



S.A.Nos.1360 & 1361 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on: 27.08.2024

Delivered on: 04.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

S.A.Nos.1360 & 1361 of 2013

S.A.No.1360 of 2013

1.Santamma (Died)	... Plaintiff / 1 st Respondent / Appellant
2.S.Suresh Babu	
3.A.S.Ramesha	
4.S.Suvarna	... Appellants

***** Appellants 2 to 4 are bring on record as legal heirs of the deceased sole appellant, viz., Santamma vide Court Order dated 11.11.2021 made in C.M.P.No.2565 of 2021 in S.A.No.1360 of 2013.***

Vs.

1.Gurumoorthy Reddy	... 1 st Defendant / Appellant 1 st Respondent
2.Suresh	... 2 nd Defendant / 2 nd Respondent 2 nd Respondent

S.A.No.1361 of 2013

1.Santamma (Died)	... Plaintiff / Cross Objector / 1 st Defendant / Appellant
2.S.Suresh Babu	



S.A.Nos.1360 & 1361 of 2013

3.A.S.Ramesha

4.S.Suvarna

... Appellants

***** Appellants 2 to 4 are bring on record as legal heirs of the deceased sole appellant, viz., Santamma vide Court Order dated 11.11.2021 made in C.M.P.No.2563 of 2021 in S.A.No.1360 of 2013.***

Vs.

1.Gurumoorthy Reddy

... 1st Defendant / Appellant
1st Respondent

2.Suresh

... 2nd Defendant / 2nd Respondent
2nd Respondent

Prayer in S.A.No.1360 of 2013:- Second Appeal filed under Section 100 of CPC, against the judgment and decree dated 14.09.2013 in A.S.No.13 of 2011 on the file of the Sub Court, Hosur, reversing and setting aside the judgment and decree dated 10.01.2011 in O.S.No.486 of 2004 on the file of the learned District Munsif cum Judicial Magistrate No.I, Hosur.

Prayer in S.A.No.1361 of 2013:- Second Appeal filed under Section 100 of CPC, challenging the judgment and decree unnumbered in Cross Objection in A.S.No.13 of 2011 dated 14.09.2013 on the file of the Sub Court, Hosur, reversing and setting aside the judgment and decree dated 10.01.2011 (as far as the same is against the appellant herein) in O.S.No.486 of 2004 on the file of the learned District Munsif cum Judicial Magistrate No.I, Hosur.



WEB COPY



S.A.Nos.1360 & 1361 of 2013

For Appellants : Mr.D.Shivakumaran
For R1 : Mr.N.C.Thirumalai Balaji
For R2 : No appearance

COMMON JUDGMENT

The plaintiff in the suit in O.S.No.486 of 2004 is the first appellant (late) in the above second appeals.

2. The suit was filed for declaring plaintiff's title to the suit property, restraining the defendants and their fellow men by a permanent injunction not to interfere with the peaceful possession and enjoyment of the suit property, directing the first defendant by mandatory injunction to remove the portion of the terraced house put by him in the suit B schedule property, and if he fails to do so, to remove the same by process of Court and directing the first defendant to deliver possession of the suit B schedule property and for cost.

3. The case of plaintiff / appellant in the plaint is as follows:

a) Originally the suit property and other properties belonged to one



S.A.Nos.1360 & 1361 of 2013

WEB COPY

Gopala Reddy who obtained the same by way of purchase. The plaintiff purchased the suit properties from the said Gopala Reddy on 30.05.1980 vide registered sale deed for a valuable sale consideration of Rs.1,200/- to an extent of 80cents of land in S.No.79 of Vathirappli Village, Hosur Taluk. According to the plaintiff, she was in possession and enjoyment of the suit property from the date of purchase to the date of instituting the suit. The defendants have no right, title or interest over the suit property to an extent of 80 cents of land in S.No.79 of Vathirapalli Village, Hosur Taluk.

- b) The first defendant purchased an extent of 20 cents of land in S.No.79 of Vathirappli Village, from the said Gopala Reddy and the first defendant owns lands on the northern side of the suit properties. The said Gopala Reddy died, leaving behind the second defendant to succeed to his properties as his only son. Since the second defendant together with the first defendant caused difficulties to the plaintiff by disturbing her peaceful possession and enjoyment of the suit properties, the second defendant was added as a party to the suit for proper adjudication of the case.



S.A.Nos.1360 & 1361 of 2013

WEB COPY

- c) The plaintiff was carrying out agricultural activities from the date of purchase of the suit property. The plaintiff contended that during the UDR patta proceedings, without notice being served on the plaintiff, the defendants, by wrongly representing before the revenue officials, obtained patta in their name for a larger extent of land, and thus the plaintiff is given patta only for 0.75 acres of land in S.No.79/2 of Vathirapalli Village. The contention of the plaintiff is that she is entitled to 80 cents of land in S.No.79 and she was in possession and enjoyment of the said extent of 80 cents of land. The first respondent, who owns lands on the Northern side of the suit property, by taking advantage of the UDR patta issued to the plaintiff, has made an attempt to encroach upon the Northern side of the suit property by claiming right over the same and by attempting to put up construction on the northern side of the suit property, and the defendants have no right, title or interest over the suit property. The defendants had also tried to trespass upon the suit property, which attempt of the defendants was prevented by the plaintiff.
- d) The surveyor's sketch and the plan submitted by the Advocate Commissioner would clearly show that the first defendant had



S.A.Nos.1360 & 1361 of 2013

WEB COPY

encroached into a portion of the suit property on the Northern side i.e., south of **AB** line in the said plan, and put up a new terraced house building thereon. The first defendant has no right, title or interest to put up the said building on the plaintiff's land. The portion of the suit property that was encroached upon by the first defendant is shown separately as B-schedule property in the plaint. Though this encroached portion is shown as 'X' in S.No.79/3, this portion actually belongs to the plaintiff. Therefore, the plaintiff is entitled to get the newly constructed house put up by the first defendant removed by an order of mandatory injunction and to get possession of the said portion now described as B schedule.

3.1 The suit was resisted by the defendants by filing a written statement denying the averments made in the plaint.

- a) It is the case of the second defendant that he is the son of one Gopala Reddy, who is the vendor of both plaintiff and first defendant. The said Gopala Reddy died, leaving behind him his widow Ramakka, his son, Suresh Reddy, the second defendant



WEB COPY



S.A.Nos.1360 & 1361 of 2013

herein and four daughters who were not made as parties to the suit.

The properties in S.Nos.79, 79/1, belonged to Rama Reddy, who is no more. The said Rama Reddy and his sons, namely, Munireddy, Thimmareddy and Chandra Reddy, were in possession of the properties in S.No.79/1 and they are necessary parties to the suit. Since the necessary parties were not made as parties in the suit, the plaint is liable to be rejected for non-joinder of parties.

- b) It is an admitted fact that the plaintiff had purchased 0.80 cents from the said Gopala Reddy in S.No.79 of Vathirapalli Village. Pattas were issued to the plaintiff, defendants 1 and 2, to the properties, which were under their respective possession and enjoyment.
- c) The said S.No.79 of Vathiripalli Village was divided into five subdivisions as follows:

- (1) In respect of properties in S.No.79/1, patta was issued in the name of Rama Reddy.
- (2) The plaintiff was given patta in respect of properties in S.No.79/2, which was in her possession.
- (3) The first defendant was given patta in respect of properties in S.No.79/3, which was in his possession.



S.A.Nos.1360 & 1361 of 2013

(4) The second defendant's father, Gopala Reddy, was given patta for the properties in S.No.79/4, which were under his possession and enjoyment.

(5) The plaintiff also got a joint patta for the properties in S.No.79/5 in patta No.275 along with the defendants.

d) Ever since the execution of sale deed in favour of the first defendant in the year 1981 by the father of the second defendant (Gopala Reddy), the first defendant is in possession of S.No.79/3, i.e., for more than 20 years exclusively.

e) The contention of the first defendant is that even though the UDR proceedings took place 20 years back and the plaintiff was given patta in the UDR proceedings and the property of the plaintiff was covered under S.No.79/2, with an ulterior motive, she has not mentioned the subdivided number of the survey number in the plaint for the reasons best known to her. The plaintiff has purposely suppressed the fact that she is in possession of only 75 cents of land even before the UDR proceedings. It is contended that the plaintiff also got a joint patta for the land in S.No.79/5 which she has not divulged in the plaint. In the said sub-division, the plaintiff obtained



S.A.Nos.1360 & 1361 of 2013

WEB COPY

an extent of 4.5 cents, which is now a road on ground. Though it has been admitted that the plaintiff was in possession of 80 cents of land as per the sale deed, which was accepted by the first defendant, the patta was given only to an extent of 75 cents and the balance of 5 cents was acquired for the formation of a road in S.No.79/5 which is the panchayat road.

- f) The first defendant contended that there is no necessity for the defendants to trespass on their own property. It is also false to state that the first defendant was trying to put up construction on the northern side of the suit property.
- g) It is the specific case of the first defendant that he has already constructed a house up to the lent level. The construction was started four months back and the plaintiff is fully aware of the same and has not raised any objection. The first defendant was in possession of 0.09.0 hectares. In the sale deed dated 20.04.1981 executed in favour of the first defendant by the second defendant's father, the northern boundary is mentioned as house of first defendant. The property mentioned as the Northern boundary for this 0.20 cents was



WEB COPY



S.A.Nos.1360 & 1361 of 2013

purchased by the first defendant vide sale deed dated 22.06.1958 from one Venkataramanappa for a valid and binding consideration, which was a tiled house and vacant place. For the properties purchased vide sale deeds dated 22.06.1958 and 20.04.1981, the UDR authorities have given a single patta for 0.09.0 hectares, taking into consideration the possession and the documents.

- h) The first defendant was in actual possession of S.No.79/3, the second defendant was in possession of S.No.79/4 and the plaintiff was in possession of S.No.79/2 for more than 20 years. The first defendant contends that a portion of S.No.79 on the Eastern side was acquired for laying the road, which is from Thummanapalli to Alur. The plaintiff was aware of the acquisition proceedings, and only to cause hindrance in completion of construction by the first defendant, the plaintiff has filed the present suit with a false and frivolous allegation.
- i) The first defendant contended that the brothers of the plaintiff have constructed their respective house on the North-West side of the suit property, and they are in possession and enjoyment of the property.



S.A.Nos.1360 & 1361 of 2013

WEB COPY

The plaintiff is permanently residing at Malur in Karnataka State and only the brothers of the plaintiff are in possession of the suit property.

- j) The specific contention of the first defendant is that the plaintiff got patta to an extent of 80 cents in S.No.79, as on date, the said extent of 80 cents is covered in S.No.79/2 and S.No.79/5. The property in S.No.79/5 is covered in the joint patta as stated supra. According to the first defendant, there is no cause of action for filing the present suit and the suit is liable to be dismissed.

3.2 An Advocate Commissioner was appointed to inspect the suit property and submit a report.

- a) The Advocate Commissioner visited the suit property on 09.10.2004 after giving due notice to the respective parties. The Advocate Commissioner identified the suit property with the help of V.A.O of Vatrappally. Neither the plaintiff nor the defendants have given any memo of submissions to the Advocate Commissioner.



S.A.Nos.1360 & 1361 of 2013

WEB COPY

- b) The Advocate Commissioner had verified 'A' register with the help of a surveyor and found that S.No.79 is subdivided as 79/1, 79/2, 79/3, 79/4 and 79/5. The description of the plaintiff's property to an extent of 80 cents is now subdivided as S.No.79/2 which is shown as 'V' in rough sketch. The first defendant's house is situated in S.No.79/3, and it is shown as 'Y' in rough sketch. The second defendant's house is situated in S.No.79/4 which stands in the name of Gopala Reddy shown as 'Z' in rough sketch. To the East of the suit property, i.e., S.No.79/2, there is a panchayat road in S.No.79/5. To the West of the suit property, there is land of Ramareddy in S.No.79/1. To the North of the suit property, there is a land of first defendant in S.No.79/3. To the South of the suit property, there is a land belonging to Munireddy in S.No.85.
- c) The Commissioner's report specifically mentions that S.No.79/2 is totally measuring 114.4 meters in the western direction, 114.0 meters in the eastern direction, 26.8 meters in the northern direction, and 26.0 in the southern direction.



S.A.Nos.1360 & 1361 of 2013

WEB COPY

d) The plaintiff had cultivated horse gram in his property in S.No.79/2.

The property in S.Nos.79/2 and 79/3 are at the same level on the ground. The newly constructed house of the first defendant is at the level of lintel at the time of visit. The Advocate Commissioner had measured the property with the help of a surveyor and the report is submitted based on the revenue records since the plaintiff and the first respondent have not produced the sale deed before the Advocate Commissioner.

3.3 The Trial Court had framed the following issues:

- 1. Whether the plaintiff is entitled for the relief of declaration?**
- 2. Whether the plaintiff was in possession on the date of filing the suit?**
- 3. Whether the plaintiff is entitled for permanent injunction as against the defendants?**
- 4. Any other relief to be granted?**

3.4 Before the Trial Court, the plaintiff examined herself as P.W-1 and examined her brother as P.W-2, examined the Advocate Commissioner as P.W-3 and also examined the second defendant as P.W-



S.A.Nos.1360 & 1361 of 2013

WEB COPY

4. The plaintiff marked Exs.A-1 and A-2. The first defendant himself was examined as D.W-1 and the V.A.O was examined as D.W-2. On the side of the defendants, Exs.B-1 to B-6 were marked.Exs.C-1, C-2 and C3 are the Court exhibits.

3.5 While considering, issue Nos.1 and 2, the Trial Court noted that, the second defendant in his evidence as P.W-4 admitted that his father sold to an extent of 80 cents of land to the plaintiff and an extent of 20 cents of land to the first defendant. Trial Court noted that there is a house belonging to the second defendant on the backside of the first defendant's property which is evident from the Court documentEx.C-2.The land in S.No.79/4, belonging to the second defendant is situated on the eastern side of first defendant's property. In view of the same, the Trial Court came to the conclusion that 5 cents out of 0.80 cents from the land belonging to the plaintiff was not acquired for the formation of a road. Examination of witnesses, documents marked by the respective parties, namely the plaintiff, defendants 1 and 2, and the Court document does not disclose that the property was acquired from the plaintiff and the defendant



S.A.Nos.1360 & 1361 of 2013

WEB COPY

for the formation of a road. In the absence of any material, the Trial Court has come to the conclusion that the plaintiff was in possession of the entire suit property to an extent of 0.80 cents.

3.6 While considering, Issue Nos.3 and 4, the Trial Court had taken note of Ex.C-3, which shows that on the southern side of the thin line demarcating A and B, there is a small building in the suit property and there is no material to show whether this building was in existence when the suit was filed by the plaintiff. Even in the plaint, the property was shown as vacant land, the Advocate Commissioner, visited the suit property on 09.10.2004 and rendered a finding that the building was newly constructed which is evident from Ex.C-2. In view of the same, the Trial Court observed that mandatory injunction with respect to property in south of AB line is not sought for by the plaintiff and decreed the suit in respect of remaining portion of the suit property.

4. Aggrieved by the Judgment and Decree of the Trial Court, the first respondent / first defendant preferred an appeal in A.S.No.13 of 2011 and



S.A.Nos.1360 & 1361 of 2013

the appellant / plaintiff filed an unnumbered cross objection No.Nil of 2012 in A.S.No.13 of 2011 before the learned Subordinate Judge, Hosur.

5. The cross objection raised by the appellant herein is that the Trial Court ought to have granted the relief of mandatory injunction directing the first respondent to remove the construction put up by him on the southern portion of the AB line in the surveyor's sketch which is evident from the Advocate Commissioner's report and Ex.C-3 for the reason that the first defendant has put up the construction only during pendency of the suit.

5.1 On the other hand, the first respondent herein, who was the appellant in A.S.No.13 of 2011, had contended that S.No.79/5 is covered under a joint patta which stands in the name of the appellant and the respondents and sub divisions made in S.No.79/2 from North-South 114 mtrs. (or) 374 feet and the width of S.No.79/5 adjacent to S.No.79/2 is 1.6 mtrs (or) 5.25 feet and therefore the land which was acquired for the formation of the road in S.No.79/5 from S.No.79/2 works out to 375 x 5.25



S.A.Nos.1360 & 1361 of 2013

1962 / 436 or Ac.0.04½ cents.

WEB COPY

5.2 The first respondent contended that the finding of the Trial Court in holding that S.No.79/5 is a panchayat road is contrary to the evidence as the road is found in S.No.80. The first respondent contended before the First Appellate Court that the declaration of title of the property, which was situated on the Southern side of the AB line in the Surveyor's sketch, is erroneous as a declaration ought to have been given only in respect of S.No.79/2 as prayed by the appellant herein.

5.3 The First Appellate Court had determined the appeal on the following questions:

- 1) Whether the plaintiff has proved that she is entitled for an extent of 80 cents in the suit property as claimed by her?**
- 2) Whether the portion of the plaintiff's property has been converted into road which is resulted in reduction in the extent of the plaintiff's property?**
- 3) In Ex.C-3, whether the property of the plaintiff extends from South till the AB line shown by the surveyor?**



S.A.Nos.1360 & 1361 of 2013

4) Are the findings of the learned Trial Court to its issues correct?

5) What is the verdict of this Court in this appeal?

5.4 The First Appellate Court had given a finding by reversing the judgment of the Trial Court with the following reasons:

a) The First Appellate Court while considering Point Nos.1 to 3, has come to the conclusion that there is no dispute with regard to the extent of 0.80 cents in favour of the appellant herein under Ex.A-1 and 0.20 cents in favour of the first respondent herein under Ex.B-1. The First Appellate Court while considering whether the first respondent had encroached a portion measuring 7.5 mts North to South, 26.8 mts East to West where the construction was made in the suit property, noted that the boundaries of the suit property as per the sale deed dated 30.05.1980 marked as Ex.A-1 is as follows:

"கிழக்கு பஞ்சாயத்துரோடு,
மேற்குராமாரெட்டிபுஞ்சைநிலம், வடக்கு
இதேஎண்ணில் என் சொந்தநிலம்,
தெற்குமுனிரெட்டியின் புஞ்சைநிலம்."



S.A.Nos.1360 & 1361 of 2013

b) The First Appellate Court while considering the evidence of Village Administrative Officer that some portion of land in S.No.79 has been converted as road which is shown as sub-division 5, in the sketch, noted that nothing was elicited from the cross examination of D.W-2 to establish whether the land was acquired for the formation of a road. As per the judgment of the First Appellate Court, the plaint does not reveal that the first defendant has encroached upon a portion of the plaintiff's property on the northern side.

c) The First Appellate Court has considered the cross examination of P.W-1, which states as follows:

".....எனக்கும் பிரதிவாதிசொத்துக்கும் நடுவில் ஒருவரப்பு உள்ளது. அந்தவரப்பு கிழமேலாக உள்ளதுவரப்புக்கு தெற்கே நான் இருக்கிறேன். வடக்கே பிரதிவாதி இருக்கிறார். அந்தவரப்புக்கு வடக்கே தான் பிரதிவாதி வீடு கட்டு உள்ளார்கள்.." குரசவாநச ளவயவநள வாயவஇ ...பட்டாவில் கண்ட சொத்து என்னுடைய அனுபவத்தில்தான் உள்ளது. பிரதிவாதி பெயரில் உள்ள பட்டாவில் உள்ள சொத்துக்கள் அவர்கள் அனுபவத்தில்தான் உள்ளது."

The First Appellate Court considered that the patta was granted to the plaintiff and the same is marked as Ex.A-2.



S.A.Nos.1360 & 1361 of 2013

WEB COPY

In the said patta No.52, measurements of S.No.79/2 are as follows:

25.4 meters on the East West on the North

26 meters East West on the South

114.0 meters on the Eastern side and

114.4 meters on the North South on the Western side within these boundaries an extent of 0.30.5 acres, has been shown to be in the possession and enjoyment of the plaintiff. Ex.A-2 issued under the UDR scheme in the Fasli year 1395 relating to 1985 or 1984.

5.5 On the admitted facts, the First Appellate Court had found that the property was measured by the Advocate Commissioner with the help of the surveyor, in presence of the parties. From the revenue records, the surveyor has marked S.No.79/5 as adjacent to the north south road on the East of the suit property. It was found that the possession and enjoyment of the property are only in accordance with the patta granted in favour of the appellant and the first respondent. The First Appellate Court while taking into consideration the evidence of the appellant that she was in possession and enjoyment of the property measuring till the AB line marked in the surveyor sketch, observed that the Trial Court while comparing Exs.A-1,



S.A.Nos.1360 & 1361 of 2013

WEB COPY

A-2, and C-3 based on the evidence of the appellant, overlooked the patta and has wrongly concluded that the said 0.80 cents extends up to the AB line, as shown in Ex.C-3 belonged to the appellant.

5.6 The First Appellate Court while considering Ex.A-2 patta, which was not challenged by the appellant for more than 20 years found that the suit is barred by limitation since the appellant was aware of the extent in the patta i.e., 75 cents. Considering the above, the First Appellate Court has come to the conclusion that the appellant has not proved that she was in enjoyment of the property to an extent of 80 cents in S.No.79/2 which extends till the AB line shown in the sketch marked as Ex.C-3 filed by the Advocate Commissioner.

5.7 While answering Issue No.2, The First Appellate Court has come to the conclusion that the property in survey numbers belonging to the appellant and the first respondent was utilised for the formation of widening of the road and this acquisition for widening up the road was not considered by the Trial Court. Therefore, the First Appellate Court has



S.A.Nos.1360 & 1361 of 2013

given a reversal finding.

WEB COPY

5.8 Regarding point No.4, the First Appellate Court has come to the conclusion that the Trial Court has completely traversed the case based on the claim of 0.80 cents by the appellant, and the Trial Court failed to appreciate the case of the first defendant, who purchased the house portion, further north of the property covered under Ex.B-1, which is reflected in Ex.B-2.

5.9 I.A.No.56 of 2012 was filed by the appellant before the Trial Court seeking mandatory injunction with respect to the building put up by the first respondent and for recovery of possession. While dismissing the cross objection filed by the appellant herein, the First Appellate Court had taken into consideration that the said mandatory injunction was sought only by way of an amendment petition in I.A.No.56 of 2012, while the report of Advocate Commissioner would reveal that the construction by the first respondent was in progress during the year 2004 which shows that the appellant had slept over for a quite long time. Therefore, the appellant



S.A.Nos.1360 & 1361 of 2013

cannot now seek a mandatory injunction, and as such the case is barred by limitation.

WEB COPY

6. Assailing the findings given by the First Appellate Court, the present appeal has been filed by the appellant, who is the plaintiff in the suit challenging the Judgment and Decree in A.S.No.13 of 2011 passed by the Sub Court, Hosur.

7. S.A.No.1360 of 2013 is against the Judgment and Decree in A.S.No.13 of 2011 reversing the judgment in O.S.No.486 of 2004. S.A.No.1361 of 2013 has been filed challenging the Judgment and Decree in unnumbered cross objection No.Nil of 2012 in A.S.No.13 of 2011.

8. The Second Appeal was admitted on the following substantial questions of law:-

- a) **In the absence of documentary evidence on the side of the first defendant, y portion of the 80 cents of lands owned by the plaintiff are acquired by the Government for the purpose of widening the Road, is the lower Appellate Court correct in**



WEB COPY



S.A.Nos.1360 & 1361 of 2013

law in holding that the 5 cents of lands of the plaintiff would have been acquired on the eastern side of the suit property, merely on the basis of oral evidence by a Village Administrative Officer?

- b) When the report submitted by the Advocate Commissioner that the first defendant has no lands beyond "AB" line on the southern side is accepted by the first defendant without any objections therefor, is the lower Appellate Court correct in not confirming the decree for declaration of the title in respect of the suit property and in not granting a decree for mandatory injunction regarding the portion encroached by the first defendant over the land belonging to the plaintiff, on the south of the AB line in the Commissioner's report?**
- c) When the first defendant purchased 4 cents of lands, which is situated in Natham lands on the northern side of Survey No.79, is the lower Appellate Court correct in holding that the first defendant has already got an extent of 4 cents, existing on the northern side, which is to be included in the new sub-division as S.No.79/3, more particularly, when the Natham land could not be joined together with the patta land in Survey No.79/3?**
- d) When it is nobody's case that the suit is barred by limitation, is the lower Appellate Court correct in holding that the suit is barred by limitation, without following the principle laid down in the judgment of the Hon'ble Supreme Court in Hari Ram Vs. Jyoti Prasad & another, reported in 2011 (3) CTC Page 769?**



S.A.Nos.1360 & 1361 of 2013

9. This Court finds that the following facts are not in dispute:-

WEB COPY

The appellant has purchased the land in S.No.79 to an extent of 80 cents vide sale deed dated 30.05.1980 which was sub-divided as S.No.79/2. The first respondent has purchased the land in S.No.79 to an extent of 20 cents vide sale deed dated 20.04.1981 which was sub-divided as S.No.79/3. The appellant and the first respondent had purchased the respective lands from Gopala Reddy, the father of the second defendant in the suit.

9.1 Learned counsel for the appellant would contend that originally, the Trial Court had come to the conclusion that when the appellant measured the property after institution of the suit, she had come to know that the first respondent had put up a building in the encroached portion in the suit property to an extent of 5 cents. In view of the same, the appellant had amended the prayer for mandatory injunction restraining the defendants from interfering with the peaceful possession of the building portion on the northern side i.e., south of AB line as shown in surveyor's sketch and also for recovery of possession.



S.A.Nos.1360 & 1361 of 2013

WEB COPY

9.2 The appellant herein filed an unnumbered cross objection in the appeal filed by the first respondent herein before the Sub Court, Hosur, challenging the Judgment and Decree in favour of the appellant for the reason that the amended prayer for mandatory injunction and recovery of possession in respect of the aforesaid building portion was not granted by the Trial Court.

9.3 The learned counsel for the appellant would contend that the First Appellate Court only on the basis of the revenue records submitted by the first respondent has given a reversal finding that certain extent of land was taken for the formation of the road.

9.4 The entire issue now is only with regard to 5 cents of land, which is in dispute between the appellant and the first respondent. Whether an extent of 80cents of land is in the enjoyment of the appellant as claimed by her and whether 5 cents of land has been encroached upon by the first respondent herein out of the said 80 cents is the only issue that has been to determined by this Court. Neither the Trial Court nor the First Appellate



S.A.Nos.1360 & 1361 of 2013

WEB COPY

Court has given a categorical finding as to whether there was any encroachment by the first respondent on the property of the appellant herein to an extent of 5 cents.

9.5 The report and sketch submitted by the Advocate Commissioner clearly demarcates the portion of the land which belongs to the appellant in S.No.79/2 and the portion of the land which belongs to the first respondent in S.No.79/3. The Advocate Commissioner's Report shows that on the eastern side of the suit property in S.No.79/2, there is a panchayat road. On the western side of the suit property there is land in S.No.79/1 which belongs to Rama Reddy. On the northern side of the suit property, S.No.79/3 which belongs to the first respondent is situated. On the southern side of the suit property, there is a land which belongs to Munireddy in S.No.85.

10. The substantial questions of law on which the present second appeal was admitted are answered hereunder:



S.A.Nos.1360 & 1361 of 2013

Issue No.1

WEB COPY

Before the Trial Court and the First Appellate Court, the appellant / plaintiff has denied the contention of the first respondent / first defendant that an extent of 5 cents of land was acquired from the plaintiff's property for formation of road. Though the Village Administrative Officer has made a statement that the land was acquired for formation of road, no materials such as proceedings of the authority by which the road was acquired, payment of compensation, if any for acquisition of land etc., were furnished to substantiate the statement of D.W-2, the Village Administrative Officer. Therefore, this Court is of the view that the question of acquisition of land for formation of road is to be re-examined.

Issue No.2

The Advocate Commissioner's report could not clarify the extent of encroachment if any made by the first respondent on the suit schedule property in S.No.79/2. The report of the Advocate Commissioner clearly shows that he has only inspected the suit property and given his report detailing the existing physical features of the suit property. He did not go beyond the scope of warrant to say who is in encroachment on whose



S.A.Nos.1360 & 1361 of 2013

property. Therefore, only on the basis of the Advocate Commissioner's Report furnished before the Trial court, the Courts below cannot arrive at a conclusion whether or not the first respondent / first defendant has any land beyond 'AB' line on the southern side.

Issue No.3

Before the Courts below, the appellant / first respondent has not disputed about the 4 cents of land purchased by the first respondent / first defendant in the northern side of the suit property being a natham land.

Issue No.4

The Hon'ble Supreme Court in ***Hari Ram Vs. Jyoti Prasad and Another*** reported in **2011 3 CTC 769** has held as follows:

"16. Any act of encroachment is a wrong committed by the doer. Such an encroachment when made to a public property like encroachment to public road would be a graver wrong, as such wrong prejudicially affects a number of people and therefore is a public wrong. So long any obstruction or obstacle is created to free and unhindered access and movement in the road, the wrongful act continues thereby preventing the persons to use the public road freely and unhindered. Therefore, that being a continuing source of wrong and injury, cause of action is created as long as such injury continues and as long as the doer is responsible for causing such injury.

17. At this stage it would be apposite to refer to and rely upon Section 22 of the Limitation Act, 1963, which reads as follows:

"22. Continuing breaches and torts.—In the case of a



S.A.Nos.1360 & 1361 of 2013

continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or tort, as the case may be, continues.”

18. This Court had the occasion to deal with Section 22 of the Limitation Act, 1963 in Sankar Dastidar v. Banjula Dastidar [(2006) 13 SCC 470 : AIR 2007 SC 514] in which the Supreme Court held that when a right of way is claimed, whether public or private, over a certain land over which the tortfeasor has no right of possession, the breaches would be continuing, to which the provisions of Section 22 of the Limitation Act, 1963, would apply. Therefore, in our considered opinion the plea that the suit is barred by limitation has no merit at all.”

Relying upon the aforesaid judgment, the learned counsel for the appellant contended that the plea of limitation raised by the first respondent has no merit as the first respondent has encroached the appellant's property in the south of AB line and also disturbing peaceful possession by putting up the construction during the pendency of the suit filed by the appellant. Therefore, there is fresh cause of action to seek mandatory injunction in respect of building in south of AB line and as such the plea is not barred by limitation.

This Court is of the view that the plea of mandatory injunction and recovery of house portion in the south of AB line cannot be said to be



S.A.Nos.1360 & 1361 of 2013

WEB COPY

barred by limitation if the first respondent/ first defendant has encroached the suit property and put up a building in the property of the appellant / plaintiff during pendency of the suit in view of the judgment of the Hon'ble Supreme Court in ***Hari Ram Vs. Jyoti Prasad and Another*** reported in ***2011 3 CTC 769***.

11. It is the imperative for the Court to arrive at a conclusion on the actual dispute which has to be resolved. This Court in ***Rangasamy Gounder v. Valliammal*** reported in ***(2012) 3 MWN (Civil) 823*** has observed as follows:

“25. One should not lose sight of the fact that if really the Plaintiffs had no right over any extent of land in that vicinity then in the year 1917 such a document might not have emerged at all. However, the onus of proof was on the Plaintiffs to prove that the suit property and the property described in the schedule appended to Ex. A1-the Sale Deed dated 16.10.1917 are one and the same, and they do tally with each other, but that was not done by the Plaintiffs and albeit such a pitfall in the case of the Plaintiffs was noticed by the Courts below; they did not help the parties to arrive at a proper conclusion by appointing an Advocate Commissioner.

26. The Appellate Court simply confirmed the judgment of the Trial Court, without trying to resolve the dispute.

27. I recollect the following maxims:

“(i) Boni judicis est ampliare jurisdictionem — It is the role of a good judge to enlarge his jurisdiction.



S.A.Nos.1360 & 1361 of 2013

(ii) *Boni judicis est ampliare justitiam* — It is the role of a good judge to enlarge or extent justice.

(iii) *Boni judicis est judicium sine dilatione mandare executioni* — It is the role of a good Judge to render judgment for execution without delay.

(iv) *Judicis est jus dicere, non dare* — It is the proper role of a Judge to state the right, not to endow it.”

28. Not to put too fine a point on it, I would like to observe that sticking on to the punctilious of Court procedures cases should not be thrown away, but it is the duty of the Court to see that the actual dispute is resolved, if a dispute is resolvable. In my considered opinion, the dispute involved in this case is resolvable. Owing to misconception alone the parties are fighting at arms length all along. Hence, I am of the considered view that the matter should necessarily be remitted back to the First Appellate Court with the following direction.

29. On balance, the judgment and decree of the First Appellate Court is set aside and the matter is remitted back to the First Appellate Court, with the direction to appoint an Advocate Commissioner, at the cost of the Plaintiffs, to visit the suit property and measure the same with the assistance of a Government surveyor and with reference to Ex. A1-the Sale Deed dated 16.10.1917 as well as the Revenue records and other documents and locate the same precisely and submit his report detailing the physical features also. Whereupon, after giving due opportunity to both sides, the First Appellate Court shall render its reasoned judgment.

30. I would also permit the Government to adduce additional evidence for the purpose of enlightening the Court with regard to their plea that the property belongs to the Government; Whereupon the Plaintiffs also could adduce rebuttal evidence. Both sides shall appear before the Trial Court on 19.11.2012.

31. The First Appellate Court shall do well to see that the matter is disposed of within four months from the date of receipt of a copy of this judgment.”



S.A.Nos.1360 & 1361 of 2013

WEB COPY

12. In view of the aforesaid judgment, the matter is remitted back to the First Appellate Court with the following directions:

- (i) The Judgment and Decree of the First Appellate Court is set aside and the matter is remanded back to the First Appellate Court with a direction to appoint an Advocate Commissioner at the cost of the appellants herein to visit the suit property and measure the same with the assistance of the Government surveyor with reference to the sale deeds submitted by the appellants and the first respondent and to identify the encroachment, if any as contended by the appellants and to measure the road formed by acquiring the lands of the appellants and the first respondent, if any as contended by the first respondent.
- (ii) The Advocate Commissioner while submitting his report shall give the details of the physical features and the revenue records pertaining to the suit property.
- (iii) The First Appellate Court is at liberty to adduce additional evidence and examine the Government authorities to ascertain whether any portion of land of the appellants were acquired for formation of road



S.A.Nos.1360 & 1361 of 2013

WEB COPY

and whether the first respondent has encroached any portion of land belonging to the appellants herein.

(iv) The First Appellate Court is directed to dispose of the matter within six months from the date of receipt of a copy of this judgment.

The Second Appeals are disposed of accordingly. However, there is no order as to costs.

04.10.2024

cda

Index : Yes / No

Speaking / Non-Speaking Order

Neutral Citation : Yes / No



WEB COPY



S.A.Nos.1360 & 1361 of 2013

To

- 1.The Sub Court, Hosur.
- 2.The District Munsif cum Judicial Magistrate No.I,
Hosur.
- 3.The Section Officer
VR Section, High Court,
Chennai.



WEB COPY



S.A.Nos.1360 & 1361 of 2013

N.SENTHILKUMAR, J.

cda

Judgment in
S.A.Nos.1360 & 1361 of 2013

04.10.2024