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S.A(MD)No.6 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.10.2024

Pronounced on : 20.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

**S.A(MD)No.6 of 2020
and
C.M.P(MD)No.117 of 2020**

Selvaraj

... Appellant/1st Respondent/
Plaintiff

Vs.

1.Appukuttan Nair

... 1st Respondent/Appellant/
2nd Defendant

2.Krishnan Thambi

3.Sadhananthan Nair

4.Nanthakumaran Thambi

5.Sivakumaran Thampi

6.Jalaja Kumari

7.Prabha Kumari

8.Sudha Kumari

9.Aji Kumar

... Respondents 2 to 9/ R2 to R9/
Defendants 3 to 6 & 8 to 11

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 23.01.2019 made in A.S.No.103 of 2014 on the file of the Subordinate Court, Kuzhithurai, reversing the judgment and decree, dated 06.08.2014 made in O.S.No.299 of 2003 on the file of the Principal District Munsif, Kuzhithurai and allow the Second Appeal.



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For Appellant : Mr.C.Dhanaseelan
for Mr.S.Sivakumar
For R1 : Ms.J.Anandhavalli
R2 to R7 & R9 : Ex-parte
R8 : Dispensed with

JUDGMENT

This Second Appeal is preferred against the judgment and decree, dated 23.01.2019 passed in A.S.No.103 of 2014 on the file of the Subordinate Court, Kuzhithurai, reversing the judgment and decree, dated 06.08.2014 passed in O.S.No.299 of 2003 on the file of the Principal District Munsif Court, Kuzhithurai.

2. The appellant is the plaintiff in O.S.No.299 of 2003 on the file of the Principal District Munsif Court, Kuzhithurai. The respondents are the defendants in the suit.

3. For the sake of convenience, the parties are referred as plaintiff and defendants as arrayed in O.S.No.299 of 2003 on the file of the Principal District Munsif Court, Kuzhithurai.

4. It is the case of the plaintiff that the suit property measuring 9.014 cents comprised in Old S.No.1859/7, Re.S.No.300/7 of Painkulam



village originally belonged to R.Madhavan Thambi son of Madevan Pillai. The plaintiff has purchased the suit property from the said Madhavan Thambi by virtue of registered sale deed, dated 27.03.2003. The plaintiff is in possession and enjoyment of the suit property as absolute owner from the date of purchase by paying revenue tax. Whiles, the defendants attempted to trespass into the suit property by demolishing the existing boundaries. Hence, the plaintiff has filed the suit for permanent injunction restraining the defendants from trespassing into the suit property by demolishing the existing boundaries.

5. It is the case of the defendants that Madhavan Thambi purchased 9.014 cents comprised in plot No.7 in S.No.1859 through sale deed, dated 08.11.1965 from one Sumathi Thankachi D/o.Eswari Thankachi. The total area of plot No.7 is 33.800 cents. That property's four boundaries are mentioned as west – remaining portion, north – another plot, East – building, and south – plot of Karunakaran Thambi. The plaintiff purchased 9.041 cents from the said Madhavan Thambi through a sale deed, dated 27.03.2003 with specific four boundaries, western boundary mentioned as property owned by Bhaskaran Thambi and Selvanayagam, northern boundary mentioned as the property owned by one Murugesan and Selvaraj; eastern boundary mentioned as road;



southern boundary mentioned as property owned by Selvanayagam and Madhavan Thambi. The remaining area of Madhavan Thambi was purchased by Sivakumar and Nandhakumar. The plaintiff with the intention to prevent the defendants from ingress and egress of his house from the road has filed this vexatious suit. The plaintiff incorrectly described four boundaries of the suit property. The plaintiff has no title or right over the suit property and hence, he is not entitled to any decree as sought in the suit.

6. The trial Court has framed the following issues:

"(1) Whether the plaintiff is entitled to the relief of permanent injunction against the defendants from demolishing the boundaries and entering into suit property?

(2) To what other reliefs plaintiff is entitled to?"

7. During trial, the plaintiff was examined as P.W.1 and marked Ex.A.1 to Ex.A.5. On the defendants side, D.W.1 and D.W.2 were examined and marked Ex.B.1 and Ex.B.9.

8. After hearing both sides, the learned Principal District Munsif, Kuzhithurai decreed the suit in O.S.No.299 of 2003 by passing



judgment and decree, dated 06.08.2014. Aggrieved by the judgment and decree, the 2nd defendant/Appukuttan Nair has preferred the Civil Appeal in A.S.No.103 of 2014 before the Sub Court, Kuzhithurai. The first Appellate Court after hearing both, passed the judgment and decree, dated 23.01.2019 allowed the appeal by reversing the judgment and decree of the Trial Court, dated 06.08.2014 and dismissed the suit in O.S.No.299 of 2003.

9. Challenging the said judgment and decree, the plaintiff has preferred this Second Appeal and the same has been admitted on 07.01.2020 by framing the following substantial question of law:-

"Whether the finding of the first appellate Court that the appellant has not proved his exclusive possession and enjoyment and therefore the suit liable to be dismissed is perverse because the respondent has categorically admitted the exclusive possession and enjoyment of the suit property by the appellant, admission by opposite side is the best evidence as per Section 58 of the Indian Evidence Act and therefore, the judgment and decree of the first appellate Court is vitiated by non-consideration material evidence of candid admission of respondent?"



10. The learned counsel for the appellant/plaintiff has argued that the suit property is originally belonged to Madhavan Thambi as he purchased the suit property under Ex.A.3 - Sale Deed dated 08.11.1965. The plaintiff purchased the suit property from Madhavan Thambi under Ex.A.1 - Sale Deed, dated 27.03.2003. Prior to Ex.A.1 - Sale Deed a suit in O.S.No.856 of 1971 was filed against Madhavan Thambi and others. In the said suit Madhavan Thambi was 33rd defendant. A decree was passed in that suit holding that Madhavan Thambi was entitled to 9.014 cents, the suit property herein. In Ex.A.1 - Sale Deed also there is a reference about the prior suit O.S.No.856 of 1971. There is no dispute in it. The defendants 1 and 2 alone contested the suit as they are adjacent owners. The first defendant has not questioned the title and entitlement of the plaintiff over the suit property. Moreover, the first defendant died and his legal heirs are D7 to D11, they have not raised any dispute upon the enjoyment of suit property by the plaintiff. The second defendant objected only with regard to boundaries. But, he deposed as D.W.1 and clearly admitted that the suit property belonged to the plaintiff. Admission is the best evidence, which need not be corroborated by any other evidence. The plaintiff's vendor was one of the defendants in the earlier suit in O.S.No.856 of 1971 which was a suit for partition, in which, his title over the suit property was upheld. Preliminary decree is



reached finality until it is not challenged. The final decree is not necessary. In support of his contention, the learned counsel relied on

AIR 1963 SC 992 (Venkata Reddy and Others /v/ Pethi Reddy.)

The trial Court has correctly appreciated the evidence and decreed the suit whereas the first Appellate Court wrongly reversed the judgment of the trial Court without proper appreciation of evidence. Therefore, the learned counsel prayed to allow the Second Appeal.

11. Per contra, the learned counsel for the 2nd defendant has mainly argued that the plaintiff purchased the property from Madhavan Thambi through Ex.A.1. The sale deed Ex.A.3 = Ex.B.8 stood in the name of Madhavan Thambi was in Malayalam language and its Tamil translation is marked as Ex.A.4 = Ex.B.9. While mentioning four boundaries which are mentioned in Ex.A.1 have differed from Ex.A.4. The plaintiff admitted when Madhavan Thambi purchased the property under Ex.A.3 Marthandam to Thangaipattinam road was in existence for more than 100 years. The plaintiff has not correctly mentioned four boundaries as per his vendor's sale deed and only to prevent the 2nd defendant from using the road, the plaintiff has wantonly and incorrectly mentioned the eastern boundary as road. So, the learned counsel submitted that the first Appellate Court has correctly appreciated



the evidence and rightly dismissed the suit, which did not warrant any interference.

12. Heard the arguments of both sides and perused the material records of the case. The suit property with larger extent of 33.800 cents is comprised in Old S.No.1859. The suit property is 9.014 cents in plot No.7 in Old S.No.1859/7 and R.S.No.300/7 of Paingulam village, Kanyakumari district. There is no dispute that the suit property was originally belonged to Madhavan Thambi. There is also no dispute that the plaintiff and the defendants 1 and 2 purchased their respective portions in suit survey number. The plaintiff says that the defendants 1 and 2 disturbed his possession in the suit property. The defendants 1 and 2 states that the plaintiff wrongly mentioned suit property and they disputed four boundaries, particularly the western boundary.

13. It is clear from the records that the said Madhavan Thambi purchased the 9.014 cents in suit survey number through Ex.A.3 = Ex.B.8 - sale deed, dated 08.11.1965 from one Sumathi Thangachi and others. The contents of the sale deed are in Malayalam version. The Tamil translation copy is marked as Ex.A.4 = Ex.B.9. There is no dispute in it. In Ex.A.3, A4 = Exs.B.8, B.9 - Sale deed the



boundaries are mentioned as “மறு வீதத்திற்கு மேற்கும், மறு கண்டத்திற்கு வடக்கும், கட்டிடத்திற்கு கிழக்கும், கருணாகரன் தம்பியுடைய கண்டத்திற்கு தெற்குமாகும்”. The plaintiff purchased 9.014 cents from the said Madhavan Thambi by virtue of Ex.A.1 - Sale Deed, dated 27.03.2003. In Ex.A.1 - Sale Deed, the boundaries are mentioned as “பாஸ்கரன் தம்பி செல்வனாயகம் இவர்கள் மனை தரைக்கு மேற்கும், முருகேசன் செல்வராஜ் இவர்கள் மனை தரைக்கு வடக்கும், ரோட்டிற்கு கிழக்கும், செல்வனாயகம் மாதவன் தம்பி இவர்கள் மனை தரைக்கு தெற்குமாகும்”. In Exs.A.3, A4 sale deeds stood in the name of Madhavan Thambi the western boundary mentioned as “கட்டிடத்திற்கும் கிழக்கு”. Whereas, in Ex.A1 - Sale Deed which stood in the name of the plaintiff, the western boundary is mentioned as “ரோட்டிற்கும் கிழக்கு”. This western boundary is entirely differed from the parent deed.

14. It is the case of the plaintiff that he purchased the property in the year 2003 after 38 years from the purchase of Madhavan Thambi. In these 38 years, the western boundary was changed as road. But, the defendant strongly objected and submitted that Marthandam to Thangaipattinam road was in existence for more than 100 years. The plaintiff, who deposed as P.W.1, clearly admitted about the existence of Marthandam to Thangaipattinam road even at the time of purchase of



property by Madhavan Thmabi. At this juncture, the plaintiff submitted that the 1st defendant has not contested the appeal before the I Appellate Court and thereby admitted the case of the plaintiff, whereas the 2nd defendant alone contested the appeal contrary to his admission in his cross examination that the plaintiff is in possession and enjoyment of the suit property. A perusal of entire evidence of the second defendant as DW1, it is clear that he has only admitted the purchase of property by the plaintiff in the suit survey number from Madhavan Thambi, but he has raised an objection that the plaintiff mentioned incorrect boundary to the suit property. It is the strong contention of the second defendant that he has road access to egress and ingress to his house and the plaintiff intentionally mentioned the road as a boundary thereby tried to prevent the second defendant from using the road.

15. It is necessary to recollect the settled position of law that a litigant cannot avail weakness and loopholes of opponent litigant. The litigant who files a case must prove his case by producing acceptable evidence. Section 58 of the Indian Evidence Act reads as follows:

"58. Facts admitted need not be proved.

No fact need be proved in any proceeding which the parties thereto their agents agree to admit at the hearing, or



which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

As per proviso to Section 58, the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions. So, the plaintiff must prove his possession over the suit property, when the defendant specifically disputed the boundaries of the suit property, particularly the boundaries are different from the parent deed. The suit is filed for permanent injunction alone. Injunction can be granted only to a property with specific boundaries. If the defendant raises a genuine dispute about the enjoyment of the plaintiff over the suit property surrounded by boundaries therein, the plaintiff must seek or amend the plaint for declaration of his title. Once a person coming to Court for discretionary relief of injunction he must come to the court with clean hands and he cannot sought for relief on the basis of defects and loopholes in the case of defendants.

16.It is well settled dictum of the Hon'ble Supreme Court that when there is any cloud on the title of property surrounded by four



boundaries, suit for bare injunction is not maintainable and they ought to have sought for the relief of declaration. The plaintiff has not filed any other revenue record, like patta in respect of suit property with subdivision of survey number or any other document for identification of suit property through revenue surveyor. At least the plaintiff can bring the real features of his property to the knowledge of the Court through appointment of an advocate/commissioner. But, the plaintiff has not taken any steps. A suit simplicitor for injunction will not be maintainable when the title of the property of the plaintiff was disputed by the defendant. Much less, when the boundaries of the suit property are disputed, the suit filed by the plaintiff to protect his possession is not maintainable.

17. Of course, as per the plaintiff's version, the preliminary decree in O.S.No.856 of 1971 is a decree, in that suit the plaintiff's vendor Madhavan Thambi was shown as the 33rd defendant. A plain reading of the decree, the plaintiff's vendor Madhavan Thambi was entitled to a share in the suit survey number. He was not specifically allotted the suit property with boundaries as mentioned therein in that suit in O.S.No.856 of 1971 as rightly argued by the defendant. So the citation **AIR 1963 SC 992 (*Venkata Reddy and Others /v/ Pethi Reddy*)** relied on



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by the plaintiff is not applicable to the facts and circumstances of this case on hand. The trial Court has not considered all these aspects. The first Appellate Court has correctly appreciated the evidence and correctly held that the plaintiff has not established that the plaintiff was in lawful possession of suit property with boundaries mentioned therein and that the plaintiff has not proved the boundaries through acceptable documents and hence, the first appellate Court rightly reversed the decree of the trial court. Therefore, this court holds that the plaintiff is not entitled to an injunction for his possession over the suit property. The question of laws in the Second Appeal is answered against the appellant/plaintiff.

18. In the result, the Second Appeal is dismissed. The judgment and decree, dated 23.01.2019 passed in A.S.No.103 of 2014 on the file of the Subordinate Court, Kuzhithurai, is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

20.01.2025

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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To

- 1.The Principal District Munsif,
Kuzhithurai
- 2.The Subordinate Court,
Kuzhithurai.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre-Delivery Judgment made in
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