



S.A.No.585 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.03.2024	Delivered on : 21.03.2024
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THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.No.585 of 2012
and
M.P.Nos.1 of 2013 & 2 of 2014

Mohammed Munvar

... Appellant

vs.

1.N.C.Nesan

2.Shanthi Usha Kumari

...Respondents

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 31.01.2012 in A.S.No.7 of 2011 passed by the learned Subordinate Judge, Poonamallee, confirming the judgment and decree dated 29.09.2010 in O.S.No.616 of 2004 passed by the learned Additional District Munsif, Poonamallee.

For appellant : Mrs.Hema Sampath, Senior Counsel
for Mr.S.Jaganathan

For respondent-1 : Mrs.Chitra Sampath, Senior Counsel
for Mr.J.Saravanavel

For respondent-2 : Mr.M.Muthusamy,
Government Advocate



S.A.No.585 of 2012

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J U D G M E N T

The first defendant in the suit is before this Court in this Second Appeal. The plaintiff is the first respondent herein and the second defendant is the second respondent herein.

2. This Second Appeal has been filed challenging the judgment and decree dated 31.01.2012 in A.S.No.7 of 2011 on the file of the Subordinate Court, Poonamallee, confirming the judgment and decree dated 29.09.2010 in O.S.No.616 of 2004 on the file of the Additional District Munsif Court, Poonamallee.

3. For the sake of convenience, the parties will be referred to as per their ranking before the Trial Court.

The brief facts, which gave rise to this Second Appeal, are as follows:

4. According to the plaintiff, he is the owner of the property



S.A.No.585 of 2012

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measuring an extent of 7,200 sq.ft in the Survey Nos.370/7A, 370/7B & 370/5 in Nerkundram Village covered under patta no.111. The plaintiff had purchased the property from one M.R.Kadambadi, represented by his power agent V.Gnanaraj through a sale deed dated 07.06.1984. After his purchase, he had obtained patta and he was in actual possession and enjoyment of the property. The plaintiff had sold an extent of 4,800 sq.ft., out of the total extent of 7,200 sq.ft. to one T.T.Balagangatharan, through a registered sale deed dated 23.01.1998 and retained the balance extent of 2400 sq.ft. for his own purpose. In the suit, the property purchased by the plaintiff from the said Kadambadi through sale deed dated 07.06.1984 is described as 'A' schedule, a portion of the property sold by the plaintiff to one Balagangatharan is described as 'B' schedule and the remaining lands retained by the plaintiff for his own use are described as 'C' schedule.

5. According to the plaintiff, even though the parent deed consisted of Survey Nos.370/7A, 370/7B and 370/5, which have been subsequently subdivided as Survey Nos.370/8, 370/9 and 370/10, the



S.A.No.585 of 2012

remaining land in occupation of the plaintiff is situated in Survey No.370/10, measuring 2,400 sq.ft. and is mentioned as 'C' schedule.

6. While so, during the months of November and December 2000, when the plaintiff was absent, as he had gone to his native place in Kerala, the first defendant unlawfully trespassed into the lands and put up construction. Immediately, in January 2001, the plaintiff had requested the first defendant to deliver the vacant possession that was trespassed by him. But, since the first defendant claimed that he was the owner, the plaintiff caused a legal notice on 02.01.2001. The first defendant, on receiving the notice, issued an evasive reply on 05.01.2001. While so, the second defendant herself trespassed into another portion of property in 'C' schedule and had put up construction. The plaintiff requested the second defendant to deliver the vacant possession and the same was evaded by her. The defendants are strangers and they have no manner of right in 'C' schedule property. As such, the plaintiff has come up with the suit for declaration and after removing the superstructure, for delivery of possession.



S.A.No.585 of 2012

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7. The first defendant resisted the suit by filing a written statement denying the fact that the plaintiff had purchased the property in Survey No.370/10. According to this defendant, the lands in Survey No.370/7 in Nerkundram Village were owned by one Kadambadi Naickar. He had personally executed a sale deed dated 22.10.1984 in his favour conveying an extent of 2400 sq.ft. and also the first defendant is in possession of the property. After the purchase, the defendant has constructed a building and is residing in the property. The building had been assessed to the property tax and he has been paying the tax, electricity charges and he is in legal possession of the property and not a trespasser. He was a *bona fide* purchaser for value and his possession is open, continuous and uninterrupted for nearly 19 years. Except this defendant, no one else has any right over the suit property and in any event, he had prescribed title to the suit property by adverse possession also. Since this defendant had constructed a building by spending more than Rs.3 lakhs and the plaintiff never raised any objection, he is estopped by his conduct. The suit property had not been properly



S.A.No.585 of 2012

described and the plaintiff had obtained wrong subdivision and patta and he is making a claim over the defendant's property. After purchasing, the first defendant had, in turn, sold 570 sq.ft. to one Kalyani Achari by a sale deed dated 14.06.1995. From the said Kalyani Achari, the second defendant, by sale deed dated 28.08.1996, had purchased and put up a residential building and is also residing there. The suit property has not been properly identified and even assuming that the plaintiff has got any title, it is barred by limitation and sought for dismissal of the suit.

8. The second defendant had also filed a separate written statement. According to her, she had purchased the property from one Kalyani Achari through the sale deed dated 28.08.1996 and immediately, constructed a building and is residing there. This defendant is paying electricity charges and tax and she is in the legal possession. After perusing the encumbrance certificate and obtaining legal advice, she had purchased the property and hence, she is in open, continuous and uninterrupted possession for nearly 19 years and sought for dismissal of the suit.



S.A.No.585 of 2012

Evidence and documents:

9. During trial, the plaintiff examined himself as P.W.1 and one Balagangatharan, who purchased the 'B' schedule property as P.W.2 and marked Exs.A1 to A14. On the side of the defendants, the first and second defendants examined themselves as D.W.1, D.W.2, respectively and one Radha as D.W.3 and marked Exs.B1 to B19.

10. Two documents were marked through witnesses as Exs.X1 and X2.

Findings of the Courts below:

11. The Trial Court, after appreciating the evidence and documents, decreed the suit. The Trial Court found that the plaintiff has proved his title to the suit property and from the sale deeds, relied on by the defendants, they have not established that they pertain to the suit property.

12. Aggrieved by the same, the defendants filed an appeal in A.S.No.7 of 2011 on the file of the Subordinate Court, Poonnamallee.



S.A.No.585 of 2012

WEB COPY

The Lower Appellate Court, after re-appreciating the evidence, by judgment and decree dated 31.01.2012, dismissed the appeal. The Lower Appellate Court found that even though there are small discrepancies in the schedule of property of the plaint, however, the suit property is able to be identified based on the survey numbers given and found that the plaintiff has established his title to the suit property.



S.A.No.585 of 2012

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13. Aggrieved by the concurrent finding of fact, the first defendant alone is before this Court in this Second Appeal.

Substantial questions of law:

14. This Court, by order dated 03.09.2012, admitted the Second Appeal and framed the following substantial questions of law:

1. Whether the Courts below are right in decreeing the suit for declaration and recovery of possession after holding that the description of the property is vague?

2. Whether the Courts below are right in decreeing the suit for declaration and recovery of possession merely based on patta and FMB?

3. Whether the Courts below have omitted to consider failure on the part of the plaintiff to correlate the survey numbers on the plaint 'C' schedule property regarding which the reliefs have been claimed?"

15. Pending this Second Appeal, this Court, by order dated 12.02.2015, based on the submissions made by both the counsels, appointed an Advocate Commissioner for the purpose of identifying the



S.A.No.585 of 2012

properties with the assistance of the Surveyor, to correlate the properties with reference to the documents in the survey records and to submit a report locating the suit properties, viz., schedule A, B and C and the properties of the defendants. Thereafter, again, by order dated 31.08.2016, this Court permitted the Advocate Commissioner to take assistance of the District Surveyor to identify the properties and take measurements. Based on the orders passed, the Advocate Commissioner had filed two Preliminary Reports on 27.11.2015 and 18.01.2016 and thereafter, filed a Final Report on 28.11.2016. Objections were filed for the Advocate Commissioner's Report on 27.11.2015 and also for the Surveyor's Report. Further, the matter was sent to the Master Court for recording evidence. The Advocate Commissioner was examined as C.W.1, the Deputy Inspector of Survey, Thiruvallur was examined as C.W.2 and also the Assistant Director of Survey, Thiruvallur was examined as C.W.3 and the documents in Exs.C1 to C13 were marked. The Final Report of the Advocate Commissioner was marked as Ex.C8 and the original patta proceedings was marked as Ex.C13.

Submissions on both sides:



S.A.No.585 of 2012

WEB COPY

16. Mrs.Hema Sampath, learned Senior Counsel appearing for the first defendant/appellant argued that the property has not been properly identified in the suit and the plaintiff has not proved his title to the property. The learned Senior Counsel further argued that when Kadambadi Naickar got the properties in Survey No.370/5 along with his two brothers, it has not been established as to how he had executed the power for the entire extent in favour of Gnanaraj in Ex.A13 and therefore, the plaintiff has not proved the title to the property. Even though the plaintiff had, admittedly, purchased the lands only in Survey Nos.370/7A, 370/7B and 370/5 through the sale deed in Ex.A1, the patta issued in Ex.A2 is in respect of Survey Nos.370/8, 370/9 and 370/10, which is completely different from the sale deed and therefore, the plaintiff failed to establish the title and identify the suit properties.

17. The learned Senior Counsel further contended that when, admittedly, Kadambadi Naickar owned an extent of 57 cents in Survey No.370/7, which he got through partition in Ex.A10, he had conveyed only an extent of 2,400 sq.ft. in favour of the first defendant, in which, the first defendant had rightly put up the construction and he is residing



S.A.No.585 of 2012

there. Out of the same, a portion of the property i.e., 570 sq.ft. was sold to one Kalyani Achari, who, in turn, had conveyed an extent of 570 sq.ft. to the second defendant and further, she had put up construction and residing there. When the first defendant filed documents in Ex.B2 to B7/property tax receipts, which are from the year 1990 to 2003, the tax receipts issued in favour of the first defendant would establish the construction of the house and possession of the first defendant from 1990 onwards. Further, this defendant had filed Exs.B8 and B9, which are the T.N.E.B. receipts for the year 1990 and also filed Exs.B10 and B15, which are the house tax receipts for the period from 1990 to 2000 and all these would establish the construction of the house and possession of the first defendant in the C schedule suit property.

18. The learned Senior Counsel relied on the following judgments in the case of *Saljing A.Sangama and another vs. Bilmoni A.Sangma* reported in *AIR 2014 (Megh) 15*, *Bandhu Das and another vs. Uttam Charan Pattanaik* reported in *AIR 2007 (Odi) 24* and *Chutahru Bhagat and others vs. Hialal Sah and others* reported in *AIR*



S.A.No.585 of 2012

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1950 (Pat) 306 for the proposition that when there is no boundary or proper description of the property, no relief could be granted in the suit and even, the decree, if passed, is not executable. The learned Senior Counsel also relied on the judgment passed in the case of ***Union of India and others vs. Vasavi Cooperative Housing Society Limited and others*** reported in **(2014) 2 SCC 269** for the proposition that when the plaintiff failed to establish the title, the plaintiff must be non-suited and the weakness in the case of the defendant cannot be a ground to grant relief and also relied on the judgment in the case of ***Chandrasekharan and others vs. Kanakarajan and others*** reported in **(2007) 5 SCC 669**, for the proposition that in the Second Appeal filed under Section 100 of C.P.C, when the Courts below have been misled or misinterpreted the documents, High Court can interfere with the same in the Second Appeal.

19. The learned Senior Counsel further contended that the First Appellate Court, being the final Court of fact, has not independently assessed the evidence of the parties as mandated under Order XLI Rule 31 of C.P.C. and failed to see that the plaintiff has not correctly described



S.A.No.585 of 2012

the suit property and also failed to prove his title. The plaintiff has also not proved as to when the suit survey numbers have been subdivided and also has not proved the date of alleged trespass by the first defendant and further, the suit is also barred by limitation. Even from the Advocate Commissioner's report filed before this Court and also from the evidence of C.W.2 and C.W.3, it could be seen that they were not able to measure the property of the first defendant covered in Ex.B1 and therefore, the identity of the property has not been properly established. The learned Senior Counsel contended that even though this defendant produced the documents to show that they are in possession of the suit property at least from the year 1990, the Courts below have erroneously concluded that the plaintiff has established the title, which is not based on materials available on record and therefore, perverse and sought for allowing this Second Appeal.

20. Per contra, Mrs.Chitra Sampath, learned Senior Counsel for the plaintiff/1st respondent argued that when the power of attorney was executed by Kadambadi Naickar in Ex.A13 on 06.09.1983, the properties have been subdivided as Survey Nos.370/7A and 370/7B and it could be



S.A.No.585 of 2012

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evident from the schedule of the power of attorney. Based on the power of attorney, the sale deed in Ex.A1 has been executed by Kadambadi Naickar represented by his power agent, in favour of the plaintiff, conveying the lands measuring 7200 sq.ft. in Survey Nos.370/7A, 370/7B and 370/5. The learned Senior Counsel further argued that from the FMB plan filed in respect of Survey No.370 along with the Final Report of the Advocate Commissioner in Ex.C8, it could be seen that the properties in Survey No.370/7A are lying on the eastern side and properties in Survey No.370/7B are lying on the western side. As per the sale deed in Ex.A1 and the FMB plan in Ex.X1, the property of the plaintiff could be easily identified. Further, the sale deed executed in favour of the plaintiff has been with specific boundary along with linear measurements with the subdivided survey numbers.

21. The learned Senior Counsel further contended that when the suit was filed, the survey number of the property and all other details have been clearly given for identifying the property, but, inadvertently, the eastern and western boundaries alone had been interchanged while northern and southern boundaries are correct. This mistake did not create



S.A.No.585 of 2012

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any confusion and in fact, the property has been correctly identified by the parties. The learned Senior Counsel further argued that from the evidence of D.W.3 and also C.W.2 and the Advocate Commissioner/C.W.1 and the original patta proceedings pertaining to the Survey No.370 filed in Ex.C13, it has been established that original Survey No.370/7 was initially subdivided as 370/7A, 370/7B and thereafter, the Survey No.370/7A has been subdivided as 370/9, the Survey No.370/7B has been subdivided as Survey No.370/10 and Survey No.370/5 has been subdivided as Survey No.370/8. In fact, in the Preliminary Report filed in Ex.C5, the measurement of the property in Survey Nos.370/7A, 370/7B, 370/5, 370/8, 370/9 and 370/10 was undertaken and when the door no.7, where the building constructed by the defendant, was identified, it was found that it is situated in the lands, which was originally in Survey No.370/7B and a small portion in Survey No.370/5, which has now been subdivided as Survey No.370/10. Further, from the Final Report filed by the Advocate Commissioner in Ex.C8 including the report of the Deputy Inspector of Survey/C.W.2, it is found that the 'B' schedule property is situated in Survey Nos.370/8 (part) and 370/9. The 'C' schedule property is situated in Survey No.370/10, in



S.A.No.585 of 2012

which, there is a house, where the first defendant is residing.

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22. The learned Senior Counsel contended that the properties have been identified and the subdivisions were found to be correct and it is also found that the first defendant is residing in the house in Survey No.370/10, which was subdivided from Survey No.370/7B. Therefore, the plaintiff has established his title to the suit property by filing the sale deed in Ex.A1 and the patta issued in favour of the plaintiff in Ex.A2 and also by filing the property tax receipts.

23. The learned Senior Counsel contended that since the encroachment in the property was made in the year 2000, a legal notice was issued on 02.01.2001 in Ex.A3, for which, he received an evasive reply in Ex.A4 and since the second defendant also trespassed into the property, a legal notice was issued on 26.07.2003 in Ex.A5 and therefore, there was no delay and the plaintiff has rightly approached the Court immediately thereafter. The learned Senior Counsel further contended that even though this defendant claimed to be in possession of the property from the year 1990, based on the documents filed in Ex.B10 to



S.A.No.585 of 2012

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B15/house tax receipts, a perusal of the same, reveals that in the house tax receipts, different assessment numbers are mentioned and also in the property tax receipts, the case number has been mentioned and the T.N.E.B receipt, filed in Ex.B8, shows that it is for the address in Kadambadi Nagar. From the above, it is clear that all these documents do not pertain to the suit property. This defendant failed to clarify the discrepancies and since these documents did not pertain to the suit property, the Courts below have rightly rejected these documents.



S.A.No.585 of 2012

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24. The learned Senior Counsel submitted that since by considering all the materials available on record, both the Courts below have arrived at a finding of fact, it does not require any interference by this Court and therefore, there is no substantial question of law involved and sought for dismissing this Second Appeal.

25. Heard the counsel on both sides and perused the materials available on record.

Analysis of the submissions:

26. Admittedly, one M.R.Kadambadi Naickar was the owner of the property in respect of an extent of 0.57 cents in Survey No.370/7, which he got through a partition deed dated 24.02.1965 in Ex.A10 and also owner of 0.32 cents of land in Survey No.370/5, which he obtained through exchange deed dated 10.11.1967 in Ex.A11. As such, these two extent of properties in the Survey Nos.370/5 and 370/7, admittedly belonged to M.R.Kadambadi Naickar. By power of attorney deed dated 06.09.1983 in Ex.A13, the said Kadambadi Naickar had appointed one Gnanaraj as his power agent in respect of above mentioned properties. A



S.A.No.585 of 2012

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perusal of the power of attorney deed in Ex.A13 shows that the said Gnanaraj had been appointed as power agent for 57 cents of land in Survey No.370/7A and 370/7B and 32 cents of land in Survey No.370/5 along with some other extent of lands also. As such, prior to the execution of power of attorney deed in Ex.A13, 57 cents of land originally belonging to him in Survey No.370/7 had been subdivided as Survey Nos.370/7A, 370/7B, which has been clearly mentioned in the schedule to the power of attorney deed.

27. By a sale deed dated 07.06.1984 in Ex.A1, the said Kadambadi Naickar, represented by his power agent Gnanaraj, had sold an extent of 1,744 sq.ft. in Survey No.370/7A, an extent of 2,576 sq.ft. in Survey No.370/7B and an extent of 2,880 sq.ft. in Survey No.370/5. In all, an extent of 7200 sq.ft. of land had been conveyed in favour of the plaintiff. Based on the sale deed in Ex.A1, mutation was carried out and patta in no.1183 has been issued in favour of the plaintiff in Ex.A2 on 20.08.1996. A perusal of Ex.A2/patta, shows that it has been issued for the subdivided Survey Nos.370/8, 370/9 and 370/10. A perusal of the original patta proceedings filed in Ex.C13, reveals that Survey No.370/5



S.A.No.585 of 2012

WEB COPY

was subdivided as Survey Nos.370/5A, 370/8 and 370/11 and the patta was issued in favour of the plaintiff for the lands in subdivided Survey No.370/8. Likewise, Survey No.370/7A was further subdivided as Survey No.370/7A and 370/9 and in respect of the lands in subdivided Survey No.370/9, the patta was issued in favour of the plaintiff. Further, the lands in Survey No.370/7B was subdivided as Survey No.370/B1A and 370/10 and the plaintiff was issued patta to the subdivided Survey No.370/10. As such, in respect of 7,200 sq.ft. purchased by the plaintiff in Ex.A1, which was originally in Survey No.370/7A, 370/7B and 370/5, the patta in Ex.A2 was issued in favour of the plaintiff for the subdivided Survey Nos.370/8, 370/9 and 370/10, which was as per the patta proceedings carried out in Ex.C13.

28. The plaintiff, by the sale deed dated 23.01.1998 in Ex.A14, had sold an extent of 4,800 sq.ft. out of the total extent of 7,200 sq.ft. in favour of one Balagangadaran/P.W.2 herein. After the property was sold in Ex.A14, which is the 'B' schedule suit property, the plaintiff had retained an extent of 2,400 sq.ft. in Survey No.370/10, which is the 'C' schedule suit property. Even though the plaintiff, as per the document, is



S.A.No.585 of 2012

entitled to 2,400 sq.ft., in the field, as per the patta, only an extent of 2,000 sq.ft. is available as mentioned in the 'C' schedule suit property.

The plaintiff had also filed FMB sketch in Ex.A7 to establish the subdivisions carried out and had also filed property tax receipts in Ex.A9 to establish his title and possession, pursuant to the purchase made by him.

29. This defendant is claiming ownership over the 'C' schedule suit property and contended that he had purchased the 'C' schedule suit property from the original owner Kadambadi Naickar himself through sale deed dated 22.10.1984 in Ex.B1. A perusal of the sale deed reveals that Kadambadi Naickar had conveyed an extent of 2,400 sq.ft. *i.e.*, 5 ½ cents, out of the total extent of 57 cents in Survey No.370/7. The schedule to the sale deed shows that on the south, it is bounded by 20 feet road and on all the three other sides, it is surrounded by remaining lands of the vendor/Kadambadi Naickar. When Kadambadi Naickar had executed the registered power of attorney deed on 06.09.1983 in Ex.A13, by appointing the power agent in respect of the 57 cents of lands in Survey Nos.370/7A, 370/7B along with other lands, but whereas



S.A.No.585 of 2012

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subsequently, the sale deed was executed on 22.10.1984 in Ex.B1, in which, he had sold 2,400 sq.ft., out of 57 cents in Survey No.370/7. It is not made clear as to why even after the lands have been subdivided, the subdivision numbers were not mentioned in Ex.B1 and it is not clearly established as to whether the land measuring 2400 sq.ft. was conveyed either in Survey No.370/7A or 370/7B through the sale deed in Ex.B1. Further, when based on the power of attorney executed by Kadambadi Naickar, the lands were plotted out and several sales have been made by the power agent, that too after the sale deed in Ex.A1 in favour of the plaintiff, which is available on record, that has been executed, the schedule to the sale deed in Ex.B1 described as though the property conveyed is surrounded in all the three sides by the lands of Kadambadi Naickar, cannot be factually correct.

30. When the lands had already been subdivided and the power agent was appointed on 06.09.1983 in Ex.A13 and based on which, the properties of Kadambadi Naickar had been sold and the sale deed in favour of the plaintiff had been executed in Ex.A1 on 07.06.1984, the first defendant, who had been aware of all these transactions through the



S.A.No.585 of 2012

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encumbrance certificate, for the reasons best known to him, had taken the risk of purchasing an extent of 2,400 sq.ft. in Survey No.370/7, ignoring the subdivision and the sale that has already been effected. From the above, it is clear that even on the date of execution of the sale deed in favour of the first defendant by Kadambadi Naickar in Ex.B1, the first defendant was not conveyed the property on clear identification and from the sale deed, it could be seen that it is not clear as to which portion of 2400 sq.ft., out of 57 cents was conveyed.

31. It can only be taken that even when the lands were subdivided and also Kadambadi Naickar had appointed the power agent in Ex.A13, who had conveyed the properties to several persons, the first defendant, ignoring all those documents, had proceeded to execute the sale deed in favour of the first defendant, which is not legally sustainable. It is also not clear as to whether any balance property was available in the hands of Kadambadi Naickar on the date of execution of sale in favour of the first defendant. When, admittedly, the sale in favour of the first defendant was subsequent to the sale deed in Ex.A1 in favour of the plaintiff, where from, it is clear that the properties have already



S.A.No.585 of 2012

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been subdivided and conveyed to several parties, the first defendant did not choose to prove that the property was available in the hand of his vendor/Kadambadi Naickar and that the sale deed in Ex.B1 pertains only to the 'C' schedule suit property.



S.A.No.585 of 2012

WEB COPY

32. As rightly argued by the learned Senior Counsel for the first defendant/respondent, a perusal of the property tax receipts filed by the first defendant in Exs.B2 to B7, reveals that in all the receipts, the ULT case no.172P/85 is mentioned and from this, it is not established that these receipts pertain to the suit property, as no details of the property are mentioned. Further, a perusal of the house tax receipts in Exs.B10 to B15, shows that the house tax receipt in Ex.B10 dated 26.07.1990 was issued in assessment no.3758, the receipt in Ex.B12 for the year 1997 to 2000 was issued in assessment no.3431 and the receipts in Ex.B14 was issued in assessment number 3851. As such, these receipts contained different assessment numbers and the defendants were not able to prove that these documents pertain to 'C' schedule suit property. Further, the T.N.E.B card and receipts filed in Exs.B8 and B9, do not contain any details that those pertain to the building in the 'C' schedule suit property.

33. Further, even the sale deed executed in favour of the second defendant on 28.08.1996 in Ex.B16 by the purchaser from the first defendant, shows that 570 sq.ft. was conveyed in Survey No.370/7 and the property tax receipt and T.N.E.B card in Exs.B17 and B18 also do



S.A.No.585 of 2012

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not contain the details to show that they pertain to 'C' schedule suit property. The purchase has been made by the second defendant in Ex.B16 on 28.08.1996 consciously, without mentioning of the subdivision numbers but simply mentioning as 570 sq.ft. in the original Survey No.370/7 and further, the second defendant did not choose to file any appeal challenging the judgment and decree passed by the Lower Appellate Court. Even though the second defendant claimed that she had constructed a house, she has not filed any appeal and that only goes to show that knowing well that the property purchased by the first defendant was not clear and identifiable, she took the risk of purchasing an extent of 570 sq.ft. and now, she has not chosen to file any appeal in spite of the decree granted against her.

34. The defendants were not able to file patta, if any, granted in their favour, pursuant to the purchase made by them. Even though from the sale deed filed in Ex.B1, which could be taken that the first defendant had purchased an extent of 2,400 sq.ft., out of the total extent of 57 cents in Survey No.370/7, the same has not been identified and without ascertaining the identity, the defendants cannot enter into possession in



S.A.No.585 of 2012

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the 'C' schedule suit property, which belongs to the plaintiff. From the survey conducted by C.W.2/Deputy Inspector of Survey in the presence of C.W.1/Advocate Commissioner and the report filed, it is made clear that the suit 'C' Schedule property is situated in Survey No.370/10 and a small marginal portion in Survey No.370/8. From the Final Report filed by the Advocate Commissioner in Ex.C8 including the surveyor's report, FMB plan filed along with the Advocate Commissioner's report and the evidence of C.W.2, it could be seen that the Survey Nos.370/7A and 370/7B have been further subdivided as Survey Nos.370/9, 370/10, respectively and Survey No.370/5 has been subdivided to Survey No.370/8.

35. After conducting the survey, it has also been established that the door no.7 in Ayyappan Street in Kadambadi Nagar, where the defendant had constructed the house, is lying completely in Survey No.370/10 and also a small portion in a part of Survey No.370/8, which belongs to the plaintiff. It could also be seen from the Surveyor's Report and the Advocate Commissioner's Report that an extent of 5 ½ cents *i.e.*, 2,400 sq.ft., purchased out of the total extent of 57 cents in Ex.B1, was



S.A.No.585 of 2012

not able to be identified and located, as no proper boundary description has been given in the Sale Deed, to show as to which part or which exact area, has been purchased by the first defendant. When the property purchased by the defendants has not been identified because of the discrepancies in the sale deed purchased by him, but it has been established that the 'C' schedule property belongs to the plaintiff, which is in Survey No.370/10, purchased through sale deed in Ex.A1, it could be easily concluded that the defendants had trespassed into the property of the plaintiff in 'C' schedule.

36. The learned Senior Counsel appearing for the appellant vehemently contended that when the plaintiff has not identified the suit property and there is a mistake in the schedule, a decree cannot be granted. The fact remains that the survey number has been correctly given in the suit property and except the eastern and western boundaries, the other two boundaries along with the linear measurements and extent have been correctly given, which is sufficient enough to identify the suit property.



S.A.No.585 of 2012

WEB COPY

37. At this juncture, it is useful to extract Order VII Rule 3 of C.P.C, hereunder:

“3. Where the subject-matter of the suit is immovable property.—Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.”

38. As such, if the suit is in respect of an immovable property, the plaint shall contain the description, sufficient to identify and if could be identified by boundaries or numbers and in such case, the plaintiff shall specify such boundaries or numbers. In the instant case, the plaintiff has correctly given the subdivided Survey Number as 370/10 and when the entire extent of land in the subdivided Survey No.370/10 belongs to the plaintiff and the extent of the property, the linear measurements and two sides of the boundaries of the properties, have been correctly mentioned in the schedule to the plaint, this Court can certainly come to a



S.A.No.585 of 2012

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conclusion that the description given in the plaint schedule by the plaintiff, satisfies the provisions of Order VII Rule 3 of C.P.C., as the property is identifiable. Therefore, the arguments of the learned Senior Counsel for the appellant that the decree cannot be granted as proper description of the suit property is not given, cannot be sustained. Even though the eastern and western boundaries have been interchanged in the schedule to the plaint, it does not create any confusion or lead to wrong identification of the property. Further, the Advocate Commissioner's reports filed and evidence of C.W.2/Deputy Inspector of Surveyor have fortified the fact that 'C' schedule suit property belongs to the plaintiff and the defendant has trespassed and also he is in possession of the 'C' schedule suit property.

39. When the defendants have not established that they have been in possession of the 'C' schedule property from the year 1990, as claimed by them, the suit is not affected by limitation. According to the plaintiff, the defendants have encroached in the suit property in the year 2000, and they immediately issued the legal notice in Exs.A3 and A5 and the same were filed in the suit. When the defendants even after the



S.A.No.585 of 2012

subdivision, have purchased the land, which could not be identified even from their own sale deed in Ex.B1, taking advantage of the absence of the plaintiff, they have encroached into the 'C' schedule suit property and have put up construction at their own risk. Further, it has been rightly observed by Courts below that when the first defendant had admitted that the dispute arose between him and the plaintiff in the year 1986, despite the dispute, he had proceeded with the construction and therefore, there cannot be any acquiescence.

40. Further, the defendants have also claimed title by adverse possession and when this defendant asserted his title, based on the sale deed in Ex.B1, both the claims are mutually inconsistent and cannot go together, the later plea has been rightly given up by the defendants.

41. When the plaintiff, through sale deed in Ex.A1, the patta issued in his favour in Ex.A2 and FMB in Ex.A7, has established his title to the suit property and further, the Advocate Commissioner's report and the Surveyor's report and the evidence of C.W.2/Deputy Inspector of Surveyor, have clearly established the fact that 'C' schedule suit property



S.A.No.585 of 2012

WEB COPY

is situated in Survey No.370/10 and the plaintiff proved his title on the 'C' schedule suit property, the onus shifted to the defendants to establish the fact that the sale deed filed by them in Exs.B1 and B16 pertain to the 'C' schedule suit property. The defendants have failed to prove that the purchase made by them in Exs.B1 and B16 relate to the 'C' schedule suit property and further, their vendor had any lands available with him on the date of sale to convey the property, which was sold in Ex.B1. The defendants have also further failed to prove that the documents filed in Exs.B2 to B15 pertain to the 'C' schedule suit property and when the defendants have not established their title, they can only be the trespasser in the suit property.

42. In view of the above finding, the substantial questions of law are answered as against the appellant and in favour of the first respondent.

43. The Courts below have rightly arrived at the findings of fact, which are based on the materials available on record and there is no illegality or perversity or misreading of any evidence for this Court to



S.A.No.585 of 2012

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interfere in this Second Appeal filed under Section 100 of C.P.C.

44. In view of the above findings and the materials available on record, as it is found that the 'C' schedule suit property is identifiable, no further orders are required in M.P. No. 2 of 2014.



S.A.No.585 of 2012

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45. In the result, this Second Appeal stands dismissed. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

21.03.2024.

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
apd

To

1. The Subordinate Judge, Poonamallee.
2. The Additional District Munsif, Poonamallee.
3. The Section Officer, V.R. Section, High Court, Madras.



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S.A.No.585 of 2012

G.ARUL MURUGAN,J

apd

S.A.No.585 of 2012
and
M.P.Nos.1 of 2013 & 2 of 2014



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S.A.No.585 of 2012

21.03.2024