



Second Appeal No.707 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.707 of 2013

1.Susila (Died)

2.Ravi

3.Venkatesan

4.Ramu

5.Sumathi

6.Jayanthi

(Appellants 2 to 6 are the LRs of the deceased 1st appellant vide order of court dated 15.02.2022 made in memo dated 14.02.2022 in S.A.No.707 of 2013 by NAVJ)

.... Appellants

-Vs-

Varadappa Naidu (Died)

1.V.Shanthi

2.R.Vijayalakshmi

3.V.Ramesh @ Venkatesan

4.Rani @ Revathi

5.Laila

6.Sasikala

7.Magi

8.Vanitha

.... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 10.07.2009 made in A.S.No.56 of 2006 on the file of the learned Sub Judge, Ponneri confirming the judgment and decree dated 29.11.2005 made in O.S.No.208 of 1988 on the file of the learned District Munsif Court, Ponneri, Tiruvallur District.



WEB COPY



Second Appeal No.707 of 2013

For Appellants : Mr.C.Prakasam

For Respondents : Mr.N.R.Anantha Ramakrishnan

J U D G M E N T

The present Second Appeal is preferred against the judgment and decree dated dated 10.07.2009 made in A.S.No.56 of 2006 on the file of the learned Sub Judge, Ponneri confirming the judgment and decree dated 29.11.2005 made in O.S.No.208 of 1988 on the file of the learned District Munsif Court, Ponneri, Tiruvallur District.

For the sake of convenience, the parties are referred to as per their rank in the suit.

2. The appellants before me are the defendants 1 to 6 in O.S.No.208 of 1988. O.S.No.208 of 1988 was presented by one Varadappa Naidu against the legal heirs of his brother, who are defendants 1 to 6 and his brother Kishtan. The seventh defendant is a neighbour of the suit schedule mentioned properties. Pending the suit, the eighth defendant died and his legal heirs were impleaded as defendants 9 to 12.



Second Appeal No.707 of 2013

WEB COPY

3. The suit is for a permanent injunction with respect to the leased lands taken from S.I.C & Co, also known as Soorapattu Estate. Originally, the plaintiff filed the suit for two items of property. Insofar as the first item of property, pending the suit, dispute was resolved and therefore the matter was not adjudicated upon insofar as that item is concerned. The entire appeal today revolves around the second item of the suit schedule mentioned property. The suit was presented for an extent of 2.5 acres of the aforesaid leasehold lands. The plaintiff stated that he is in possession of entire 2.5 acres and pleaded that since groundnut crops being raised by the plaintiff are sought to be disturbed by the defendants, he presented the suit.

4. The defendants entered appearance and denied the right of the plaintiff to an extent of 2.5 acres. The first defendant had pleaded that the plaintiff is in occupation of 75 cents out of 2.5 acres of the suit property. 50 cents is in occupation of the eighth defendant and the remaining 1 acre 25 cents to the west of the eighth defendant and plaintiff's occupation is under their possession.

5. On the basis of these pleadings, the parties went on trial. The learned Trial Judge framed the following issues.



WEB COPY

- i. Whether the plaintiff is in possession of suit item 1 and 2 as alleged?
- ii. Whether it is true that defendants 1 to 6 are cultivating on lease suit item-2?
- iii. Whether cause of action is true?
- iv. Whether plaintiff is entitled to relief of permanent injunction as against the defendants?
- v. What other reliefs?

6. On the side of the plaintiff, the plaintiff examined himself as P.W.1 and Exs.A1 to A6 were marked. On the side of the defendants, the first defendant examined herself as D.W.1 and one Ramamoorthy as D.W.2 and Exs.B1 to B4 were marked. Pending the suit, an advocate commissioner was appointed, who visited the suit schedule mentioned properties and Exs.C1 and C2 were marked.

7. The learned trial Judge came to the conclusion that, the plaintiff by virtue of Ex.A4 series, which are lease rental receipts, two of which speaks to an extent of 1.25 acres, the plaintiff is in occupation on the eastern side of the property to the extent of 1.25 acres out of 2.50 acres and decreed the suit to that extent.



Second Appeal No.707 of 2013

WEB COPY

8. The defendants 1 to 6 carried this on appeal before the learned Subordinate Judge at Ponneri. This appeal was numbered as A.S.No.56 of 2006. Subsequent to this appeal, the plaintiff preferred A.S.No.58 of 2006 against the disallowed portion. By a common judgment rendered on 10.07.2009, the learned Subordinate Judge dismissed both the appeals. Against the order of dismissal of A.S.No.56 of 2006, the present Second Appeal has been presented.

9. Originally, notice regarding admission had been ordered by this Court on 04.07.2013. Subsequently, this Court was pleased to admit the appeal on 23.02.2022 on the following substantial questions of law:

a) Whether both the Courts below, after finding that the plaintiff is not entitled for the entire 2.50 acres in the second item of the schedule property, were right in granting the relief insofar as 1.25 acres is concerned merely based on Ex.A4 series ?

b) Whether both the Courts below failed to consider the specific stand taken by the appellants to the effect that they never attempted to interfere with the possession of the plaintiff insofar as the lands to an extent of 75 cents situated on the northern side out of 1.25 acres in item 2 of the schedule property and consequently whether both the Courts below were right in granting the relief for an extent of 1.25 acres in favour of the plaintiff ?



WEB COPY



Second Appeal No.707 of 2013

c) Whether the findings of both the Courts below can be termed as perverse due to improper appreciation of the evidence available on record ?

10. Heard Mr.C.Prakasam and Mr.N.R.Anantha Ramakrishnan for the respective parties.

11. Mr.C.Prakasam, learned counsel for the appellants would argue that after finding the plaintiff is not entitled for 2.5 acres, the Court below should have dismissed the suit and should not have granted the decree for 1 acre 25 cents on the basis of Ex.A4 series alone.

12. Mr.N.R.Anantha Ramakrishnan for the respondents would submit that the Court is empowered to grant a lower relief than what is sought for by the parties. In this regard, he would rely upon **Angammal and Others -vs- Komara Gounder and Others (2002) 1 C.T.C.472** and would state that the Court is empowered to grant a lower relief even when a higher relief is sought for.

13. Insofar as this issue is concerned, it is settled that in terms of Order VII Rule 7 of C.P.C., where a party seeks for a higher or larger relief, the Court



Second Appeal No.707 of 2013

when it thinks that the plaintiff is entitled for a lesser relief, it can grant the said relief. Mr.N.R.Anantha Ramakrishnan is right in relying upon the said judgment in **Angammal and Others -vs- Komara Gounder and Others (2002) 1 C.T.C.472** which has laid down this legal proposition.

14. However, turning to the facts of the present case, the decree was granted based on Ex.A4 series. They are leasehold receipts, that stands in the name of the plaintiff. However, it is not as if in all of them, the plaintiff has been given an extent of 1.25 acres. In a couple of receipts, it speaks about 1.25 acres and in the remaining, the extent varies. On the basis of the receipts alone, one cannot come to the conclusion the plaintiff is in occupation of 1.25 acres. This is especially so since the owner/lessor had not been examined. Facing this problem, Mr.N.R.Anantha Ramakrishnan would have to rely on the admission that has been made by Mr.Prakasam's client in the written statement.

15. The admission in the written statement is that, the plaintiff's land on the eastern side is abutted by Highways and on the western side by the defendants' land. It is the case of the defendants that, on the southern side of the plaintiff's land, 50 cents is occupied by the eighth defendant. Therefore, the concession that the defendants 1 to 6 have offered is that the plaintiff is in occupation of 75 cents and not an extent of 1.25 acres. This had been confirmed



Second Appeal No.707 of 2013

by the Courts below, which has taken the largest extent that has been mentioned in the receipts and granted the decree.

16. In a suit for injunction that is based on immovable property, identification of the property is essential. This is because, in case there is any dispute post the grant of decree, which necessitates filing of execution, the decree of the Court must be clear and specific in order to come to a conclusion that the decree has been violated by the defendants. The Courts can never grant a decree which is inchoate or incomplete. A decree passed on such inchoate or incomplete document cannot stand the test of scrutiny. The entire case of the plaintiff relies upon Ex.A4 series which are lease rental receipts. The lease rental receipts do not give the boundaries nor do they speak of the place and area in occupation of the plaintiff. All that is mentioned is the extent of the property.

17. As pointed out above, even the extent is not clear and categorical, but varies from receipt to receipt. Therefore, while granting a decree to the plaintiff, at best the Courts below ought to have granted to the extent which had been conceded to by the defendants. This is because, in a suit of injunction it is only one *in personam* and it is not *in rem*. Therefore, only the defendants who are parties to the suit would be affected by the decree and nobody else.



Second Appeal No.707 of 2013

18. Mr.N.R.Anantha Ramakrishnan would argue that the eighth defendant

Kishtan has not proved his possession over 50 cents. Such a submission begs the issue. It is the plaintiff who has come to the Court and it is his duty to prove the extent he is in occupation with clear boundaries thereof. The fact that the defendants having not proved their case does not mean the plaintiff is entitled to a decree. The plaintiff should stand or fall on his case and as rightly said by Mr.Prakasam, he cannot rely upon the weakness of the case of the defendants. Both the Courts below have been persuaded to grant a decree for 1.25 acres on the basis of Ex.A4 series.

19. In the light of the above discussion and from the admission that has been made by the defendants, I partly allow the appeal. The decree granted by the trial Court and the lower appellate Court will be modified as follows. The plaintiff being in possession of 75 cents in Soorapattu Village, Ponneri Taluk, Tiruvallur District comprised in S.No.6/2 is entitled to a decree of permanent injunction to an extent of 75 cents bounded on the west by the lands in possession of defendants 1 to 6, on the north by the lands belonging to Velapandi Nadar and Elumalai Reddiar, on the east by Highways and on the south by the remaining extent in S.No.6/2.



Second Appeal No.707 of 2013

20. With the above modification, the Second Appeal is partly allowed. The suit for permanent injunction is decreed in the above terms. Since the parties are closely related, there shall be no order as to costs.

29.02.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST

To

- 1.Sub Judge, Ponneri
- 2.District Munsif, Ponneri.



WEB COPY



Second Appeal No.707 of 2013

V.LAKSHMINARAYANAN, J.

KST

S.A.No.707 of 2013

29.02.2024