



S.A.(MD)No.133 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.04.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.133 of 2017

and

C.M.P.(MD)No.2131 of 2017

Annadurai Chettiar

... Appellant

/Vs./

Subramanian

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the Judgment and Decree dated 28.07.2015 made in A.S.No.1 of 2014 on the file of the Sub Court, Sivagangai, confirming the judgment and decree dated 19.11.2013 made in O.S.No.9 of 2010 on the file of the District Munsif, Sivagangai.

For Appellant : Mr.Mohammed Ibram Saibu
for M/s.Ajmal Associates

For Respondent : Ms.K.Shwathini
for M/s.G.Prabhu Rajadurai



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JUDGMENT

This Second Appeal has been filed challenging the concurrent findings of the Courts below. The plaintiff in the suit in O.S.No.9 of 2010 on the file of the District Munsif Court, Sivagangai, is the appellant herein. The respondent is the defendant in the said suit. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. As seen from the plaint, the suit property originally belonged to the grandmother of the plaintiff, namely Veeramakali, vide registered sale deed dated 15.08.1942. According to the plaintiff, the extent of the property was east-west 19 kejem, equivalent to 57 feet and east-west 16 kejem equivalent to 48 feet. According to the plaintiff, out of larger extent, the suit property measures north-south 9 ½ feet and east-west 48 feet. According to the plaintiff, the entire property devolved upon his father, namely, Meyappa Chettiar, through partition. It is also the case of the plaintiff that pursuant to the partition that took place between the plaintiff and his brothers, the suit property and its adjacent portion was



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allotted to him and he has been in possession and enjoyment of the same for a long number of years.

3. According to the plaintiff, on the southern side of the suit property and its adjacent portion, the plaintiff's house and his oil shop are located. According to the plaintiff, the suit property is a vacant site. It is the case of the plaintiff that on the northern side of the suit property, the property belonging to Vaduga Pandaram Madam and Nandhavanam is there and in the said property, the defendant had put up a tiled shed and was running a saw mill.

4. According to the plaintiff, the defendant has now closed the said saw mill by demolishing the tiled shed and has started constructing a new building by encroaching into the vacant site belonging to the plaintiff by claiming that the said property belongs to him. The plaintiff claims that he has lodged a complaint before the Sivagangai Town Police on 15.11.2009 against the defendant. According to him, since there was no proper enquiry conducted by the Superintendent of Police, Sivagangai, he was constrained to file a civil suit.



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5. However, according to the defendant, as seen from his written statement, he has categorically contended that the suit property did not belong to Veeramakali, as claimed by the plaintiff and it never devolved upon the plaintiff's father, namely, Meyappa Chettiar under partition, as claimed by the plaintiff. The defendant also contends that the suit property is not a vacant site, as claimed by the plaintiff. The defendant has also denied that he was running a saw mill in the property belonging to Vaduga Pandaram Madam by putting up a tiled shed.

6. According to the defendant, the suit property is lying on the northern side of the plaintiff's house and by keeping the plaintiff's northern wall as a common wall, the defendant is enjoying the suit property. According to the defendant, only on the northern common wall of the plaintiff's house, there is a kavanjaly and a tiled shed was put up with support of the said kavanjaly and in the said tiled shed, the defendant was having a saw mill. The defendant has also stated that it is false to allege that he has been running a saw mill on the northern side of the suit property by putting up a tiled shed. The defendant also contends



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that the new construction after demolition of the saw mill had commenced one year back and the entire three floor building is about to be completed by him.

7. According to the defendant, the plaintiff who all along remained a silent spectator has filed the suit only to harass the defendant and also to unlawfully extract money from him. The defendant claims that the suit property was purchased by him under a registered sale deed dated 02.12.1983 for valuable consideration from its owner and he has been in possession and enjoyment of the same as the absolute owner. According to the defendant, the suit property and the property belonging to Murugaboopathy and the property belonging to the plaintiff were subdivided as per their respective possession during town survey in the year 1961 to 1971. According to the defendant, the said fact was very much known to the predecessors of the plaintiff.

8. According to the defendant, the measurement of the suit property described in the plaint is false. According to him, the description and measurement shown in the amended plaint is also



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incorrect. According to the defendant, the plaintiff has wrongly described that the suit property is situated in T.S.No.52 on the southern portion to the extent of 408 sq.ft.

9. Based on the pleadings of the respective parties, the trial Court framed the following issues:

- (a) Whether the plaintiff is the absolute owner of the suit property?
- (b) Whether the defendant is the absolute owner of the suit property as per the registered sale deed dated 02.12.1983 as alleged?
- (c) Whether the plaintiff is entitled to the relief of declaration and possession as prayed for?
- (d) Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for?
- (e) To what other reliefs?

10. On the side of the plaintiff, one witness was examined, namely the plaintiff himself as P.W.1 and 10 documents were marked, namely Ex.A1 to A10. On the side of the defendant, three witnesses were examined, namely the defendant himself as D.W.1 and the Town



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Surveyor, Sivagangai as D.W.2 and another person, by name Murugan as D.W.3. On his side, 16 documents were filed, namely Exs.B1 to B16. Apart from the documents filed on the side of the plaintiff and the defendant, the Advocate Commissioner's report was marked as Ex.C1 and the Advocate Commissioner's plan was marked as Ex.C2 and the series of photographs annexed along with the Commissioner's report was marked as Ex.C3.

11. After careful consideration of the oral and documentary evidence available on record, the trial Court, namely the District Munsif Court, Sivagangai, by its Judgment and Decree dated 19.11.2013 in O.S.No.9 of 2012 dismissed the suit by giving the following reasons:

(a) After extracting the relevant portion of the cross-examination of P.W.1, the trial Court has held that the plaintiff has taken different stands at various point of time and in the various stages of his cross-examination. The trial Court has given a finding that it is clear that the suit property lies within the northern wall of the plaintiff's house and Murugaboopathy's house;

(b) It is also an admitted case that Murugaboopathy's house is



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situated in the northern side of the suit property;

(c) Therefore, inbetween the plaintiff's house and the said Murugaboopathy's house, the north-south extent is only 12 ½ feet. Only in the said extent of the land, the defendant had been running a saw mill before constructing the present building in the suit property;

(d) P.W.1 has also admitted during his cross examination that only by removing the said tiled shed, the defendant had put up the building in the suit property;

(e) Admissions made by the plaintiff P.W.1, during his cross-examination would prove the fact that abutting the northern wall of the plaintiff's house, the defendant had been running a saw mill in a tiled shed, which has its support in the kavanjaly placed on the northern wall of the plaintiff's house. The same is reflected in the sale deed of the defendant dated 02.12.1983 (Ex.B1);

(f) House tax receipts filed by both parties would also prove that the properties are lying adjacent to each other;

(g) The plaintiff has filed Ex.A9, house tax receipt, in which survey number was mentioned as 159 in one receipt and in another receipt, it is mentioned as 159/A;



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(h) The defendant has filed Ex.B4, series of tax receipts. In some tax receipts, door number is mentioned as 159 and in some other tax receipts, door number is mentioned as 159/B;

(i) Thus, after considering the house tax receipts produced by the plaintiff and the defendant, it shows that the plaintiff's property and the defendant's property were earlier bearing the same door number, but later, it has been separated as door numbers, namely, 159A and 159B respectively.

(j) A perusal of the Advocate Commissioner's report and plan would go to show that the suit property is lying in the center being sandwiched between the property of the Murugaboopathy belonging to Vaduga Pandaram Madam and Nandavanam and the plaintiff's property;

(k) The plaintiff (P.W.1) has admitted that only between Murugaboopathy's property and his house, the defendant was running a saw mill in a tiled shed and after removing the said tiled shed, the defendant has now put up a new construction. If the said claim of the plaintiff is correct, there is no possibility at all for the defendant to have a saw mill in between the property of the plaintiff and Murugaboopathy.



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(l) the claim of the defendant that he was running a saw mill in the tiled shed that has its support on the kavanjaly placed on the northern wall of the plaintiff is confirmed by Ex.B4 series of house tax receipts;

(m) The Advocate Commissioner has also specifically observed in his report that there were kavanjalies in the northern wall of the plaintiff's house. The said observation of the Advocate Commissioner only supports the case of the defendant that the northern wall of the plaintiff's house is a common wall;

(n) The evidence available on record would prove that there was a tiled shed immediately abutting the northern wall of the plaintiff's house, with the support of kavanjaly placed on the northern wall, which bears the door number 159B and in the said tiled shed alone, the defendant was running a saw mill;

(o) The town survey was made long time back and as per the town survey, the suit property is a portion lying in T.S.No.52, whereas the plaintiff's property is exclusively situated in T.S.No.53. Therefore, the plaintiff cannot make any claim in respect of the suit property, which is lying in T.S.No.52. The town survey was settled even during the period



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of the plaintiff's father and his father had restricted his claim only with respect to T.S.No.52.

(p) Only in respect of T.S.No.51/2, the name of Meyappa Chettiar and his predecessor in title was found entered and not in T.S.No.52 and therefore, it is clear that taking into account the measurement in Ex.A1, the plaintiff is making a false attempt by claiming title over the suit property, which is situated in T.S.No.52;

(q) The defendant has established his title over the suit property by virtue of the sale deed dated 02.12.1983 (Ex.B10);

(r) Apart from the aforementioned findings of the trial Court, this Court after giving due consideration to other exhibits marked on the side of the defendant, namely house tax receipts, electricity bills, receipts for payment of fee for building licence and building development, which have been marked as exhibits, it is clear that the plaintiff has got no legal right over the suit property and it is only the defendant, who is having right over the same.

12. The trial Court, only based on the pleadings and oral and documentary evidence available on record has rightly dismissed the suit



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filed by the plaintiff by its Judgment and decree dated 19.11.2013 in O.S.No.9 of 2010. Aggrieved by the same, the plaintiff had filed a first appeal before the Sub Court, Sivagangai in A.S.No.1 of 2014. The lower appellate Court has also rightly confirmed the findings of the trial Court by dismissing the first appeal filed by the plaintiff.

13. This Court, on 03.03.2017 admitted the Second Appeal by formulating the following substantial questions of law:

"(a) Whether the interpretation of Courts below with regard to the documents in Exs.A.1 and A.5 sale deeds are correct?

(b) Whether the Courts below were right in ignoring Ex.C.1 Commissioner's report and plan which prove the case of the plaintiff with regard to the prayer for recovery of possession and mandatory injunction?"

14. Admittedly, the suit schedule property is situated in T.S.No.52. The plaintiff has not produced any revenue records to show that he is entitled for legal possession of the suit property. The sale deed standing



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in the name of the plaintiff also does not reveal that the plaintiff is having a right over T.S.No.52, where the suit property is situated.

15. The trial Court as well as the lower appellate Court has rightly appreciated the documents filed by the plaintiff, which were marked as Exs.A1 to A10 and has rightly rejected the plaintiff's claim, as he has miserably failed to prove that he has right over the suit property. The Advocate Commissioner's report, plan and the photographs, which have been marked as Court exhibits, namely Exs.C1 to C3 have been rightly appreciated by the Courts below, as the plaintiff has not been able to prove his case that the defendant has encroached upon his property, whereas the defendant has put up a new construction only in his property comprised in T.S.No.52, after demolishing the existing saw mill. Therefore, the substantial questions of law formulated by this Court, while admitting the Second Appeal are answered against the plaintiff by holding that the Courts below have rightly dismissed the suit filed by the plaintiff. There are no debatable issues of fact or law involved for further consideration by this Court under Section 100 of C.P.C.



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16. In the result, there is no merit in this second appeal and accordingly, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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TO:

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



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ABDUL QUDDHOSE, J.

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Judgment made in
S.A.(MD)No.133 of 2017

Dated:
27.04.2023