



S.A.No.137 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.01.2024

CORAM

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.No.137 of 2005
and C.M.P.No.2015 of 2005

P.C.Renugopal (died)

A2.R.Sreedhar

A3.Dhanalakshmi (died)

A4.Premalatha

...Appellants

(Sole appellant died A2 to A4 brought on record as legal heirs of the deceased sole appellant viz., P.C.Renugopal vide court order dated 09.09.2022 made in C.M.P.No.20951 of 2021 in S.A.No.137 of 2005)

(A3 died, appellants 2 and 4 are already on record as LR's of 3rd appellant vide order of Court dated 24.02.2023 made in C.M.P.No.4167 of 2023 in S.A.No.137 of 2005)

Vs

The Perambur Co-operative Building Society Limited,
represented by its Secretary.

...Respondent

PRAYER: Second Appeal is filed under section 100 of the Civil Procedure Code, as against the Judgment and Decree dated 16.07.2004 made in A.S.No.401 of 2003 on the file of Principal Judge, City Civil Court, Chennai in dismissing the appeal and confirming the decree dated 22.08.2002 in O.S.No.9095 of 1984 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.D.S.Ramesh

For Respondent : Mrs.Dr.S.Suriya



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S.A.No.137 of 2003

Additional Government Pleader

J U D G M E N T

The plaintiff in the suit is the appellant before this Court.

2. The second appeal has been filed as against the judgment and decree dated 16.07.2004 made in A.S.No.401 of 2003 on the file of Principal Judge, City Civil Court, Chennai confirming the judgment and decree dated 22.08.2002 in O.S.No.9095 of 1984 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

3. For the sake of convenience, the parties are referred as per the ranking before the trial Court.

4. (a) According to the plaintiff, he is the owner of the land of an extent of 18 cents comprised in T.S.No.28/1, Ayyanavaram Village, having purchased the same from one Munusami Mudaliar and Thanickachala Mudaliar under sale deed dated 05.07.1971 in Ex.A2. Further according to the plaintiff, they have been issued patta by the Tahsildar. Based on the sale deed, they have been in uninterrupted possession and enjoyment of the property.

(b) Earlier, when the plaintiff attempted to put up fencing around the land, the defendant objected and in such circumstances, the plaintiff filed suit in O.S.No.8569 of 1972 on the file of the XI Assistant Judge, City Civil



Court, Chennai for permanent injunction.

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(c) During the trial of the suit, the defendant filed a sanctioned lay out plan and based on the lay out plan, the suit was dismissed.

(d) Later on, on enquiries and investigation, the plaintiff came to understand that the lay out plan which was filed by the defendant was not the sanctioned lay out but it is a fabricated lay out plan. Therefore, the decree passed in O.S.No.8569 of 1972 is null and void and it is not binding on the plaintiff. Based on the same, since the property of the plaintiff was sought to be interfered, the plaintiff has filed the suit for declaration of title of the property in T.S.No.28/1, to declare the judgment and decree dated 14.10.1976 in O.S.No.8569 of 1972 on the file of the XI Assistant Judge, City Civil Court, Chennai as null and void and for consequential permanent injunction with respect of possession.

5. The defendant society resisted the suit by filing written statement stating that already the plaintiff has filed suit in respect of the same suit property for bare injunction and after trial, the suit was dismissed on 14.10.1976. Therefore, the present suit filed by the plaintiff as against the defendant society in respect of the same suit property for the relief of



S.A.No.137 of 2003

declaration and injunction is hit by resjudicata.

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6. (a) It is further case of the defendant that the plaintiff purposely with a view to take over the portion of the property bearing T.S.No.18/1, which belongs to the society has deliberately and wrongly described the suit property and has filed the suit without giving any boundaries or measurements. Therefore, the suit is liable to be rejected.

(b) The defendant further stated that the defendant is a co-operative society, a statutory body for whose benefit, the Government of Tamilnadu acquired several items of land situated in Ayyanavaram-Peravallur Village and the lands so acquired was assigned to the society for being plotted out and distributed to its members. One of the items so acquired and assigned by the Government to the society is the suit property bearing Survey No.18 in Block No.2, Ayyanavaram Village.

(c) According to the defendant, in view of the dispute even in the earlier suit, the lands have been surveyed and it was found that the suit property comprised in Survey No.18/1 is belonging to the society and only the



next land alone comprised in T.S.No.28/1 belongs to the plaintiff. In such circumstances, the suit filed by the plaintiff is not maintainable and hit by resjudicata.

7. During trial, the plaintiff himself examined as P.W.1 and examined another witness as P.W.2 and marked documents Ex.A1 to A14. On the side of the defendants, D.W.1 was examined and marked documents Ex.D1 to D8.

8. After considering the documents and evidences, the trial court dismissed the suit. Aggrieved by the same, the plaintiff filed appeal in A.S.No.401 of 2003 on the file of the City Civil Court, Chennai. After re-appraising the evidence, the lower appellate Court dismissed the appeal. Aggrieved by the same, the plaintiff is before this Court with this Second Appeal.

9. At the time of admission, this Court by order dated 01.04.2005 framed the following substantial question of law:-

"1. Whether the declaratory relief in respect of possession of immovable property could be negatived relying on the report and evidence of the Revenue authorities overlooking the title deeds and as well the corresponding revenue records?



S.A.No.137 of 2003

2. Whether the report of the Revenue Authority with regard to the demarcation of the lands in adjacent survey numbers without locating the survey stones is valid to place reliance by the Court to decide on declaratory relief?

3. Whether the dismissal of the bare injunction suit would operate as res-judicata for subsequent suit praying declaratory relief?"

10. The learned counsel appearing for the appellant submitted that he is not making any submissions with respect to 2nd and 3rd prayer filed with respect to declaring the earlier decree of the suit as null and void and for bare injunction, but he restricts his arguments only with respect to 1st prayer in the suit i.e., declaration of his right in respect of the suit property.

11. Learned counsel for the appellant further submitted that during trial, the Advocate Commissioner was appointed and the Surveyor has surveyed property and filed the report before the trial Court. The report clearly revealed that as per the sale deed filed by the plaintiff, the plaintiff is the owner of the lands only in Survey No.T.S.No.28/1, block 2 of Ayyanavaram Village. As far as the lands in T.S.No.18 is concerned it has been assigned in respect of the society and lands in T.S.No.18/1 have been plotted out separately. The report



S.A.No.137 of 2005

further stated that since the plaintiff is the owner only in respect of the lands in T.S.No.28/1 and the defendant society is the owner in respect of the lands in T.S.No.18/1, there is no dispute with respect of the lands in triangular portion in the plan and therefore, prayer for declaration in respect of the lands in T.S.No.28/1 could be granted.

12. Mrs.Dr.S.Suriya, Learned Additional Government Pleader appearing for the respondent submitted that the plaintiff has already come up with the suit in O.S.No.8569 of 1972. The defendant society have filed detailed written statement in the suit and after trial, by decree and judgement dated 14.10.1976, by taking into consideration the report of the lay out plan and the report of the advocate commissioner filed in the suit, was pleased to dismissed the suit. Now again the plaintiff has come up with the present suit with respect of the same suit property again making the prayer for injunction along with declaration and the present suit is not maintainable and clearly barred by principles of res-judicata.

13. Further the counsel for the respondent submitted that even though this plaintiff has purchased extent of land in other survey No.T.S.No.28/1, he has filed the suit without any boundaries or measurements,, which shows that he always intended to interfere and take over a portion of the defendant



S.A.No.137 of 2003

society property which is situated in a triangular portion in T.S.No.18/1.

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14. Considering the report of the surveyor and advocate commissioner and the perusal of the documents, both the Courts below have arrived at a concurrent finding of fact and dismissed the suit. Therefore, no interference is required in the appeal and sought for dismissal of the second appeal.

15. Heard learned counsel on either side and perused the documents available on record.

16. It is the admitted case that the plaintiff has purchased a portion of lands to the extent of 18 cents of lands in T.S.No.18/2, Ayyanavaram Village, now bearing T.S.No.28/1 under sale deed Ex.A2. The defendant society is the owner of the lands in T.S.No.18/1 which has been acquired by the Government and assigned in favour of the defendant society. Pursuant to the same, the society has formed a layout.

17. The only issue raised by the plaintiff with the strength of the Ex.A2 is that even though he is the owner in respect of the 18 cents in T.S.No.28/1 of Ayyanavaram Village, but however attempted to project a case as though



S.A.No.137 of 2005

the lands in T.S.No.18/1 of Ayyanavaram Village which is in a triangular portion also formed part of the land purchased by him.

18. In fact even in the earlier suit filed in O.S.No.8569 of 1972, the defendant society has filed a detailed statement and advocate commissioner was appointed and the report was filed and considering the documents and evidences, the trial Court by judgment and decree dated 14.1.1976 found that the plaintiff has purchased only lands in survey No.T.S.No.28/1 in Ex.A2 and that the portion of the lands in T.S.No.18/1 was the lands belonging to the respondent society which was acquired and handed over by the Government and dismissed the suit. Hence, the suit has been decided and judgment was passed on merits. However, the plaintiff has again filed the present suit with respect of the same suit property as against the respondent society. When the issue in respect of the same property has already been decided on merits in the earlier suit between the same parties, the present suit filed by the plaintiff is barred by the principles of resjudicata.

19. The appellant's counsel contended that the lower appellate Court having rightly observed that the plaintiff is the owner of the property in respect of the lands in Survey No. T.S.No.28/1, Ayyanavaram Village ought



to have decreed the suit in respect of the 1st prayer, when through the report of the advocate commissioner and surveyor has found that the lands in T.S.No.18/1 belongs to the respondent society. But this court is not persuaded with such arguments.

20. The entire issue arose because of the intention of the plaintiff who was well aware that he has purchased only 18 cents in Ex.A2 and that he was the owner in respect of the property, got the patta for the same which was never disputed by the society. However, the plaintiff wanted to include the lands in triangular portion in T.S.No.18/1 which belongs to the respondent society and made a false claim.

21. Perusal of the prayer in the plaint reveals that there is no boundaries given to the property with measurements. In such view of the matter, the filing of the suit by the plaintiff, is only with an intention to assert title in respect of a portion of the property belonging to the respondent society in T.S.No.18/1.

22. In such circumstances, since the lower appellate Court even though concurred with the finding that the plaintiff has ownership for 18 cents in



S.A.No.137 of 2023

T.S.No.28/1 of Ayyanavaram Village through Ex.A.2 have found that based on the report of the surveyor, the claim made by the plaintiff in respect of T.S.No.18/1 belonging to the defendant society, to include in the suit property, was wrong. Therefore, both the Courts below rightly dismissed the suit. The finding of facts of both the Courts below is based on the materials available on record. It does not warrant any interference of this Court. The substantial questions of law are therefore answered against the appellant/plaintiff and in favour of the respondent/defendant.

23. In the result, this Second Appeal is dismissed. The decree and judgment of courts below are confirmed. No cost. Consequently, connected miscellaneous petition is closed.

29.01.2024

Index : Yes/No
Speaking order/non-speaking order
mpa

To

1. The Principal Judge, City Civil Court, Chennai.
2. The XVIII Assistant Judge, City Civil Court, Chennai.



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S.A.No.137 of 2005

G.ARUL MURUGAN, J.,

mpa/drl

S.A.No.137 of 2005
and C.M.P.No.2015 of 2005

29.01.2024