



S.A.No.243 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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JUDGMENT RESERVED ON : 18.07.2024

JUDGMENT PRONOUNCED ON : 12.08.2024

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

S.A.No.243 of 2021

and

CMP.No.4754 of 2021

1.Ramesh

2.Naina

...Appellants

VS

Gopal

...Respondent

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure Code, 1908 to set aside the Judgment and Decree dated 19.12.2018 in A.S.No.111 of 2017 on the file of Sub Court, Ullundurpet in confirming the Judgment and Decree in O.S.39 of 2010, dated 24.03.2014, on the file of the Principal District Munsif Court, Ullundurpet.

For Appellants : Mr.P.Vasanth

For Respondent : Mr.T.Gandhi

JUDGMENT

The Second Appeal is filed against the confirming judgment of the lower appellate court by the unsuccessful defendant. The Second Appeal arises out of a suit filed for declaration of title, for removal of construction put up by the



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defendant at his own cost and for recovery of vacant possession.

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2. The parties will be referred to as per their array in the trial court.

Facts in Brief:

3. The plaintiff purchased the suit property in Old S.No.126/1, New S.No.125/2 in Vadamambakkam village under a registered sale Deed dated 30.01.1996 from one Kathavarayar gounder and since then been in peaceful possession and enjoyment of the same. While so the defendant taking advantage of the plaintiff's absence from the village on account of his job in Kerala, entered into the suit property and illegally constructed a house. The plaintiff therefore was constrained to file the suit for declaration of his title, removal of construction and for recovery of possession as vacant site.

4. The defendant's denied the plaint averments. The defendant's case was that the plaintiff had no title to the property, that the resurvey No. of S.No.126/1 referred to by the plaintiff was not S.No.125/2 but S.No.125. The defendant's stated that the plaintiff filed the suit giving wrong survey no. and failed to identify



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the suit property. According to the defendant's the suit property was their ancestral property and the same was allotted to them in a family partition dated 17.12.2008.

The defendant stated that even before the partition the defendants and their ancestors were in peaceful possession and enjoyment of the suit property. The defendants stated that the plaintiff's property lay north of the suit property which belonged to them. The defendants denied the title of the plaintiff and claimed title in themselves relying on Ex.B1. The defendant therefore prayed for the dismissal of the suit.

5. In the trial court the plaintiff examined himself as P.W1 and one other witness as P.W2. The plaintiff marked his sale Deed as Ex.A1. The defendant examined 3 witnesses apart from himself and marked Ex.B1 to Ex.B6. The Commissioner's report and plan were marked as Court documents Ex.C1 and Ex.C2.

6. The trial court after framing necessary issues held that the plaintiff established his title to the suit property and that the plaintiff had properly identified the suit property. The trial court further found that the defendants had



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failed to prove that in the partition the defendants were allotted the entire suit property and also that the defendant failed to prove their possession as also the possession of their ancestors. The trial court on the basis of its said findings decreed the suit as prayed for. The lower appellate court on appeal by the defendant confirmed the findings of the trial court on similar reasoning. Aggrieved by the confirming judgment and decree of the lower appellate court, the defendant is in Second Appeal before this Court.

7. The court at the time of admission, framed the following substantial questions of law.

“Whether the Courts below are right in decreeing the suit especially when the plaintiff fail to establish his title with reference to Survey No. & Re Survey No.'s as shown in the suit schedule, especially when CI exfacie reveal that identification & location of the property in Ex.A1 is not correct?”

8. The learned counsel for the appellant at the time of hearing relying on the



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judgments in the case of *T.K.Mohammed Abubucker (Dead) through lrs. and others Versus P.S.M.Ahamed Abdul Khader and others* reported in (2009) 14 SCC 224 and in the case of *K.Kumar and others Versus Mahaboomariam Beevi and Others* reported in 2023 SCC OnLine Mad 1283: (2023) 2 LW 339, submitted that the plaintiff having failed to trace the title of his vendors ought to have been non-suited, moreso, when the plaintiff failed to identify the suit property. No other point was raised by the appellant's counsel.

9. The learned counsel for the respondent on the other hand submitted that the judgments relied on by the appellant's counsel do not apply to the facts of this case. The learned counsel further submitted that the Court's below have concurrently held in favour of the plaintiff on proper appreciation of the facts and law and therefore this court in Second Appeal should be reticent to interfere with the same.

10. I have heard both the learned counsels and perused the records.



11. The plaintiff claims title to the suit property on the basis of Ex.A1.

Under Ex.A1, two items of property were purchased by the plaintiff. The plaintiff states that the defendant taking advantage of his absence from the suit village encroached into his property and put up the construction. The plaintiff therefore filed the suit for the aforesaid relief. The defendants on the other hand stated that the suit property is their ancestral property and that the same was allotted to the 1st defendant in a family partition dated 17.12.2008. According to the defendants the plaintiff did not identify the suit property and the survey number given in the suit did not tally with the survey number in the sale Deed. The defendants state that they were in exclusive enjoyment of the suit property and therefore the plaintiff's suit deserved no merit. As the defendant disputed the survey number as also the identity of the property, an Advocate Commissioner was appointed to conduct local inspection of the suit property. The Advocate Commissioner submitted his report and plan which were marked as Ex.C1 and Ex.C2.

12. The plaintiff filed Ex.A1 sale Deed to prove his title to the suit property.

Ex.A1 is a registered document. Under Ex.A1, 2 items of property with specific



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boundaries were sold. The 1st item of Ex.A1, sale Deed is the subject matter of the suit. Under Ex.A1, item 1 measuring 378 Sq.ft of vacant land with specific boundaries was sold to the plaintiff.

13. The defendant disputed the identity of the suit property as also its survey number. According to the defendant the property purchased by the plaintiff was not available on ground. The Advocate Commissioner who inspected the suit property in his report clearly identified the suit property on the basis of the boundaries given in the plaintiff's sale Deed Ex.A1. It is well established that a property can be identified either by its boundaries or by any other specific description. In this case the Advocate Commissioner has identified the property on the basis of the specific boundaries given in the sale Deed, Ex.A1. From the Advocate Commissioner's report, it is clear that the property purchased by the plaintiff under Ex.A1 is the suit property. It is also settled that minor discrepancies in measurement or wrong mentioning of survey number does not matter as long as the property is identifiable by its boundaries. Therefore the contention of the



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defendant that the plaintiff failed to prove the identity of the property on ground cannot be sustained. The plaintiff having proved his title to the suit property under Ex.A1, the burden shifts on the defendant to prove the rival title set up by him. The defendant relies on the Partition Deed dated 17.12.2008 marked as Ex.B3. The defendants specific case is that the suit property is their ancestral property and in the aforesaid partition the suit property was allotted to the 1st defendant. One more aspect which needs to be considered here is the defendant's plea that the plaintiff's property lies to the north of the suit property, which belongs to them.

14. From the recitals in the partition Deed it is seen that item 13, which relates to the suit S.No. was allotted to the 1st defendant. The said item 13 measures 323 Sq.ft and 1/9th share alone was allotted to the defendant. Therefore the trial court as well as the lower appellate court rightly held that the defendant could not claim right over the entire suit property measuring 378 Sq.ft., based on the partition Deed. It is also pertinent to note that the defendant's claimed that the plaintiff's property was to the north of their property, but the Advocate



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Commissioner's report shows that it is the defendant's property which is to the north of the plaintiff's property.

15. The court's below on an appreciation of the defendant's documents clearly found that the defendant failed to establish their right both under the partition Deed as well as the Patta and other tax receipts. As the court's below have appreciated the evidence on record in proper manner, I find no compelling reasons to interfere with the same. It is further relevant to point out here that the Advocate Commissioner reported that the superstructure constructed in the suit property was of recent origin and therefore the plea of the plaintiff that the defendant's taking advantage of his absence from the suit village constructed the house cannot be ignored. It is pertinent to note that the defendants did not object to the Commissioner's report and plan.

16. The learned counsel for the appellant relied on the judgments in the case of *T.K.Mohammed Abubucker (Dead) through Lrs. and others Versus P.S.M.Ahamed Abdul Khader and others* reported in (2009) 14 SCC 224 and in the case of *K.Kumar and others Versus Mahaboomariam Beevi and Others* reported in



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2023 SCC OnLine Mad 1283: (2023) 2 LW 339 and submitted that the plaintiff

ought to have traced the title of his vendor also. In my view the facts of the case in the said judgments are completely different from the facts of present case and therefore I am of the view that the contention of the appellant's counsel in this regard cannot be accepted. The substantial question of law is answered against the defendant.

17. For all the above reasons, I am of the view that this court sitting in Second Appeal cannot interfere with the concurrent findings of facts of the court's below, moreso, when no illegality or impropriety is found or established.

The Second Appeal is hence dismissed. The judgments of the court's below are confirmed. No costs. Consequently connected CMP is closed.

12.08.2024

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

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To

1.The Sub Court, Ullundurpet.

2.The Principal District Munsif Court,
Ullundurpet.



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N.MALA,J.

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PRE-DELIVERY JUDGMENT IN
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