



S.A.No.1866 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 20.09.2024	Judgment Pronounced on 27.09.2024
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CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.1866 of 2003
and C.M.P.No.16919 of 2003

Murugavel

..Appellant

Vs.

1.Mannangatti @ Raja (Deceased)
2.Ambika
3.Tamilselvi
4.Loganathan
5.Silambarasan

..Respondents

[R2 to R5 brought on record as LR's of the deceased sole respondent vide order dated 01.03.2019 in C.M.P.Nos.2666 to 2668 of 2018 in S.A.No.1866 of 2019]

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 10.03.2003 made in AS.No.49 of 2002 on the file of the Principal District Judge, Villupuram, confirming the judgment and decree dated 21.12.2001 made in O.S.No.196 of 1994 on the file of the Principal District Munsif, Villupuram.



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For Appellant : Mrs.A.Nilaphar
for Mrs.R.Meenal

For Respondents : Ms.B.S.Mitraneeshaa
for M/s.V.Srimathi

JUDGMENT

The Second Appeal has been filed against the judgment and decree dated 10.03.2003 made in AS.No.49 of 2002 on the file of the Principal District Judge, Villupuram, confirming the judgment and decree dated 21.12.2001 made in O.S.No.196 of 1994 on the file of the Principal District Munsif, Villupuram.

2.The unsuccessful plaintiff, who lost concurrently before the Courts below, is the appellant herein. The plaintiff had sought for a relief of declaration of his title to suit 'B' schedule property and for a consequential permanent injunction to restrain the defendant from interfering with the plaintiff's possession and enjoyment of the suit 'B' schedule property.

3.The parties are described as per their litigating status before the Trial Court.



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4.The suit was resisted by the defendant on the ground that the defendant has been in peaceful possession and enjoyment of the 'B' schedule property described in the plaint for over thirty years and neither the plaintiff nor the plaintiff's predecessors-in-title were in possession and enjoyment of the said 'B' schedule property. Further, the defendant also denied the measurements and description of the suit schedule property as set out in the plaint and prayed for dismissal of the suit.

5.Before the Trial Court, on the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and Ex.A1 to Ex.A10 were marked as exhibits. On the side of the defendant, D.W.1 was examined and Ex.B1 to Ex.B18 were marked.

6.The Trial Court finding that the plaintiff has not established his title over 'B' schedule property and that the plaintiff was also not in possession of the suit 'B' schedule property, proceeded to dismiss the suit.



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7. Aggrieved by the said dismissal, the plaintiff preferred A.S.No.49 of 2002. The First Appellate Court concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved by the said concurrent findings, the present Second Appeal has been preferred.

8. On 24.12.2003, the Second Appeal was admitted by this Court on the following substantial questions of law:

“1. Whether in law the Courts below are right in failing to see that boundaries would prevail over measurements and that the confusion in the measurement in Exs.A3 to A5 was not significant enough to extinguish the appellant's title?

2. Whether in law the Courts below are not wrong in failing to grant a decree for at least the extent shown in the title deeds of the appellant by moulding the relief vide 1992 (2) MLJ 152?”

9. I have heard Mrs.A.Nilaphar, for Mrs.R.Meenal, learned counsel for the appellant and Ms.B.S.Mitraneshaa for M/s.V.Srimathi, learned counsel for the respondents.



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10.Mrs.A.Nilaphar, learned counsel for the appellant would state that 'A' schedule property was a larger extent of property and even in respect of 'B' schedule property, the dispute was only with regard to the East - West boundary and not in any other respect. The learned counsel for the appellant would take me through various exhibits filed on the side of the plaintiff and also attack the finding of the Courts below on the ground that valid settlement deeds duly executed and registered can never be questioned by a neighbour and in any event, even though there were incorrect measurements set out in the settlement deeds as well as sale deeds, the Court ought to have moulded the relief and restricted the right of the plaintiff in terms of Ex.A9, Sale Deed which was to a lesser extent.

11.The learned counsel for the appellant would take me through the report of the Advocate Commissioner who was appointed by this Court and contend that the Advocate Commissioner's report clearly overrules the objections regarding correlation and therefore, when the plaintiff had claimed only 42 feet on East – West and the same was shown to be available, the Courts below erroneously dismissed the suit.



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12.Per contra, Ms.B.S.Mitraneshaa, learned counsel for the respondents would submit that the sale deed under which the plaintiff purchased the property contained boundaries which did not even tally with the plaint schedule. She would also refer to the boundaries in various documents in Ex.A6 to Ex.A9 and state that the plaintiff was not even in a position to identify the schedule 'B' property and therefore, both the Courts rightly dismissed the suit on the ground that 'B' schedule property does not tallied with any of the boundaries.

13.Both the substantial questions of law are taken up together.

14.It is the specific case of the plaintiff that the plaintiff purchased the 'B' schedule property in and by a sale deed dated 06.01.1994 which has been marked as Ex.A9. It is the further case of the plaintiff that 'B' schedule property was originally purchased by one, Govindasamy Odayar under a registered sale deed dated 14.10.1905 and ever since he had been in possession and enjoyment of the same.



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15. According to the plaintiff, the said property was sold in the Court auction on 22.12.1938 and one, Natesa Pillai purchased the same, which is evidenced by sale deed dated 04.03.1940 marked as Ex.A3. Subsequently, the said Natesa Pillai sold the properties in favour of Govindasamy Odayar in and by sale deed dated 09.04.1941 under Ex.A4, who in turn sold the properties in favour of Vaduvambal, Selvambal and Kumudammal in and by a registered sale deed dated 12.05.1951.

16. It is the case of the plaintiff that even in the sale deed beginning 04.03.1940 in favour of the Natesa Pillai, the East – West boundaries were wrongly mentioned as South – North and South - North was wrongly mentioned as East – West. Two of the settlees, Vaduvambal and Selvambal executed settlement deed subsequently in favour of Gnanasoundari Ammal in respect of their 1/3rd share each, by settlement deeds dated 05.06.1974 which were marked as Ex.A6 and Ex.A7.

17. According to the plaintiff, the settlement deeds were acted upon and northern 20 feet portion with East – West running 150 feet was sold by



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Rajaguru and Gnanasoundari in favour of Thirunavukkarasu and Parimala by means of a registered sale deed and southern 20 x 150 feet was sold to Pethaperumal also by a registered sale deed. According to the plaintiff, 'B' schedule property is situate on the East of the 'A' schedule property and Rajaguru is entitled to 1/3rd share in 'B' schedule property and remaining 2/3rd share belongs to Gnanasoundari being legal heirs of Vaduvambal and Selvambal. It is from the said Rajaguru and legal heirs of Gnanasoundari that the plaintiff purchased the 'B' schedule property on 06.01.1994.

18.In contrast, the case of the defendant is that even according to the sale deeds relied on by the plaintiff, the East – West measurements are set out as 150 feet. The defendant has also denied the execution and attestation of the settlement deeds dated 05.06.1974 and 30.04.1973 in Ex.A6 and Ex.A8. According to the defendant, the plaintiff never prescribed any title to 'B' schedule property since the said 'B' schedule property has been in enjoyment of the defendant and the defendant's predecessors-in-title for the past several decades and at no point of time, the plaintiff or the plaintiff's predecessors-in-title were in possession and enjoyment of the property.



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19. According to the learned counsel for the appellant, the measurements even according to the plaintiff were interchanged and therefore, that cannot be a ground to reject the plaintiff's title. She would also submit that boundaries would prevail over extent and therefore, when the plaintiff had established title right from 1905 under Ex.A1, the defendant's claim under Ex.B16 and Ex.B17 cannot upset the title of the appellant.

20. The learned counsel for the respondent would however contend that in a case of this nature, the principle "boundaries will prevail over extent" would not apply since there is dispute even with regard to the boundaries and the learned counsel would contend that when even according to the plaintiff, 'B' schedule property lies on the eastern side of 'A' schedule property, then one of the boundaries of 'B' schedule property must reflect at least a portion of 'A' schedule property. Taking me through the various documents, the learned counsel for the respondents would elaborate her contention that none of the parent documents under which the plaintiff claims title, 'B' schedule is shown as boundary. She would therefore submit that the plaintiff has miserably failed to establish the lay of the suit property, especially 'B'



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schedule property. She would further submit that the Courts below have arrived at a factual findings which do not reserve interference in the Second Appeal, especially in absence of the substantial questions of law raised.

21.Having considered the rival submissions advanced by the learned counsel on either side and in answering the substantial questions of law, it is the specific case of the plaintiff that 'B' schedule property was lying adjacent to 'A' schedule property. According to the plaintiff, the plaintiff has described the title to 'B' schedule property and the defendant is only a neighbouring owner of another property which is situate on the East of 'B' schedule property and only because the defendant attempted to interfere with the plaintiff's possession and enjoyment of the 'B' schedule property, the suit came to be filed. However, to the contrary, it is the case of the defendant that the plaintiff has no interest in the 'B' schedule property at all. In this regard, the defendant would rely on the ad-measurements and boundaries set out in various registered documents under which the plaintiff claims title.

22.Admittedly, the Courts below, after thoroughly examined the oral and documentary evidence, have come to a categorical finding that the



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plaintiff has not been able to explain the discrepancy in the boundaries and further, the plaintiff has not been able to establish title and also possession in respect of 'B' schedule property. Excepting for filing registered documents, namely the settlement deeds and sale deeds, the plaintiff has not been able to satisfactorily show the Court that the plaintiff has been in physical possession. No revenue records have been filed to establish the factum of possession. Per contra, the defendant besides filing the parent title deeds, registered sale deeds in favour of the defendant, also exhibited House Tax receipts and Electricity Board Card to evidence possession of 'B' schedule property.

23.In a suit for declaration of title and permanent injunction, the burden is only on the plaintiff to establish and prove the claim of title, especially when title is called in question by the defendant. Here, the defendant has specifically set up a defence that 'B' schedule property belongs only to the defendant and not the plaintiff. In such circumstances, the burden was very heavy on the plaintiff to establish that the plaintiff is the lawful title holder to the 'B' schedule property.



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24.The Trial Court as well as the First Appellate Court have discussed the parent documents and also Ex.A9, Sale Deed under which the plaintiff purchased the property threadbare, its measurements as well as boundaries and rendered concurrent findings that the plaintiff neither established the title nor possession to the 'B' schedule property. It is the case of the appellant that the Courts below having accepted the title of the plaintiff, at least the Courts ought to have moulded the reliefs and granted a decree for lesser extent, namely 45 feet in respect of which the plaintiff had sought for a decree, even though the measurements of larger extent of the property did not tally. In fact, the error in the documents is admitted even by the plaintiff as can be seen in the plaint as well as in the evidence adduced on the side of the plaintiff. However, the plaintiff is now seeking the relief only in respect of 42 feet East – West.

25.Admittedly, the plaintiff has purchased only 42 feet East – West and 25 ½ North – South, totally in all 1071 sq.ft. Therefore, it is not as if the plaintiff is giving any concession by contending that the Courts ought to have moulded the relief for a lesser extent. In other words, the plaintiff is attempting to get a decree for the schedule of the property which has been



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purchased by the plaintiff and in such process, appears to give an impression that the plaintiff is giving up larger right available to the plaintiff.

26. Even before this Court, an Advocate Commissioner was appointed and he has filed a report. Plan -3 of the Advocate Commissioner's report pertains to the disputed land. Unfortunately, the Advocate Commissioner has not given the boundaries in his report in Plan - 3 and I do not find even the directions. However, at least the directions can be deciphered from the Plan -1 of the Advocate Commissioner's report which indicates the northern side with an arrow mark. In the light of the said report and plans, I am unable to see how the said report comes to the aid of the plaintiff.

27. Both the Trial Court as well as the First Appellate Court have independently discussed the boundaries in Ex.A6, Ex.A7 and Ex.A8 and found that the boundaries do not tally as claimed by the plaintiff. The Trial Court has also rightly found that North – South under Ex.A6 and Ex.A7 the property settled was only in respect of 150 feet by 26 1/3 feet on the East of the road and it was not known how the said Gnanasoundari acquired right in 'B' schedule property. The Courts below have clearly found that the plaintiff's



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title over 'B' schedule property has not been clearly established and even with regard to possession, the Courts below have rightly held that the plaintiff has not proved to be in possession of the 'B' schedule property.

28.Interestingly, the sale deed dated 10.03.1984 in Ex.B1 under which the plaintiff's father acquired half share in 'A' schedule property was exhibited on the side of the defendant and not by the plaintiff. In fact, the said document appears to have been withheld by the plaintiff since in the said document also the boundaries on the western side do not indicate that it is part of the property retained by the vendor but instead it is mentioned as சீனிவாச கவுண்டர் வகையறா தோட்டத்திற்கும், ஆழ்வார் மனைக்கும் (மேற்கு),

29.When it is the specific case of the plaintiff that the 'B' schedule property is adjoining the 'A' schedule property and lying on the East side of the 'A' schedule, as rightly contended by the learned counsel for the respondent, the documents would have definitely indicated the boundary to be 'A' schedule property or atleast a part of 'A' schedule property and are of the boundaries in 'B' schedule property ought to have indicated 'A' schedule property of the boundaries. It is admittedly not reflects in the present case



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and in the absence of revenue records to show physical possession and in the light of the fact that the plaintiff has not been able to establish his claim to the even to the said 42 feet on the eastern side and the documents also containing incorrect measurements and not in any way furthering the plaintiff's cause, the Courts below have rightly rejected the plaintiff's contentions and dismissed the suit.

30.I am conscious of the fact that sitting in Second Appeal, exercising power under Section 100 of Code of Civil Procedure, this Court cannot re-appreciate the evidence and upset concurrent findings, unless perversity is shown in the said findings or for other substantial grounds which are available under Section 100 of Code of Civil Procedure. In the present case, both the Courts have appreciated oral and documentary evidence available on record in a proper perspective and having tested the evidence adduced by the parties at trial, in the light of the pleadings of the plaintiff and the defendant, have rightly found that the plaintiff has miserably failed to discharge the burden of proof to establish title and also prove possession. I do not see any grounds to interfere with the said concurrent findings arrived at by the Courts below. For all the above reasons, the substantial questions of law are



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answered against the appellant.

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31.In fine, the Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

27.09.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
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P.B.BALAJI, J.

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To

- 1.The Principal District Judge, Villupuram.
- 2.The Principal District Munsif, Villupuram.
- 3.The Section Officer, V.R.Section, High Court, Madras.

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and C.M.P.No.16919 of 2003

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