



S.A.(MD)No.15 of 2005

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.15 of 2005

1.Ceril Corera (Died)

2.Lilly Pushpam

3.Jenitta

4.Mrs.C.Augesta

... Appellants

(Appellants 2 to 6 and respondents 3 and 4 are impleaded and brought on record as LR's of the deceased 1st appellant vide orders dated 01.09.2009 made in M.P.(MD)Nos.1 & 2/2008 in S.A.(MD)No.15/2005)

Vs

1.Celin Fernando

2.V.Don Bosco Fernando (Died)

3.Dhasan

4.Aldrin

5.Silva

6.Leo

... Respondents

(1st respondent, who is already on record, is recorded as LR of the deceased 2nd respondent and respondents 5 and 6 are brought on record as LR's of the deceased 2nd respondent vide Court order dated 05.01.2023 made in C.M.P. (MD)Nos.12362 of 2002 in S.A.(MD)No.15 of 2005)



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PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.48 of 2003 on the file of the Sub Court, Tuticorin dated 11.08.2004 reversing the judgment of the decree passed in O.S.No.432 of 2001 on the file of Principal District Munsif Court, Tuticorin dated 30.01.2003.

For Appellants : Mr.M.P.Senthil

For Respondents : Mr.V.Shathurthi Raja
for Mr.S.Kadarkarai

JUDGMENT

The plaintiff in the suit is the appellant. Suit is for declaration of title and injunction in respect of 2nd schedule of the suit property. The suit was decreed by the trial Court. On an appeal filed by the defendants, the first appellate Court reversed the findings of the trial Court and allowed the appeal. Aggrieved by the same, the plaintiff has come by way of this Second Appeal.

2. According to the plaintiff, the suit 1st schedule property belonged to him under gift deed executed by his aunt Arockiammal Fernando dated 31.01.1963. He has been in possession and enjoyment of



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the same from the date of gift. On the western side of the 1st schedule, there was a vacant land in the enjoyment of the plaintiff's mother Reginammal Leon. On 11.11.1959, she executed a registered settlement deed in respect of suit property in favour of the plaintiff. Under the settlement deed, the plaintiff gifted a property with the East-West measurement of 6 carpentry scale equivalent to 16.5 feet and North-South measurement of 11 carpentry scale equivalent to 30.25 feet in favour of the plaintiff and the said property was shown as 2nd schedule. Subsequently, on 26.07.1989, the plaintiff and his children sold Western portion of the said property with the East-West measurement of 12.6 feet on the North and East-West measurement of 13 feet on the South and North-South measurement of 17 feet 10.5 inches to the first defendant. The remaining portion of the property was retained by the plaintiff. The said remaining portion is shown as 2nd schedule of the suit property. Right from the date of said sale, the plaintiff has been in possession and enjoyment of the 2nd schedule of the suit property and the first defendant has been enjoying only the portion of the property conveyed to him by the plaintiff. Thereafter, taking advantage of the fact that the portion of the property retained by the plaintiff is lying as vacant site, the defendants attempted to put up construction in the 2nd schedule of the suit



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property. In these circumstances, the plaintiff was constrained to file a suit seeking declaration and injunction in respect of 2nd schedule of the suit property.

3. The suit was resisted by the defendants mainly on the ground that the suit 2nd schedule of the suit property was also sold to the defendants under document dated 26.07.1989. It was also claimed by the defendants that the plaintiff's house with door No.118 is situated on the Eastern side of the 2nd schedule of the suit property and he had no right or possession over the property sold in favour of the defendants on the Western side of the said house portion. On these pleadings, the defendants sought for dismissal of the suit.

4. Before the trial Court, the plaintiff was examined as P.W.1. Yet another witness was examined as P.W.2 and 8 documents were marked as Ex.A1 to Ex.A8. On behalf of the defendants, second defendant was examined as D.W.1 and another witness was examined as D.W.2. 17 documents were marked as Ex.B1 to Ex.B17. The Advocate Commissioner's report and plan were marked as Ex.C1 and Ex.C2.

5. The trial Court, on appreciation of oral and documentary



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evidence came to the conclusion that the plaintiff sold only the Western portion of the property, which he got under gift deed executed by his mother, retaining a small strip of land on the Eastern side viz., 2nd schedule of the suit property. Therefore, the trial Court granted decree as prayed for. Aggrieved by the same, the defendants preferred an appeal in A.S.No.48 of 2003 on the file of the Sub Court, Tuticorin. The first appellate Court, on consideration of boundary description in the documents, relied on by the parties, came to the conclusion that the 2nd schedule of suit property was also sold to the defendants by the plaintiff and hence, allowed the appeal by reversing the findings of the trial Court. Aggrieved by the same, the plaintiff has come by way of this Second Appeal.

6. This Court at the time of admission formulated the following substantial questions of law by an order dated 06.01.2005:

“1. Whether the findings of the lower Appellate Court are vitiated by its failure to consider the proved and admitted facts particularly with reference to the property under Ex.A2 and the property conveyed to the respondents under Ex.A3?

2. Whether the Lower Appellate Court is right in going



into the question with reference to the extent of the properties and genuineness of Ex.A1 and Ex.A2 especially when the appellants right under Ex.A1 and Ex.A2 is not disputed?”

7. The learned counsel for the appellants by taking this Court to the linear measurement found in Ex.A2 and Ex.A3 submitted that the plaintiff has got right over the property with East-West measurement of 6 carpentry scale equivalent to 16.5 feet under Ex.A2. However, he sold only the Western portion of the suit property with the East-West measurement of 13 feet on the South and 12.6 feet on the North under EX.A3 to the first defendant. Therefore, it is the submission of the learned counsel that the remaining strip of the land on the Eastern side of the property sold under Ex.A3 was retained by the plaintiff and the said crucial aspect was not taken into consideration by the first appellate Court. The learned counsel further submitted that the first appellate Court failed to give weightage to the linear measurement mentioned in Ex.A2 and Ex.A3. In support of his contention, learned counsel relied on the following judgments:

1. ***Dr.Paneerselvam and others Vs. Padmasini and others*** reported in **2019 (4) CTC 907**;



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2. ***Ramu (Deceased) and others Vs. Samuel Nadar*** reported in

2017 (1) MWN (Civil) 732; and

3. ***Dina Malar Publications Vs. The Tiruchirapalli Municipality,***

Rep. by its Executive Authority ad others reported in ***1984 (97) LW 365***

equivalent to 1984 (2) MLJ 306.

8. The learned counsel appearing for the respondents submitted that while describing the property sold under Ex.A3 equivalent Ex.B4, the Eastern boundary of the property sold under the document was mentioned as “முன் மரியம்மாள் தற்போது எங்களில் 1வது நபர் கையிருப்பு 118 நிர் மனை வீட்டுக்கும் மேற்கு”. The learned counsel further submitted that the house with Door No.118 was gifted to the plaintiff under Ex.A1. Therefore, it is the submission of the learned counsel that the plaintiff has not retained any portion of the land, which he got under gift deed executed by his mother under Ex.A2. The learned counsel by taking this Court to the advocate commissioner's report and plan and also Ex.B8-FMB sketch submitted that the East-West length available on ground is only 13 ½ feet and the entire property has been sold to the first defendant under Ex.A3 equivalent to Ex.B4. Therefore, the learned counsel sought for dismissal of this Second Appeal.



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9. Under Ex.A2, the plaintiff got property situated on the Western side of the house covered under Ex.A1 gift deed. The property gifted to plaintiff under Ex.A2 was described as property on the West of Mariyammal's house. The East-West measurement of the property covered by Ex.A2 was mentioned as 6 carpentry scales equivalent to 16.5 feet. Under Ex.A3 equivalent to Ex.B4, the plaintiff sold the property, which he got under Ex.A2, to the first defendant. The plaintiff claims he sold only Western portion of the property, he got under Ex.A2. However, the defendants claims that the entire property was sold to the first defendant. The measurement of the property sold to the first defendant was mentioned as 12 ½ feet East-West on the Northern side and 13 feet East-West on the Southern side. By relying on these measurements, the learned counsel for the appellants submitted that the remaining extent was retained by the plaintiff. However, while giving four boundaries to the property covered by Ex.A3 equivalent to Ex.B4, it was mentioned as follows:

“கிழமேல் ஓடிய சின்னக்கடை தெருவுக்கும் வடக்கு
1ம் அயிட்ட நிலத்துக்கும் தெற்கு
தங்களுக்கு பாத்தியப்பட்ட மனை நிலத்துக்கு கிழக்கு
முன் மரியம்மாள் தற்போது எங்களில் 1வது நபர் கையிருப்பு
118 நிர் மனை வீட்டுக்கும் மேற்கு□



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10. The Eastern Boundary mentioned in Ex.A3 goes with the Eastern boundary mentioned in Ex.A2. Therefore, it is clear that the plaintiff sold the entire strip of land that lies on the Western side of his house to the first defendant under Ex.A3 equivalent to Ex.B4. The Advocate Commissioner in his report and plan mentioned the East-West measurement of the strip of the land that lies in between the house of the plaintiff and the property of the defendants as 13 ½ feet (10 ½ +3). Therefore, the East-West linear measurement available on ground in between the property of the plaintiff and the property of the defendants was only 13 ½ feet and the said property was sold by the plaintiff to the first defendant under Ex.A3 equivalent to Ex.B4. It is clear a larger linear measurement mentioned under Ex.A2, namely 6 carpentry scale equivalent to 16.5 feet, is not available on ground. Therefore, the contention raised by the appellants as if the plaintiff retained a narrow strip of the land on the Eastern side of the property sold under Ex.A3 [2nd schedule of suit property] is not acceptable to this Court. The first appellate Court, by taking into consideration the boundary description in the document filed by the parties and also the linear measurement of the property available on ground as noted by the Advocate Commissioner's report, came to the conclusion that the plaintiff sold the suit 2nd schedule



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property to the first defendant under Ex.A3 and he has not retained any portion of the East of the property sold under Ex.A3. Therefore, the conclusion reached by the first appellate Court is not vitiated by misreading of the document or any perversity. In view of clear Eastern boundary description in Ex.A2 and Ex.A3 and availability of land with lesser East-West measurement on ground [than the one mentioned under Ex.A2], the judgments relied on by the learned counsel for the appellant are not applicable to the facts of the case. In such circumstances, the questions of law framed at the time of admission are answered against the appellants and in favour of the respondents. Accordingly, the Second Appeal stands dismissed. There shall be no order as to costs.

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NCC : Yes / No
Index : Yes / No

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To

- 1.The Subordinate Judge, Tuticorin.
- 2.The Principal District Munsif Court, Tuticorin.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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