

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.02.2023

PRONOUNCED ON : 24.03.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.1068 of 1999
and
C.M.P.No.10709 of 1999

1.A.V.Ramachari (Died)

2.A.R.Hari Ram

... Appellants

(2nd appellant is brought on record as LR of the deceased sole appellant vide Court order dated 03.12.2021 made in C.M.P.(MD).Nos.1219 to 1221/2019 in S.A.No.1068/1999)

Vs

1.B.Nagendra Iyer (Died)

2.S.N.Mohan

3.N.Gandhimathiammal

4.S.N.Hariraman (Died)

5.S.N.Mothilal

6.S.N.Desikachari

(R3 to R6 are brought on record as LR's of deceased R1 vide Court order dated 28.07.2017 made in C.M.P.(MD)Nos.10634 and 10635/2000 in S.A.No.1068/1999)

7.C.H.Santha

8.C.H.Vijayalakshmi

9.C.H.Balaji

... Respondents

(R7 to R9 are brought on record as LR's of the deceased 4th respondent vide Court order dated 09.12.2021 made in C.M.P.(MD).Nos.1427 to 1429 of 2019 in S.A.(MD).No.1068/1999)

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code, praying to set aside the decree and judgement dated 21.01.1998 passed in A.S.No.14 of 1995 on the file of Principal District Judge, Ramanathapuram confirming the decree and judgement dated 09.12.1994 rendered in O.S.No. 276 of 1991 on the file of District Munsif of Paramakudi.

For Appellants : Mrs.P.Jessi Jeevapriya

For R2 to R6 : Mr.V.Meenakshisundaram

J U D G M E N T

The plaintiff in the suit is the appellant. He filed a suit for declaration that he was owner of the suit Item-1 and for consequential injunction restraining the respondents from interfering with his possession over suit Item-1 and also for injunction restraining the respondents from putting up any construction in suit Item-1. The appellant also prayed for mandatory injunction directing the respondents to remove offending construction put up by him in suit Item-1 and to close the three windows opened by him in suit Item-2 wall facing Item-1. The suit was partly decreed by the Trial Court granting limited declaration that suit Item-1 belonged to the appellant as well as respondents and injunction restraining the respondents from interfering with appellant's common possession over suit Item-1. The suit was dismissed as far as prayer for mandatory injunction was concerned. Aggrieved by the same, the appellant filed an appeal in A.S.No.14 of 1995 on the file of Principal District Court, Ramanathapuram. The First Appellate Court dismissed the appeal by confirming the judgment and decree passed by the Trial Court. Aggrieved by the same, the appellant is before this Court.

2. Pending second appeal, the appellant/plaintiff died and the 2nd appellant was brought on record as legal representative of the deceased sole appellant. The 1st respondent also died pending second appeal and the respondents 3 to 6 were brought on record as legal representatives of deceased 1st respondent. Subsequently, the 4th respondent died and the respondents 7 to 9 were brought on record as legal representatives of deceased 4th respondent.

3. According to the appellant/plaintiff, the property of the appellant situate on the western side of respondents' house. The dispute is in respect of the strip of land in between the property of the appellant and respondents' house. The land portion with a measurement of 27 ½ feet north-south and 4 feet in east-west direction on the northern side and 3 feet in east-west direction on southern side was shown as Item-1. The western wall of the respondents' house with the measurement of 27 ½ feet north-south and 1 feet 3 inches on east-west was shown as Item-2 of the suit property. In the plaint the appellant claimed that he purchased the suit Item-1 along with the

property on the west under Ex.A8 dated 13.11.1972 from one Venkatesan Vaigaiyara. It was claimed by the appellant that suit Item-1 was shown as eastern portion of the property covered under his title document. The 1st respondent admitting the appellant's exclusive right over the suit Item-1 of the property, signed as a witness in Ex.A8 and consequently, the 1st respondent and his son 2nd respondent were estopped from questioning the title of the appellant. It was further stated by the appellant that two years prior to filing of the suit the respondents illegally opened 3 windows in the suit Item-2, their western wall facing Item-1. The appellant claimed that said act of respondents were causing nuisance to him. The appellant also claimed Prescriptive Title over suit Item-1 by virtue of his long enjoyment over the suit property. It was further claimed by the appellant that the respondents without having any manner of right, put up certain offending construction in suit Item-1. On these pleadings, the appellant laid the suit for above said reliefs.

4. The respondents herein filed their written statement and denied the alleged title of the appellant over suit Item-1. It was claimed by the respondents that the suit Item-1 was enjoyed by the respondents together with their house on the eastern side as their property. The respondents also claimed that the three windows referred to in the plaint and another window on the southern side were put up by them in their western wall in the year 1972. The respondents also denied the claim of Prescriptive Title of the appellant. The respondents claimed that the east-west measurement of his property together with the suit Item-1 was 56 1/4 feet. The respondents also claimed that 1st respondent purchased the first Item of the suit property from Govindaraman and Subramanian under Ex.B2 dated 09.07.1971 along with western portion of the house that situate on immediate east of suit Item-1. The respondents also claimed that appellant herein acknowledging the right of the respondents over the suit property attested the said document as Witness No.1. The respondents also claimed that in the year 1972, the 1st respondent demolished the portion of the old house purchased by him and put up a terrace house and the windows mentioned in suit Item-2 were

opened at that point of time. The respondents further claimed that when they were away from the suit property, the appellant opened an entrance in his eastern wall, as if he has got right over suit Item-1 and put up offending construction in the suit property. The objections raised by the respondents/defendants after their return to suit property were not considered by the appellant. In nutshell, the respondents claimed right over the suit property and sought for dismissal of the suit.

5. The Trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that suit Item-1 was a common property of the appellant and respondents and granted a decree declaring the common right of appellant and respondents over the suit property. The Trial Court also granted an order of injunction restraining the respondents from interfering with appellant's common right over the suit Item-1. The suit was dismissed in respect of prayer for mandatory injunction. Aggrieved by the same, appellant filed an appeal in A.S.No.14 of 1995 on the file of Principal District Court, Ramanathapuram. The First Appellate Court affirmed the

findings of the Trial Court and dismissed the appeal. Aggrieved by the same, the deceased 1st appellant/plaintiff filed the above second appeal.

6. This Court at the time of admission formulated the following substantial question of law:-

“Whether the judgments of the Courts below are vitiated in the eye of law, since the finding rendered in the judgments against the plaintiff is opposed to evidence on record ?”

7. The learned counsel for the appellants elaborating the substantial question of law framed at the time of admission submitted that when 1st appellant as well as respondents claimed exclusive right over the suit Item-1, the Courts below ought not to have come to a conclusion that suit Item-1 was a common property. The learned counsel for the appellants further submitted that in the title document of the 1st appellant viz., Ex.A8, the eastern boundary of the suit property was shown as 1st respondent's

house and hence, the Courts below ought to have held that suit lane portion was part of the property conveyed to 1st appellant under Ex.A8, especially when 1st respondent attested the said document as a witness.

8. Per contra, the learned counsel for the respondents by taking this Court to the boundary description found in 1st respondent's title deed viz., Ex.B2 contended that in his title document the western boundary of the property conveyed under the document was mentioned as Thakku R.Ramasamy Iyer and L.Nagasamy Iyer house. The learned counsel by taking this Court to evidence of PW.1 and Ex.A1 and A2 submitted that Thakku R.Ramasamy Iyer house refers to the house of the appellant who purchased the same from one of the sharer of Thakku family viz., Thakku Ranganayulu. Therefore, it was the submission of the learned counsel for the respondents that when house of the 1st appellant was shown as respondents western boundary in their title document-Ex.B2, it necessarily leads to the conclusion that the suit Item-1, a narrow strip of land in between the two houses was also part of the conveyance under Ex.B2 in

favour of 1st respondent. The learned counsel also by taking this Court to the description in the schedule to Ex.B2 submitted that the 1st respondent purchased western house portion together with narrow strip of land on it's western side which was described as Wari Land under Ex.B2. Therefore, it is the submission of the learned counsel for the respondents that the 1st respondent purchased the suit property under Ex.B2 and he had established his exclusive right over the suit property. The learned counsel also submitted that the courts below granted a lesser relief in favour of the 1st appellant declaring the suit property is a common property and the respondents were satisfied with that and no appeal or cross appeal were filed by them. The learned counsel also had taken this Court to mortgage deeds executed by 1st respondent's predecessors in title wherein the suit property was described as lane portion and sought for dismissal of the second appeal.

9. The 1st appellant/plaintiff claimed exclusive right over the suit property under Ex.A8 dated 13.11.1972. A perusal of Ex.A8 would make it

clear that the eastern boundary of the property conveyed under exhibit was mentioned as Chokkalingam and Nagendraiyer house. Nagendraiyer is the 1st respondent in this appeal. The further description in Ex.A8 would show that the lane portion on the eastern side of the 1st appellant's house was also included in the property conveyed to him under Ex.A8. The said document was attested by 1st respondent as a witness.

10. Merely because, a document is attested by a person, I cannot jump to a conclusion that he had knowledge about the contents of document especially the boundary description, unless there is a positive supportive evidence for the same.

11. The 1st respondent herein also claims exclusive right over the suit Item-1 under Ex.B2. A perusal of title document of 1st respondent would show that in the boundary description Thakku R.Ramasamy Iyer house and L.Nagasamy Iyer house were shown as western boundary of the property conveyed under the document.

12. Thakku R.Ramasamy Iyer is none other than one of the sharer of Thakku family. A perusal of Ex.A1 and A2 would make it clear that the vendor of the appellant under Ex.A8 is none other than the descendant of Thakku family. Therefore, when the house of 1st appellant was shown as western boundary of property purchased by the 1st respondent under Ex.B2, it necessarily means that the suit lane portion was also included in the conveyance under the said document.

13. Moreover, the description of the property would also make it clear that the property conveyed under Ex.B2 includes the western Wari Land. Therefore, the narrow strip of land on immediate west of 1st respondent western wall was also conveyed to him under Ex.B2. Ex.B2-title document of 1st respondent was anterior to the title document of plaintiff viz., Ex.A8. It is also seen that Ex.B2 was attested by the 1st appellant. As mentioned earlier, merely because the 1st appellant attested the Ex.B2, I cannot come to a conclusion that he attested the document with knowledge of the contents

of document. As a general rule, the anterior title deed will prevail over the subsequent document.

14. In the case on hand, the title deed of 1st respondent is anterior in time and therefore, it should be given weightage over and above the title document of 1st appellant. However, respondents have not filed any appeal questioning the decree passed by the courts below declaring that common ownership of the appellant/plaintiff and respondents over the suit Item-1. Therefore, the findings of the court below as if the suit Item-1 is a common had become final as far as the respondents are concerned. The 1st appellant aggrieved by the said finding filed this second appeal, however, in view of the fact that his title document is subsequent to the title document of the 1st respondent, he cannot claim any exclusive right over the suit Item-1 by virtue of description found in his title document. Therefore, this Court has come to a definite conclusion that appellant has failed to prove the exclusive right over the suit Item-I.

15. Therefore, the 1st appellant failed to make out any case to set aside the findings of the Courts below that the suit property is a common property of the appellant and 1st respondent. As far as mandatory injunction prayer is concerned, both the Courts below have concurrently found that appellants are not entitled to mandatory injunction and the appellants have not made out any case to interfere with the said findings.

16. In view of the discussions made earlier, the question of law framed at the time of admission is answered against the appellant and in favour of the respondents.

In fine,

- (i) The Second Appeal is dismissed by confirming the judgment and decree passed by the Courts below.

(ii) However, in the facts and circumstances of the case, there will be no order as to costs.

(iii) Consequently, the connected miscellaneous petition is closed.

24.03.2023

NCC: Yes/No

Index: Yes/No

dm

To

1.The Principal District Judge,
Ramanathapuram.

2.The District Munsif,
Paramakudi.

3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

S.A.No.1068 of 1999

S.SOUNTHAR, J.

dm

Pre-delivery judgement in
S.A.No.1068 of 1999

24.03.2023