



S.A.No.1019 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.1019 of 2022

1. Moorthy @ Krishnamoorthy

2. Vanitha

...Appellants

Vs.

1. Pichai Reddy (died)

2. Aayyammal

3. Gowri

4. Selvi

5. Mohan

6. Lakshmi

7. Venkatesan

8. Chandran

... Respondents

R1 died. RR2 to RR8 are brought on record as legal heirs of the deceased R1 vide court order dated 01.09.2023 made in CMP No.502/2023.

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 20.09.2021 passed in A.S. No.1 of 2018, on the file of the Sub-Court, Tiruttani, upholding the decree and judgment dated 31.08.2017 passed in O.S.No.65 of 2010, on the file of the District Munsif Court, Tiruttani.

Page 1 of 17



S.A.No.1019 of 2022

WEB COPY

For Appellant : Mr.A.R.Suresh

For R2 to R8 : Mr.P. Satheeshkumar

JUDGMENT

The appellants are the defendants in the suit in O.S.No.65/2010 on the file of the District Munsif Court, Tiruttani. The first respondent/plaintiff filed the said suit for a declaration to declare his title over the suit property situate in Survey Number 158/2 of Mamandoor village, Tiruttani Taluk, Tiruvallur District, measuring 3¼ cents within the boundaries stated in the plaint schedule and for a mandatory injunction directing the defendants to remove the superstructure put up by them in the suit property and to deliver the vacant possession of the same.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.



S.A.No.1019 of 2022

WEB COPY

3.The case of the plaintiff in a nutshell is as follows :

3.1. The suit property originally belonged to one Munuswamy Reddy, son of Govinda Reddy. The plaintiff purchased the suit property from Munuswamy Reddy through a registered sale deed dated 12.11.1973 (Ex.A1) for a valid consideration. Ever since the date of purchase, the plaintiff has been in possession and enjoyment of the suit property by putting up a thatched house. He is also paying necessary house tax (Ex.A2 series) to the Government. The defendants attempted to trespass into the suit property. Therefore, the plaintiff sent a request letter to the Tahsildar, Tiruttani, to measure the suit property. Accordingly, the Taluk Head Surveyor came down to the village, for measuring the property. However, he was prevented by the defendants. According to the plaintiff, the defendants are total strangers and they do not have any title or possession over the suit property. They have also put up a construction in the suit land. Therefore, the plaintiff has filed the suit for the reliefs as stated in paragraph number 1.



S.A.No.1019 of 2022

WEB COPY

4. The suit was resisted by the defendants on the following grounds:

- i. The defendants had purchased 595 sq. ft of land in Survey Number 158/2 of Mamandoor village from one Neelaveni, daughter of Munuswamy Reddy, through a registered sale deed dated 24.02.2010 (Ex.B1).
- ii. The defendants, after obtaining proper approval from Mamandoor Panchayat, constructed a concrete house measuring East-West 31 feet, North-South 26 feet, leaving 2½ feet space on the eastern side and 3 feet on the west. The said house bearing Door No.2/171 has also been assessed for property tax vide assessment No.332.
- iii. A joint patta was issued in favour of the defendants and hence the suit filed by the plaintiff is liable to be dismissed.

5. On the basis of the above pleadings, the trial Court framed the following issues :



S.A.No.1019 of 2022

WEB COPY

- i. *"Whether the plaintiff is entitled to declaration as sought for?*
- ii. *Whether the plaintiff is entitled to mandatory injunction as sought for?*
- iii. *Whether the plaintiff is entitled to delivery of possession as sought for?*
- iv. *Whether the suit is bad for non joinder of necessary parties?*
- v. *Whether there cannot be an injunction against co-owner?*
- vi. *Whether court fee paid is not correct?*
- vii. *To what relief, the plaintiff is entitled ?"*

6. In the trial Court, the plaintiff examined himself and three other witnesses and marked Ex.A1 to Ex.A3. The first defendant examined himself and five other witnesses and marked Ex.B1 to Ex.B8. An Advocate Commissioner was appointed by the trial court and he filed his report and plan, which were marked as Ex.C1 and Ex.C2 respectively.

7. After full contest, the learned District Munsif, Tiruttani,



S.A.No.1019 of 2022

WEB COPY

decreed the suit in favour of the plaintiff, vide her decree and judgment dated 31.08.2017, on the following grounds:-

- i. The plaintiff has proved his title over the suit property by adducing acceptable evidence.
- ii. No single piece of document was marked on the side of the defendants to prove their contention that they have title to the suit property.
- iii. The property which originally belonged to Munuswamy Reddy was sold to the plaintiff through Ex.A1 and Munuswamy Reddy's daughter did not have have any right to convey the land in favour of the defendants.

8. Aggrieved over the decree and judgment passed by the trial court, the defendants filed an appeal in A.S.No.1/2018, before the Sub-Court, Tiruttani. The learned Subordinate Judge, Tiruttani, upheld the findings recorded by the trial court and since the trial court did not specify the area to be removed by the defendants, directed the defendants



S.A.No.1019 of 2022

WEB COPY

to remove the superstructures raised in the red marked area in the survey plan (measuring 3/4 cents) and hand over the possession of land to the plaintiff without any let or hindrance, vide her decree and judgment dated 20.09.2021, as against which the present second appeal is filed.

9. The second appeal was admitted by this Court on the following substantial question of law:

" (a) Whether in the absence of measurement in Exhibit A1 sale deed dated 12.11.1973, the extent of land alleged to have been purchased would prevail over the boundaries referred in the sale deed Exhibit A1?

(b) Whether in the absence of specific pleading, oral and documentary evidence as to the measurement of the extent and identity, the relief of mandatory injunction is maintainable in law?

(c) Whether is it proper to the Courts below to ignore the Doctrine and principle that "Boundaries will prevail over the extent", when admittedly in the Exhibit A1 sale deed dated 12.11.1973 there is no specific linear measurements to the extent referred and the boundaries to the document are not disputed by either parties to the suit?"



S.A.No.1019 of 2022

WEB COPY

10. During the pendency of the present appeal the first respondent/plaintiff died and his legal heirs were brought on record as respondents 2 to 8.

11. Heard Mr.A.R.Suresh, learned counsel appearing for the appellants and Mr.P. Satheeshkumar, learned counsel appearing for the respondents.

12. In order to prove the title over the suit property, the plaintiff relies on the sale deed Ex.A1. A perusal of the sale deed (Ex.A1) shows that the plaintiff has purchased 3 ¼ cents of land out of 38 cents from one Munuswamy Reddy. The boundaries are described in the sale deed as under:

1. Ragava Reddy's house on the south.
2. Kunnam Reddy's house on the east.
3. Pandi Krishna Reddy's house on the north.
4. Munuswamy Reddy's house on the west.



S.A.No.1019 of 2022

WEB COPY

A perusal of the Written statement and the evidence of the defendants shows that the defendants had admitted that the plaintiff purchased the suit property from Munuswamy Reddy. However, their contention was that they have not encroached upon the property of the plaintiff. According to them, they purchased 595 sq. ft of land from Neelaveni, daughter of Munuswamy Reddy, through a sale deed dated 24.02.2010 (Ex.B1). It is seen from Ex.B1 that the plaintiff's property was shown as eastern and southern boundaries of the property purchased by the defendants. According to the defendants, after the demise of Munuswamy Reddy, the disputed property devolved upon his daughter Neelaveni as she was the only legal heir and that she sold the said property in favour of the defendants.

12.1. The specific case of the plaintiff is that the defendants had encroached upon the land owned by the plaintiff. It is pertinent to point out that there is no dispute with regard to the measurements



S.A.No.1019 of 2022

WEB COPY

indicated in the sale deed Ex.A1. On the other hand, the defendants had not established as to how their vendor Neelaveni had any right over the property which was already sold in favour of the plaintiff. Therefore, there is no difficulty in holding that the plaintiff has title over the suit property.

12.2. An Advocate Commissioner was appointed in the instant case by the trial court and he filed his report and sketch (Ex.C1 and Ex.C2). The Taluk surveyor measured the suit property. It is seen from Ex.C1 and Ex.C2 that survey number 158/2 was subdivided into survey numbers 158/2A to 158/2J. The surveyor, in his plan, had identified orange marked area and red marked area as the properties in the present suit and as per his report survey number 158/2D measures 2 ½ cents and the red marked portion in the said area measures ¾ cents. It is seen from the records that the plaintiff has purchased 3¼ cents of land. Actually the plaintiff is in possession of 2 ½ cents and the remaining ¾ cents lies in the encroached land. The defendants also did not raise any objection to the Advocate Commissioner's report and plan. Therefore,



S.A.No.1019 of 2022

WEB COPY

both the courts below had concurrently held that the plaintiff has got title over the suit property and that the defendants had encroached upon the suit property of the plaintiff by putting up a superstructure. The first appellate court directed the defendants to hand over vacant possession of the encroached portion which is shown as red marked area in the survey plan (measuring 3/4 cents). Both the courts below had, in fact, analysed the evidence on record threadbare. In fact the first appellate court in its judgment has observed thus:

"15. DW1 has stated that he has knowledge about the Ex.A1. DW1 admits that he has constructed a house in the suit property. DW3 has deposed that he has knowledge about the Ex.A1. DW6 during the cross examination admitted that the Plaintiff had purchased the suit property through Ex.A1. The property belonged to Munuswamy already sold to the Plaintiff through Ex.A1. How the Munuswamy Reddy's daughter has got right to sell the same property again is not proved. In view of foregoing discussions, Plaintiff's right and title over the suit property is proved through Ex.A1. Moreover, the Defendants have admitted the Plaintiff's right in respect of the suit property. Hence, the plaintiff is entitled to declaration of his right and title in respect of the suit



S.A.No.1019 of 2022

WEB COPY *property and the plaintiff is entitled to the recover of the suit property after removing the encroachment made by the Defendants by constructing a house. Hence, these issues are decided in favour of the plaintiff."*

16. The Trial Court had considered that the Survey No.158/2 belongs to 6 families and each as 6 cents and they have left 2 cents for common passage. Out of 6 co-owners Pandi Perumal Reddy had 2 sons by name Pandi Govinda Reddy and Krishna Reddy. Pandi Perumal Reddy had a son name Pandi Munuswamy Reddy who is the vendor to the Plaintiff. The Plaintiff had purchased the property devolved on Munuswamy. In respect of Krishna Reddy share, it is stated that the mother of the Defendant purchased it from the wife of Krishna Reddy. It is an oral sale. No document is filed. And that was not the disputed property, the Court did not probe into it. As rightly discussed by the Trial Court that when Munuswamy had sold the entire property belonging to him in the said Survey Number his daughter Neelaveni had no right over the said Survey No.158/2. But in Ex.A1 in the description of property the house of Munuswamy was mentioned as Western boundary. The Defendant pleaded that he purchased that



S.A.No.1019 of 2022

WEB COPY

Western house and the suit property is marked as one of boundary in Ex.B1. The Court does not want to harp upon the title of the Defendant over the property mentioned in Ex.B1. The title of the Plaintiff as mentioned in Ex.A1 was declared in the earlier issue. Now the point for determination is to what extent in the suit property the Defendant had encroached for granting relief of possession and mandatory injunction. It is not the case of the Plaintiff that the Defendant had encroached the entire suit property. It is stated that the Defendant had encroached in the front side of the suit property. In such circumstances, the actual measurement of encroachment is to be described and identified. The Advocate Commissioner who inspected the suit property had filed a report without giving the correct particulars of encroachment stating that there was no encroachment. He had simply stated that Survey No.58/2 was subdivided into 158/2A and 158/2B. But had not mentioned anything about which survey Number is enjoyed by him. Further, it seems that the Commissioner had visited the property without the help of Surveyor. It is stated by the PW1 in his cross examination that Surveyor had not accompanied the Commissioner. But along with the Commissioner Report the Survey plan was marked. From



S.A.No.1019 of 2022

WEB COPY

the Plan annexed with the Commissioner Report Ex.C1. The Survey No.158/2 was divided into Survey Nos.158/2A to 158/2J. The Surveyor had identified orange marked area and red marked area as properties found in O.S.No.65/2010 that is the present suit. He had stated that Survey No.158/2D measures 02 1/2 cents and red marked portion is the area measuring 3/4 cents. It is stated "I.A.No.236/10 in O.S.No.65/10 க்கு உட்பட்ட புல எண் 158/2Cல் எடுக்கவேண்டிய பரப்பு 00030 ச.மீட்டர் 003/4 சென்ட். It is then that the red marked portion in the Commissioner Surveyor report was the land to be recovered for the suit property. Ex.A1 is a document of 30 years which is not disputed. Actually on the state, the Plaintiff was in possession of 21/2 cents and the remaining 3/4 cents lies with the adjacent land. The measurement as per Ex.A1 by the Surveyor is taken for consideration. On perusal of records, it is seen that no objection was stated by the Defendants in respect of Commissioner Report. Hence, it holds good as not rebutted. Though the plaint is devoid of measurement particulars there is pleading regarding encroachment in the plaint paras and in the relief. The Plaintiff was prevented from measuring the property before suit. So he could not furnish particulars. The measurement



S.A.No.1019 of 2022

WEB COPY

is clearly given by the Surveyor in his report. In order to avoid pulling the Plaintiff go to another round of litigation, the Court is of the considered opinion that when the encroachment is proved through materials based before it, the Court can pass a Decree. The Trial Court had not discussed about the extent of constructions to be demolished and decreed the suit relief for mandatory injunction to the total suit property. This may cause chaos while taking delivery of property. Hence, this Court is inclined to slightly modified the Decree in respect of Mandatory Injunction. The Trial Court is modified by annexing the Surveyor Plan for the relief of Mandatory Injunction.

17. On the material records and the evidences, this Court in addition to the discussions of the Trial Court finds that the Plaintiff is entitled for the relief of Mandatory injunction over the property mentioned in red colour in the survey plan. The Surveyor plan may form part of this decree."

The above observations of the first appellate court cannot be found fault with and the substantial questions of law are answered against the appellant.



S.A.No.1019 of 2022

WEB COPY

13. In the result,

- i. the Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 20.09.2021 passed in A.S. No.1 of 2018, on the file of the Sub-Court, Tiruttani, and the decree and judgment dated 31.08.2017 passed in O.S.No.65 of 2010, on the file of the District Munsif Court, Tiruttani, are upheld.

12.11.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The Subordinate Judge, Tiruttani.
2. The District Munsif, Tiruttani.
3. The Section Officer, VR Section, High Court, Madras.



WEB COPY



S.A.No.1019 of 2022

R. HEMALATHA, J.

bga

S.A.No.1019 of 2022

12.11.2024