



S.A.No.438 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 30.01.2024

Pronounced on: 16.02.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.No.438 of 2020

1. Vanjinathan

2. Suganthy

... Appellants/Respondents/Plaintiffs

/versus/

1. Ponmudi

2. Killivalavan @ Aiyyappan

... Respondents/Appellants/Defendants

Prayer: Second Appeal has been filed under Section 100 of C.P.C., to set aside the judgment and decree passed by the Learned Sub-Judge, Tittagudi in A.S.No.24 of 2017, dated 07.01.2020 and reversing the judgment and decree passed by the Learned District Munsif cum Judicial Magistrate, Tittagudi in O.S.No.215 of 2001, dated 20.12.2016.

For Appellants : Ms.S.Banupriya
for Mr.G.Karthikeyan

For R1 & R2 : Mr.D.Veerasekaran



S.A.No.438 of 2020

JUDGMENT

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The unsuccessful plaintiffs are the appellants in the suit O.S.No.215 of 2001 on the file of District Munsif-cum-Judicial Magistrate, Tittakudi, praying for the relief of permanent injunction came to be decreed by the trial Court. However, on appeal by the respondents herein, the suit came to be dismissed as against which the present Second Appeal has been preferred on 14.09.2020.

2. The above Second Appeal was admitted on the following two substantial questions of law:

(i). Whether the lower appellate Court was right in concluding that the 1st plaintiff has got title only to an extent of 8 cents, when the total extent of the property in Survey No.332/1 is shown to be 32 cents not 31 cents as claimed by the defendants and the sale deed dated 08.11.1962 and the partition deed dated 22.09.1982, established the title of the plaintiffs to an extent of 9 cents of land in the said Survey Number?

(ii). Whether the lower appellate Court was right in not adverting to the extent of land mentioned in the revenue documents, which would go to show the extent of



the suit Survey Number is 32 cents and not 31 cents as claimed by the defendants?

3. I have heard Ms.Banupriya, representing for Mr.G.Karthikeyan, Learned Counsel for the appellants and Mr.D.Veerasekaran, Learned Counsel for the respondents 1 & 2.

4. The case of the appellants was that the suit property measuring 1 cent was actually a pathway to reach their land. However, the case of the defendants to the contrary was that there was no land available in the first place for the plaintiffs to claim the relief of permanent injunction. According to the defendants, S.No.332/1 was comprising an extent of only 31 cents, which according to the defendants, belong to them. As no other excess land was available much less 1 cent in the said S.No.332/1, the plaintiffs were sought to be non-suited.

5. Before the trial Court, on the side of the plaintiff, the 2nd plaintiff examined herself as P.W.1 and marked Ex.A.1 to Ex.A.8. On the side of the defendants, the 1st defendant examined himself as D.W.1 and one Sekar as D.W.2 and Ex.B.1 to Ex.B.10 were marked.



S.A.No.438 of 2020

6. The trial Court found that S.No.332/1 was comprising 12.5Ares which was equivalent to 32 cents consequently, the trial Court finding that the case of the defendants regarding their right was only in respect of 31 cents even as per their own exhibits, concluded that the excess 1 cent of land was available as a passage in which the plaintiffs were claiming a right and therefore, the trial Court decreed the suit.

7. However, on Appeal, the First Appellate Court found that S.No.332/1 comprised of only 31 cents and not 32 cents and that the said 31 cents was available only at the hands of the defendants, namely by partition and purchase of 23 cents and 8 cents respectively, in support of which the defendants have exhibited their title deeds.

8. The Learned Counsel appearing for the appellants would submit that even though the trial Court had incorrectly found that S.No.332/1 had 32 cents and on the said assumption proceeded to decree the suit, finding that 1 cent excess land was available and therefore, the case of the plaintiffs was accepted, even otherwise the appellants have established that their vendor had purchased 3 cents prior to the respondents acquiring title and in such view of



S.A.No.438 of 2020

the matter, the First Appellate Court erred in dismissing the suit. Further, the

Learned Counsel for the respondent contend that in Ex.A.6 the parties had mutually accepted a condition with regard to usage of a pathway, Cart track and channel and further, in all title deeds pertaining to S.No.332/1, eastern side boundary was shown as a road. She would further draw my attention to the cross examination of D.W.1 who had admitted that he had purchased 8 cents and that his sale deed did not contain boundaries of the property purchased by him. She would also refer to the findings of the trial Court with regard to possession being with the appellants on the date of filing the suit.

9. Per contra, Mr.D.Veerasekaran, Learned Counsel for the respondents would state that the only issue between the parties was the 1 cent. He would state that 23 cents in S.No.332/1 was allotted in the year 1960 under a partition to Varadha Naicker and another 8 cents was purchased in and by sale deed by the 1st defendant. Thus, there was no question of 1 cent being available in S.No.332/1 in the first place, for the plaintiffs who claim that there was a passage comprising of an extent of 1 cent in which the plaintiffs were entitled to access.



S.A.No.438 of 2020

10. The Learned Counsel for the respondent would further state that the First Appellate Court had rightly corrected the calculation error committed by the trial Court and finding that there was no passage available for the appellants as claimed by them dismissed the suit. Therefore, he prayed for dismissal of the Second Appeal as no interference was warranted with the conclusions arrived at by the First Appellate Court.

11. I have considered the arguments advanced by the Learned Counsel on either side. Even though at the time of admission of the above Second Appeal, two substantial questions of law were framed, the second substantial question of law was framed on the premise that the entire suit survey number was comprising only 32 cents and not 31 cents. However, the Learned Counsel for the appellants has fairly conceded that the extent available in S.No.332/1 is only 31 cents and not 32 cents and therefore the second substantial question of law does not survive for consideration.

12. Even the first substantial question of law is partly covering the same issue namely, S.No.332/1 having an extent of 32 cents. However, it also involves the partition deed dated 22.09.1982 which according to the plaintiff



S.A.No.438 of 2020

establishes their title to an extent of 9 cents in the very same survey number.

Therefore, on this limited score, I am addressing the arguments advanced by the Learned Counsel on either side, in order to decide the first substantial question of law.

13. The contention of the Learned Counsel for the appellants is that under Ex.A.5 partition deed dated 01.10.1960 lands were allotted to Ayyasamy Servai in S.No.332/1. The said Ayyasamy Servai, in and by sale deed Ex.A.3 dated 19.12.1960, conveyed an extent of 3 cents to one Ramasamy Naicker, who in turn sold it to Varadha Naicker on 08.11.1962. The claim of the respondents on the contrary was that their uncle, Rangasamy Naicker had purchased 2 cents from Govindhasamy Servai who was a party to the partition deed Ex.A.5 on 23.12.1960. Citing this, the Learned Counsel for the appellants would contend that the appellants' vendor had purchased 3 cents of land, four days prior to the purchase of 2 cents by respondent's uncle, Rangasamy Naicker and therefore, the case of the plaintiffs would have to be accepted. It is seen from the documents exhibited that on 07.09.1957, Rangasamy Naicker purchased 4 cents from Pachamuthu Servai and on 23.12.1960, he purchased 2 cents from Govindhasamy Servai. This accounts for 6 cents in S.No.332/1.



S.A.No.438 of 2020

Though, it is contended by the Learned Counsel for the appellants that the purchase by the appellants' vendor was prior in point of time, it is seen that in Ex.A.6 partition deed, one Kolanjiappa was allotted 9 cents. Kolanjiappa's father was allotted 6 cents and 1st defendant's grandfather had purchased 3 cents from Ramasamy in Ex.A.4. Vaiyapuri Naicker, son Rangasamy Naicker purchased 4 cents from Pachamuthu Servai in Ex.B.4 and another 2 cents as already seen from Govindhasamy Servai in Ex.B.5. Even though, in Ex.A.6 partition deed, Kolanjiappa was allotted 9 cents, only an extent of 8 cents was available. The evidence of D.W.1 in cross examination also establishes the same. D.W.1 has stated that he purchased only 8 cents from Kolanjiappa in Ex.B.2 and apart from the partition deed, there is nothing on record to show that the property available and allotted to Kolanjiappa was 9 cents and not 8 cents. The partition deed is only a self serving document between the parties to it and cannot be taken as gospel truth for ascertaining or determining title of the respective parties in the said partition deed.

14. The trial Court has proceeded entirely on the footing that S.No.332/1 was having an extent of 32 cents. Admittedly, S.No.332/1 as an extent of only 31 cents and that being the case, in the light of the oral and



S.A.No.438 of 2020

documentary evidence adduced by the parties, the entire 31 cents in S.No.332/1 is available only at the hands of the defendants. The entire claim of the appellants was based on the extent available in S.No.332/1 being 32 cents and not 31 cents. Once, it is seen that the actual extent available in S.No.332/1 is only 31 cents, the case of the appellants cannot be sustained. Moreover, the suit is only for a bare injunction to restrain the defendants from distributing the peaceful possession of the suit property at the hands of the plaintiffs. Apart from the sale deeds and partition deeds discussed herein above, the plaintiffs have not filed any other documents to establish their physical possession of the said 1 cent of land.

15. Per contra, the defendants have filed Ex.B.7 and Ex.B.8 Patta which establishes possession of the suit property only in the hands of the defendants. Moreover, as already found the partition deed cannot be used to establish the title of the plaintiffs/appellants.

16. In view of the above, I do not find any perversity, illegality or infirmity in the findings arrived at by the First Appellate Court, reversing the judgment and decree of the trial Court. The substantial questions of law, that



S.A.No.438 of 2020

too in part, is answered against the appellants.

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17. In fine, this *Second Appeal is dismissed.* There shall be no order as to costs.

16.02.2024

Index :Yes/No.

Internet :Yes/No.

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Copy To:-

1. The Sub-Judge, Tittagudi.

2. The District Munsif cum Judicial Magistrate, Tittagudi



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S.A.No.438 of 2020

P.B.BALAJI, J.

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Pre-delivery judgment made in
S.A.No.438 of 2020

16.02.2024