary and putting up of compound wall. The suit was dismissed by the trial Court and the findings of the trial Court were confirmed in first appeal. Aggrieved by the same, the unsuccessful plaintiff is before this Court.



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1.2. S.A.(MD) No.477 of 2015 is arising out of a suit for bare injunction filed by the respondent in O.S.No.167 of 2009. The suit was decreed by the trial Court and the findings of the trial Court were confirmed in first appeal and hence, the unsuccessful defendant is before this Court.

2.1. The appellant herein claimed that he purchased the suit property to an extent of 1½ cents in Resurvey No.301/22 from one John Sylus on 14.11.1991 under Ex.A.1. The vendor, in turn, purchased the suit property from Raju Vagaiyara under Ex.A.13, dated 16.01.1981. The respondent herein is the eastern neighbour of the appellant and he had no title or possession over the suit property. The property purchased by the appellant from one Devadoss lies on the north of the suit property. According to the appellant, the suit property is the access to reach his property on the northern side. The appellant claimed that the respondent tried to commit trespass into the suit property by cutting the tamarind trees in the suit property and hence, the appellant was constrained to file the suit for the above said reliefs.



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2.2. The respondent herein filed a written statement denying the title and possession of the appellant over the suit property. The respondent specifically denied the title of the appellant's vendor viz., John Sylus and his predecessor James Nadar. The averment of the appellant that the suit property was used as a pathway to reach his property on the northern side was also specifically denied. The respondent claimed that the suit property originally belonged to his grandmother Gnanapackiam and after her death, the suit property was allotted to the share of the respondent's father Rajayyan in a partition between Rajayyan and his brother Thankayan on 24.09.1993.

3.1. In O.S.No.167 of 2009, suit for bare injunction filed by the respondent, he claimed that in Resurvey No.301/22, his father Rajayyan purchased 5.350 cents under four sale deeds dated 28.01.1967, 31.12.1973, 28.01.1975 and 06.04.1979. It was also claimed that the respondent's grandmother Gnanapackiam got assignment patta in respect of one cent in the suit survey number on the immediate west of 5.350 cents purchased by



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his father. Thus, the respondent claimed right over 6.350 cents in the suit survey number. It was also alleged that the appellant tried to encroach upon portion of the suit property, and hence, the respondent was constrained to file the suit for bare injunction.

3.2. The appellant herein filed a written statement denying the title of the respondent's father Rajayyan over 5.350 cents in the suit survey number. He also denied the assignment of one cent in favour of Gnanapackiam, grandmother of the respondent. The appellant also contended that the partition deed, dated 24.09.1993 relied on by the respondent was a fraudulent document, wherein 1½ cents purchased by the appellant from John Sylus was wrongly included.

4.1. Both the suits in O.S.No.134 of 2006 filed by the appellant and the suit in O.S.No.167 of 2009 filed by the respondent were tried together and the evidence was recorded in the appellant's suit viz., O.S.No.134 of 2006.



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4.2. On consideration of oral and documentary evidences available on record, the trial Court came to the conclusion that the appellant failed to prove his title over the suit property and dismissed his suit. The trial Court also found that the respondent was able to prove his possession over the property in O.S.No.167 of 2009 and hence, decreed his suit. Aggrieved by the common judgment passed in both the suits, the appellant herein preferred first appeals in A.S.No.92 of 2012 and A.S.No.25 of 2013. Both the appeals preferred by the appellant were dismissed by the first appellate Court by confirming the findings rendered by the trial Court. Aggrieved by the same, the appellant is before this Court. This Court at the time of admission, formulated the following substantial questions of law:

“i) Whether the Courts below were right in concluding that the grand-mother of the plaintiff in O.S.No.167 of 2009 was entitled to one cent of land in Survey No.301/22 solely based on Ex.B.7?

ii) Whether the Courts below were right in concluding that the plaintiff has not established his title to 1½ cents of land purchased by him under Ex.A1 dated 14.11.1991 despite the production of title deed dated 16.01.1981 marked as Ex.A13?



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iii) Whether the lower appellate Court was right in not considering the Ex.A23 and Ex.A24, which were received in evidence by it?"

5. The learned counsel for the appellant submitted that the appellant proved his title by producing his title document Ex.A.1 and the parent document Ex.A.13 and hence, the finding rendered by the Courts below as if the appellant failed to prove his title over the suit property got vitiated by non-consideration of material evidence. The learned counsel forcefully submitted that the Advocate Commissioner appointed by this Court filed his report stating that the properties of both the appellant and the respondent were overlapping and hence, the mere suit for bare injunction filed by the respondent was not at all maintainable.

6. The learned counsel for the respondent, by taking this Court to the findings rendered by the Courts below and also the boundary description found in the documents of the appellant, contended that the appellant failed to prove his title over the suit properties and hence, the Courts below rightly



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dismissed the suit for declaration and injunction filed by the appellant. The learned counsel further submitted that the Courts below, based on the title document relied on by the respondent and the revenue document viz., Ex.B.8 and Ex.B.9 in the name of the respondent, came to the conclusion that the possession of the respondent over the suit property was proved and hence, granted a decree for injunction. According to the learned counsel, the finding of the Courts below that the respondent proved his *prima facie* possession over the suit property requires no interference by this Court.

7. Heard the arguments of the learned counsel for the appellant and the learned counsel for the respondent and perused the typed set of papers and other records.

8.1. The appellant herein claimed right over 1½ cents in Resurvey No.301/22 under Ex.A.1 dated 14.11.1991, whereunder his vendor John Sylus sold 1½ cents to the appellant. The parent document of the appellant viz., the sale deed executed by Raju Vagaiyara in favour of John Sylus, was marked as Ex.A.13. Under Ex.A.13, Raju Vagaiyara sold only 1¼ cents to



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John Sylus. However, John Sylus sold 1½ cents to the appellant under Ex.A.1. There is no explanation available on the side of the appellant as to how John Sylus, who purchased 1¼ cents under Ex.A.13 was entitled to sell 1½ cents to the appellant under Ex.A.1. Unless the appellant satisfies the Court as to how his vendor got the excess 1/4 cents to convey 1½ cents to the appellant, the appellant is not entitled to get a decree for declaration.

8.2. Further, the four boundaries mentioned in Ex.A.1 and Ex.A.13 are not tallying with each other. In Ex.A.13, the northern boundary was mentioned as Arumainayagam's property, whereas in Ex.A.1, the northern boundary is mentioned as property of the appellant. In Ex.A.13, the eastern boundary was mentioned as property of Francis. However, in Ex.A.1, the eastern boundary is mentioned as Rajayyan's (father of the respondent) property. In Ex.A.13, the southern boundary was mentioned as road. However, in Ex.A.1, the southern boundary is mentioned as *idaiveli* (space). In Ex.A.13, the western boundary was mentioned as Sadayan Arumainayagam's property. However, in Ex.A.1, the western boundary is mentioned as Pushpam's property. The trial Court, on careful consideration



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of boundaries mentioned in Ex.A.1 and Ex.A.13, came to the conclusion that the properties covered under Ex.A.1 and Ex.A.13 are not one and the same. The first appellate Court also considered Ex.A.1 and Ex.A.13 along with the parent documents produced by the appellant before the first appellate Court viz., Ex.A.23 and Ex.A.24 and came to a factual conclusion that Ex.A.1 and Ex.A.13 are not relating to the same property. Therefore, on two accounts, the appellant is not entitled to declaration of title. Firstly, the appellant failed to explain as to how his vendor, who was said to have purchased 1¼ cents under Ex.A.13, conveyed 1½ cents to the appellant under Ex.A.1. Further, in view of the discrepancy in the four boundaries, both the Courts below came to the conclusion that the properties dealt with under Ex.A.1 and Ex.A.13 were different properties. The said factual finding rendered by the Courts below is binding on this Court and hence, it requires no interference while exercising jurisdiction under Section 100 of Code of Civil Procedure. Accordingly, the second and third substantial questions of law are answered against the appellant and in favour of the respondent. Consequently, S.A.(MD) No.476 of 2015 is dismissed by confirming the judgments and decrees passed by the Courts below.



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9.1. The respondent herein filed Exs.B.1, B.2, B.4 and B.5 dated 28.01.1967, 31.12.1973, 28.01.1975 and 06.04.1979 respectively to prove that his father purchased 5.350 cents in the suit survey number. The respondent also claimed that one cent in the suit survey number was assigned in favour of the respondent's father's mother Gnanapackiam. Thus, he claimed right over 6.350 cents in the suit survey number. The respondent also produced Ex.B.3 to show that in the family partition, 6.350 cents was allotted to his share including one cent assigned in favour of his grandmother Gnanapackiam. However, the respondent failed to produce the assignment deed in favour of Gnanapackiam and prove that one cent was assigned in favour of Gnanapackiam and hence, his family enjoyed 6.350 cents in the suit survey number.

9.2. The Advocate Commissioner appointed by this Court measured the suit properties based on the appellant's document viz., Ex.A.1 and respondent's document Ex.B.3 and found that the properties covered under Ex.A.1 and Ex.B.3 are overlapping on the south-western corner and the



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same is noted as 'NMLGHKN' by the Advocate Commissioner. However, as stated earlier, the respondent failed to prove that his grandmother was assigned with one cent and therefore, his family enjoyed 6.350 cents in the suit survey number. Therefore, there is a serious cloud over the title of the respondent over the suit property. In such circumstances, it is not open to him to maintain a simple suit for injunction simpliciter without prayer for declaration of title. Though the respondent produced Ex.B.7, patta passbook in the name of his father Rajayyan, in the absence of any document to show that his family owned 6.350 cents in the suit survey number, merely based on Ex.B.7-patta, we cannot come to a definite conclusion that the respondent's family got right over 6.350 cents in the suit survey number. Even in Ex.B.7, the original pattadhar's name was mentioned as Gnanapackiam and three others. Subsequently, the respondent's father's name appeared to have been included, but the said correction was not countersigned by the authorised officer. Therefore, the first substantial question of law is answered in favour of the appellant and against the respondent. Consequently, S.A.(MD) No.477 of 2015 is allowed by setting aside the judgments and decrees passed by the Courts below.



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10. In nutshell,

(i) S.A.(MD) No.476 of 2015 is dismissed by confirming the judgments and decrees passed by the Courts below;

(ii) S.A.(MD) No.477 of 2015 is allowed by setting aside the judgments and decrees passed by the Courts below; and

(iii) In the facts and circumstances of the case, there would be no order as to costs.

01.03.2023

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NCC: Yes/No

Index: Yes/No

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To

1.The Sub Judge (Camp Court),
Padmanabhapuram.

2.The Principal District Munsif,
Padmanabhapuram.

Copy to

The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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