



S.A.(MD)No.509 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 22.08.2024

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

S.A.(MD)No.509 of 2024

and

C.M.P.(MD)No.11094 of 2024

1. R.Mariammal
2. R.Subburaj

... Appellants

versus

1. A.Balamurugan
2. R.Pandian

... Respondents

Second Appeal filed under Section 100 of C.P.C. as against the Judgment and Decree dated 27.02.2019 made in A.S.No.113 of 2017 on the file of the learned Sub Judge, Thirumangalam, confirming the Judgment and Decree dated 14.09.2016 made in O.S.No.754 of 2004 on the file of the District Munsif Court, Thirumangalam.

For Appellants : Mr.K.Baalasundharam

For R1 and R2 : Mr.S.M.Kadhar



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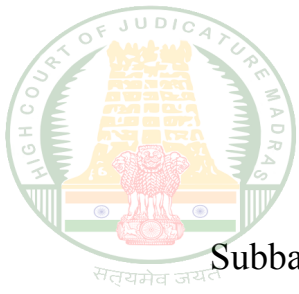
S.A.(MD)No.509 of 2024

JUDGMENT

The plaintiffs in O.S.No.754 of 2004 have preferred this second appeal challenging the Judgment and Decree dated 27.02.2019 made in A.S.No.113 of 2017 on the file of the learned Sub Judge, Thirumangalam, confirming the Judgment and Decree dated 14.09.2016 made in O.S.No.754 of 2004 on the file of the District Munsif Court, Thirumangalam.

2. This appellants as plaintiffs have filed the above suit in O.S.No. 754 of 2004 for the relief of permanent injunction restraining the defendants, their men and agents from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule property. The suit schedule property is in Survey No.217/7 of Sivarakottai Village, Thirumangalam Taluk, to an extent of 9 cents.

3. The case of the plaintiffs was that the suit schedule property belonged to one Subba Reddiar and his son Rengasamy Reddiar. The first plaintiff was married to Rengasamy Reddiar and for their marriage,



S.A.(MD)No.509 of 2024

Subba Reddiar settled some property in favour of the 1st plaintiff through settlement dated 11.09.1949. According to the plaintiffs, the total extent of the suit property is 14 cents, out of which, the southern portion of 5 cents belonged to one Kumar Reddiar.

4. The case of the defendants was that the suit schedule property originally belonged to one Sundarammal, the mother-in-law of the first plaintiff. The said Sundarammal purchased the property to an extent of 4 ½ cents from one Guruva Reddiar, vide a registered sale deed dated 12.12.1928. After the demise of Sundarammal, Subba Reddiar and his son Rengasamy Reddiar acquired the property and executed the alleged settlement deed dated 11.09.1949. However, in the settlement deed, they have wrongly mentioned as 7 cents instead 4 ½ cents. Taking advantage of the same, the plaintiffs have filed the above suit. The defendants have also claimed that there was a joint patta before UDR and the same stands in the name of Thimmammal, Lakshmi, Guruvammal, Kuppatchi, Nagammal, Kondu Reddiar and Minor Rengasamy Reddiar. According to the defendants, Kuppatchi and Nagammal are grandmothers of the defendants' father Andavar. Therefore, they claimed that they are



S.A.(MD)No.509 of 2024

entitled for 4 ½ cents on the north-western side of 14 cents in Survey No. 217/7.

5. The trial Court framed the following issues:

(i) Whether the plaintiffs are in exclusive possession of entire suit properties?

(ii) Whether the plaintiffs are entitled to the relief of permanent injunction?

(iii) To what other reliefs?

Answering the above issues, the trial Court, by its Judgment and decree dated 14.09.2016, dismissed the suit. Challenging the same, the appellants/plaintiffs have preferred an appeal before the Sub Court, Thirumangalam, in A.S.No.113 of 2017.

6. The First Appellate Court, by its Judgment and Decree dated 27.02.2019, partly allowed the appeal in respect of the eastern portion of 4 ½ cents and dismissed the appeal in respect of the remaining extent and granted liberty to file a fresh suit for declaration of title in respect of the remaining 4 ½ cents. Aggrieved over the same, the plaintiffs/appellants



S.A.(MD)No.509 of 2024

have filed this Second Appeal on the following substantial questions of law:

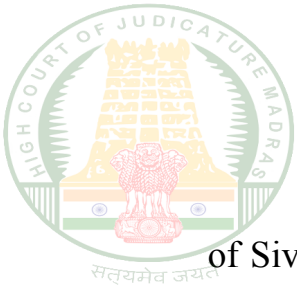
(i) Whether boundaries mentioned in Ex.A1 prevail over the extent mentioned thereon within the meaning of Section 95 of Indian Evidence Act, 1872?

(ii) Whether non-denial of the fact as to extent constrained by Ex.A1 amounts to admission by the defendants within the meaning of Order VIII Rule 15 of Civil Procedure Code, 1908?

(iii) Whether 1st Appellate Court is bound to consider all grounds mentioned in Appeal Memorandum within the meaning of Order 41 Rule 30 of Civil Procedure Code, 1908?

7. This Court considered the rival submissions made and perused the materials on record and the substantial questions of law raised by the appellants.

8. The fundamental principle of the law of transfer of property is that “no one can confer a better title than what he himself has”. In this case, the first appellant/first plaintiff got the property in Survey No.217/7



S.A.(MD)No.509 of 2024

of Sivarakkottai Village, vide a Settlement Deed dated 11.09.1949. But, the property was purchased by the mother-in-law of the first plaintiff, one Sundarammal. After the demise of Sundarammal, the property was devolved to her husband Subba Reddiar and her son Rengasamy Reddiar and they executed a settlement deed in favour of the first plaintiff on 11.09.1949. Therefore, the appellants have established title over the north-eastern portion of 4.5 cents. However, the title of the north-western portion of 4.5 cents has not been established in favour of the appellants. Further, the patta in favour of the appellants has been cancelled by the RDO and their interest extends to merely 4.5 cents as per the order of the RDO, which has been upheld by the order of the DRO dated 03.03.2008. As noted by the Sub Court, the appellants have made no attempts to challenge this order and hence, applying the rule of estoppel, it can be said that the said position has been implicitly accepted by the appellants.

9. Section 95 of the Indian Evidence Act, 1872, allows for the introduction of evidence to clarify the meaning of a document when its language is plain on its fact but unmeaning in relation to existing facts.



S.A.(MD)No.509 of 2024

This means that even if the words in the document appear clear, if they do not make sense when considering the existing facts, evidence can be presented to show how the language was used in a specific, peculiar sense. The rule of boundary prevailing over extent is covered under the above provision.

10. The rule of boundaries prevailing over extent specified in the document is meant to give effect to the true intention of the parties in line with the above provision. As held in ***Dina Malar vs. Tiruchirapalli Municipality, (1984) 2 MLJ 306***, this rule comes in when the extent to be conveyed is varying or doubtful and therefore, the boundaries specified in the document will prevail.

11. However, the same cannot defeat the basic principle of 'Nemo dat quod non habet' which means “no one gives what he doesn't have”. As noted in ***Mrs.Umadevi Nambiar vs. Thamarasseri Roman Catholic Diocese (2022 INSC 380)***, it is a fundamental principle of the law of transfer of property that “no one can confer a better title than what he himself has”. The rule of boundary prevailing over extent comes in



S.A.(MD)No.509 of 2024

only when the transferor has definitive possession of some amount of property and there is confusion regarding how much has exactly been transferred to the transferee.

12. In the case on hand, there is dispute over the title itself and without establishing the same, the rule of boundary prevailing over extent cannot come to the aid of the appellants.

13. It is a settled position that the suit must be limited to the facts stated in the pleadings. As held in ***Ram Sarup Gupta (Dead) by Lrs. vs. Bishun Narain Inter College & Ors. (1987 AIR 1242)***:

“It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet.”



S.A.(MD)No.509 of 2024

WEB COPY

14. As noted by the appellate Court, in the pleadings of the plaintiffs, the description of the property in dispute (boundary on the west side) refers to vacant side of Pandi @ Venkidu Reddiar and not the property of Guruvammal, which would have made the extent as 9 cents. Hence, it cannot be said that the boundary of the property in the settlement deed is 9 cents. Therefore, bare injunction could not have been provided in favour of the plaintiffs by the lower court, when the title over the property is in question and the same needs to be determined in a separate suit where the necessary parties are impleaded. Therefore, the Sub Court has rightly relied on the same to hold that possession over the north-western side of 4.5 cents needed to be established by filing a separate suit for determination of title.

15. With regard to non-denial of extent by defendants in Ex.A1, as per Order VIII Rule 5 of the Civil Procedure Code 1908, every allegation of fact in the plant, if not denied specifically or by necessary implication in the pleading of the defendant, shall be taken to be admitted by the defendant. However, it is important to note the proviso to the rule which provides that the court may, in its discretion, require that any fact be



S.A.(MD)No.509 of 2024

proved otherwise than by such admission. This is in line with Section 58 of the Indian Evidence Act 1872 which provides the court with the discretion to require proof of admitted facts (other than the admission itself).

16. As held by the Supreme Court in ***Balraj Tenja & another vs. Sunil Madan & another (AIR 1999 Supreme Court 3381)***, the Court may still require the plaintiff to prove the fact which has been admitted by the defendants. This is because the burden of proof of preponderance of probabilities continues to apply to civil suits and the plaintiffs are required to discharge their own burden. This aspect was upheld in ***Moran Mar Basselios Catholicos vs. Thukalan Paulo Avira & others (AIR 1959 Supreme Court 31)***, wherein, the Supreme Court held that the plaintiffs must succeed on the strength of their own title in civil suits and cannot rely on the weakness of the defendants.

17. The facts of the case reveals that determination of title is necessary before any injunction can be provided and the same can be done only in a separate suit, where the necessary parties are impleaded.



S.A.(MD)No.509 of 2024

The appellants cannot rely on the non-denial by the defendants alone to establish their title over the property.

18. This Court does not find any error in the Judgment and Decree passed by the First Appellate Court and as such, this Court is not inclined to entertain this second appeal on the substantial questions of law raised by the appellants.

19. Accordingly, this second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2024

LR/ogy

NCC : Yes / No.

Index : Yes / No.

Internet: Yes/No.

To

1. The Sub Court,
Thirumangalam.
2. The District Munsif Court,
Thirumangalam.

11/12



WEB COPY



S.A.(MD)No.509 of 2024

B.PUGALENDHI, J.

LR/ogy

S.A.(MD)No.509 of 2024

22.08.2024