



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.No.740 of 2003

Kuppusami Padayachi(died)

2.Sivapackiam

3.Govindan

4.Ambika

5.Venkatasalam

6.Periasamy

... Appellants

(Appellants 2 to 6 are brought on record
as the LR's of the deceased sole appellant
vide order dated 14.11.2018 made in
CMP.No.17246 to 17248/2018 (SMSJ))

vs.

1.Ranganathan

2.Radhakrishnan

3.Veeramani

4.Sundaramurthi

... Respondents

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure

Code against the judgment and decree dated 31.01.2002 passed in



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A.S.No.39 of 2001 on the file of the Principal Sub Court, Vridhachalam, partly allowing the judgment and decree dated 27.04.2001 passed in OS.No.7 of 1997 on the file of the District Munsif cum Judicial Magistrate, Neyveli.

For Appellants : M/s.R.Meenal
For Respondents : No Appearance

J U D G M E N T

The plaintiff in the suit is the appellant before this Court. Pending appeal, the sole appellant died. Appellants 2 to 6 are substituted as legal heirs. The second appeal is filed challenging the judgment and decree dated 31.01.2002 in AS.No.39 of 2001 on the file of the Principal Sub Court, Vridhachalam, partly allowing the judgment and decree dated 27.04.2001 in OS.No.7 of 1997 on the file of the District Munsif Cum Judicial Magistrate, Neyveli.

2. For the sake of convenience, the parties are referred to as per the ranking before the trial court.



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The brief facts, which gave rise to the present Second Appeal, are as

follows:

3. According to the plaintiff, the plaintiff is the absolute owner of the property having purchased from one Kamaraj and Nedumaran sons of Ramanujam through a sale deed dated 07.03.1996 in Ex.A.1. It is the case of the plaintiff that beneath the land of the plaintiff, the lands belonging to the defendants are situated. Since the vendors of the plaintiff have sold the property to the plaintiff without selling the land to the defendants, the defendants became inimical and created disturbances in the peaceful possession and enjoyment of the property by the plaintiff. Further, according to the plaintiff, on 15.11.1996, the defendants attempted to encroach and interfere into the suit property, and therefore the plaintiff has come up with suit for declaration and permanent injunction.



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4. The first defendant has filed the written statement adopted by defendants 2 to 4 and resisted the suit. It is the case of the defendants that the suit property relates to S.No.68/1 and the total extent of land is 0.80 cents. Out of the total land, an extent of 0.28 cents was jointly purchased by Ramanujam and Manonmani Ammal on 31.01.1977 and thereafter in the year 1980, through an oral partition, out of 0.28 cents, 0.02 cents were left for a common pathway, and the balance extent of 0.26 cents was divided between them. Of this, 0.13 cents in the higher portion were allotted to Ramanujam, and 0.13 cents in the lower portion were allotted to Manonmani Ammal. From the date of partition, the parties have been in possession and enjoyment of their respective shares of the suit properties. In respect of 0.13 cents of land which was allotted to Manomani Ammal, she sold the property in favour of the first defendant on 02.02.1994 through Ex.B.2. In the sale deed executed in Ex.B.2, Ramanujam's sons, i.e, Kamaraj and Nedumaran were the attestors to the sale deed. Thereafter, when the property was sold in favour of the plaintiff in Ex.A.1, Kamaraj and Nedumaran who had



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attested the sale deed in Ex.B.2, conveyed an extent of 0.14 cents instead of 0.13 cents, without mentioning, the 0.02 cents allotted for the common way of access. It is the case of the defendants that all the parties, even the vendors had been enjoying the property of a common way of access for nearly 12 years. As such, 0.01 cents excessively sold in favour of the plaintiff will not grant any specific right for the plaintiff, even the vendors did not have any right over 0.01 cents except by way of common enjoyment by both the parties.

Evidence and Documents:

5. During Trial, PW.1 & PW.2 were examined on the side of the plaintiff and Ex.A.1 to A.5 were marked. On the side of the defendants DW.1 & DW.2 were examined and Ex.B.1 to Ex.B.12 were marked.

Findings of the Trial Court:

6. After appreciating the evidence and documents, the trial court dismissed the suit. The trial court found that when the 0.02 cents of



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lands had been earmarked for the common way of access, only 0.26 cents of land were available. But, however when Ex.A.1 was executed, the vendors, who are also the attestors in Ex.B.2, had wrongly included 0.01 cent more, which is beyond the lands available with the vendors of the plaintiff. Aggrieved, the plaintiff filed appeal in AS.No.39/01 on the file of Principal Sub Court, Vridhachalam. The Lower Appellate Court, after reappraising the evidence, by judgment and decree dated 31.01.2002, partly allowed the appeal and partly decreed the suit. The Lower Appellate Court had come to the conclusion that as per the document in Ex.B.3, 0.05.5 ares in S.No.68/1A1 belongs to the plaintiff, and the common way that runs in S.No. 68/1A3 belongs to both the plaintiff and the defendants, and the defendant shall not interfere in the possession of the property by the plaintiff in S.No.68/1A1. Aggrieved by the judgment and decree, in respect of one cent that was declared to be a common way, the plaintiff has come up with the above appeal.



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Substantial questions of law:

7. This Court by order dated 27.06.2023, admitted the second appeal in the following substantial questions of law.

“1.Whether in law the courts below are right in presuming knowledge of the vendors of the appellant as per Section 115 of the Evidence Act with regard to the recitals in Ex.B.2 sale deed merely because they attested it, ignoring the ratio laid down in 1997 (2) LW 366?”

Submission by the learned counsel for the Appellant:

8. The learned counsel appearing for the appellants argued that when admittedly the plaintiff has purchased an extent of 0.14 cents of land through Ex.A.1, and there is no mention of any common way of access in the sale deed executed, the plaintiff has proved the title to the suit properties and are entitled for declaration and also for permanent injunction.



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9. The learned counsel further contended that when the Lower Appellate Court has given the finding that the plaintiff has purchased 0.01 cents in Ex.A.1. The Lower Appellate Court erroneously has set apart one cent from out of the land purchased by the plaintiff and declared it to be a common way of access to be enjoyed by the plaintiff and the defendant.

10. The learned counsel further contended that the vendors of the plaintiff were only attestors to the sale deed executed in favour of the first defendant in Ex.B.2, which cannot in any way be put against the case of the plaintiff. The learned counsel further contended that it is a settled proposition of law that merely because the parties are attestors to the documents, it cannot be taken that they had knowledge of the contents of the deed and that cannot be put against them.

11. The learned counsel further argued that the Lower Appellate Court, by placing reliance on the attestation made by the vendors of the



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plaintiff, had erroneously even though while partly allowing the appeal has held against the plaintiff in respect of the 0.01 cents of land.

Therefore, the learned counsel further submitted that the finding of fact arrived at by the Lower Appellate Court is not based on the materials available on record, and therefore perverse, and sought for allowing the second appeal.

12. Even though the names of the learned counsel for the respondent were printed in the cause list, there is no appearance on the side of the respondent.

Analysis:

13. Admittedly, an extent of 0.28 cents of land out of a total extent of 0.80 cents in S.No.68/1 was purchased by Ramanujam and Manonmani Ammal through a sale deed dated 31.01.1977. It is also admitted case between the parties that there was an oral partition in the year 1980 and in the oral partition, the properties were divided between



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Ramanujam and Manonmani Ammal. It is the case of the plaintiff that out of the half of the lands allotted to the share of Ramanujam, his sons Kamaraj and Nedumaran executed the sale deed in Ex.A.1 in favour of the plaintiff by conveying an extent of 0.14 cents. However, it is the case of the defendant that during the oral partition, 0.02 cents of land was earmarked as a way of access for both the parties and only the balance land measuring 0.26 cents was divided among the parties. As such, both the parties were entitled only to 0.13 cents of land and both the parties have a common right of way of access in the 0.02 cents of land.

14. It could be seen that when the lands were sold by Manonmani Ammal in favour of the defendant in Ex.B.2 dated 02.02.1994, an extent of 0.13 cents of land has been conveyed out of the total extent of 0.26 cents of land. It is also specifically mentioned in the document that the party will have a common way of access out of 0.02 cents of land. It is also pertinent to mention here that the sons of Ramanujam, that is Kamaraj, Nedumaran had been the witnesses to the document, whereby



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0.13 cents of land was conveyed to the defendant. Therefore, when the sale in favour of the defendant was executed, the common way of access in 0.02 cents of land was given to both the parties and without any denur the parties have executed the document. Thereafter, when Kamaraj and Nedumaran conveyed the properties in favour of the plaintiff through sale deed in Ex.A.1 dated 07.03.1996, instead of conveying 0.13 cents of land and also by giving rights in common way of access in the 0.02 cents of land, they conveyed an extent of 0.14 cents, which is one cent more than the land which was actually available with them.

15. It is also relevant to mention that in the document executed in favour of the plaintiff in Ex.A.1, nearly 2 years after the sale deed executed in favour of the defendant, it has been mentioned that the lands out of an extent of 0.27 cents in Survey No.68/1A. When 0.14 cents of land has been conveyed in Ex.A.1, then naturally the total extent should have been 0.28 cents. From this, it could be seen that only 0.26 cents of land was available after two cents was set apart for the common way of



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access, and out of which, when the land was sold to the defendant, it was correctly mentioned as 0.13 cents. However, when the lands were conveyed in favour of the plaintiff, the one cent being excess has been added and conveyed in his favour.

16. However, from the evidence let in by the parties, it could be easily seen that the access to 0.02 cents has been set apart by both the vendors of the plaintiff and the defendant when there was an oral partition executed in the year 1980, which was also mentioned in the sale deed executed in favour of defendant in Ex.B.2. The Lower Appellate Court has rightly found and had arrived at the finding of fact that the plaintiff is entitled only for a declaration in respect of 0.13 cents of land, that is 0.05.5 ares in S.No.68/1A1 and in so far as a common way of access in 0.00.5 ares of land in S.No.68/1A3, both the plaintiff and the defendant will have the right and have a common way of access. As such, the finding of fact arrived at by the Lower Appellate Court is based on the document available on record and is not perverse.



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17. In view of the above finding of fact, the substantial question of law is answered against the appellant and in favour of the respondent.

Therefore, the second appeal stands dismissed. However there is no order as to costs.

04.03.2024

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Index : Yes / No

Neutral Citation : Yes / No

To

1.The Principal Sub Court, Vridhachalam.

2.The District Munsif cum Judicial Magistrate,
Neyveli.



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G.ARUL MURUGAN.,J.

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