

(2012) 12 MAD CK 0104

Madras High Court (Madurai Bench)

Case No: S.A. (MD) No. 792 of 2012 and M.P. (MD) No. 1 of 2012

S. Lakshmi and Others APPELLANT

Vs

M. Tamilselvi and Another RESPONDENT

Date of Decision: Dec. 7, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 31

Citation: (2013) 28 MLJ 424

Hon'ble Judges: A. Selvam, J

Bench: Single Bench

Advocate: P. Sundar Srinivasan, for the Appellant; D. Gandhiraj, for the Respondent

Final Decision: Dismissed

Judgement

A. Selvam, J.

Challenge in this Second Appeal is to the judgment and decree dated 3.7.2012 passed in Appeal Suit No. 106 of 2011 by the Sub Court, Devakottai, wherein the judgment and decree dated 9.4.2011 passed in Original Suit No. 110 of 2008 by the District Munsif Court, Devakottai are reversed. The appellants herein as plaintiffs have instituted Original Suit No. 110 of 2008 on the file of the trial Court for the reliefs of declaration and perpetual injunction, wherein the present respondents have been shown as defendants.

2. It is averred in the plaint that the first plaintiff is the wife of the deceased Sornam Chettiar. The plaintiffs 2 to 6 are their children. The adoptive father of Sornam Chettiar viz., SP. Nagappa Chettiar has passed away in the year 1975. The ancestral house of SP. Nagappa Chettiar is situate in old door Nos. 17 and 18 and the said house is facing towards eastern side. The said SP. Nagappa Chettiar has owned a tiled house bearing No. 18/2 and vacant site immediately on the northern side of the house bearing door Nos. 17 and 18. The said SP. Nagappa Chettiar has sold 1200 square feet under a registered sale deed dated 12.12.1974 in favour of SP.

Nagammai Achi and he retained the suit property. The suit property is situate in between the house bearing door Nos. 17 and 18 and the property mentioned in the sale deed dated 12.12.1974. The purchaser under the sale deed dated 12.12.1974 by name SP. Nagammai Achi has executed a will in favour of her daughter-in-law by name Anusya who has been arrayed as first defendant. The said Anusya has executed a sale deed dated 22.1.1998 in favour of the defendants 2 and 3. Now the defendants 2 and 3 have made illegal claim over the suit property. The suit property is the absolute property of the plaintiffs. The suit property is an extent of 134.7 square feet. Since the defendants have denied title of the plaintiffs over the suit property, the present suit has been instituted for the reliefs of declaration and perpetual injunction.

3. The material averments made in the written statement filed on the side of the defendants 2 and 3 can be stated like thus:

It is false to say that the ancestral house of SP. Nagappa Chettiar is bearing door Nos. 17 and 18. It is also equally false to say that a tiled house bearing No. 18/2 is situate on the northern side. The original owner of the suit property by name SP. Nagappa Chettiar has executed a sale deed in favour of SP. Nagammai Achi on 12.12.1974, wherein clear four boundaries have been given. The said Nagammai Achi has executed a will dated 28.12.1988 in favour of the first defendant and the first defendant has sold the property covered under the will dated 28.12.1988 in favour of the defendants 2 and 3 by virtue of the sale deed dated 22.1.1998. It is false to say that the plaintiffs are the owners of the suit property. The defendants 2 and 3 are the owners of the suit property and its adjoining northern property. There is no merit in the suit and the same deserves to be dismissed.

4. On the basis of the rival pleadings raised on either side, the trial Court has framed necessary issues and after analysing both the oral and documentary evidence has decreed the suit as prayed for. Against the judgment and decree passed by the trial Court, the defendants 2 and 3 as appellants have preferred Appeal Suit No. 106 of 2011 on the file of the first appellate Court.

5. The first appellate Court after hearing both sides and upon reappraising the evidence available on record has allowed the Appeal and thereby set aside the judgment and decree passed in Original Suit No. 110 of 2008 by the trial Court. Against the judgment and decree passed by the first appellate Court, the present Second Appeal has been preferred at the instance of the plaintiffs as appellants.

6. As agreed by the learned counsel appearing on either side, the present Second Appeal is disposed of on merits at the stage of admission.

7. On the side of the appellants/plaintiffs, the following substantial questions of law have been raised for consideration:

(i) Whether the finding of the lower appellate Court that the boundaries will prevail over extent is legally sustainable in cases where there is no discrepancy or ambiguity in the schedule of property and only a portion out of larger extent of property, has been conveyed giving specific extent and correct boundaries?

(ii) Whether the findings of the lower appellate Court which is perverse and not supported by any material and without valid reasoning and without considering the various points considered by the trial Court for decreeing the suit is sustainable in law?

(iii) Whether the lower appellate Court is justified in non-framing proper points determination as contemplated under Order 41, Rule 31 CPC?

(iv) Whether the lower appellate Court is justified in holding that the appellants have not proved the title, when the title relied upon by the respondents, is through the sale deed, executed by the predecessor in title of the appellants?

8. The consistent stand taken on the side of the plaintiffs is that the first plaintiff is the wife of Sornam Chettiar and the remaining plaintiffs are their children. The adoptive father of Sornam Chettiar by name SP. Nagappa Chettiar has owned an old house bearing door Nos. 17 and 18 and immediately on the northern side of the said house, a tiled house bearing door No. 18/2 and also vacant site are situate and the said SP. Nagappa Chettiar has sold 1200 square feet in favour of one Nagammai Achi under a registered sale deed dated 12.12.1974 and the suit property is situate in between the old house of the said SP. Nagappa Chettiar and the property which is mentioned in the sale deed dated 12.12.1974. The suit property is an extent of 134.7 square feet and the same has not been sold under the registered sale deed dated 12.12.1974. The said Nagammai Achi has executed a will in favour of her daughter-in-law who has been arrayed as first defendant and the first defendant has sold the property mentioned in the sale deed dated 12.12.1974 by virtue of the sale deed dated 22.1.1998 in favour of the defendants 2 and 3. Now the defendants 2 and 3 have made illegal claim over the suit property by way of denying the title of the plaintiffs. Under the said circumstances, the present suit has been instituted for the reliefs sought for in the plaint.

9. On the side of the defendants it has been specifically stated that after executing the sale deed dated 12.12.1974 the original owner of the suit property by name SP. Nagappa Chettiar has not retained any vacant space in between the property covered under the said sale deed and the old house bearing door Nos. 17 and 18 and in fact in the sale deed dated 12.12.1974 clear four boundaries have been given and therefore, the claim of the plaintiffs is totally untenable. Under the said circumstances, the present suit is liable to be dismissed.

10. The trial Court based upon the claims and counter claims made on either side has decreed the suit as prayed for. But the first appellate Court has passed its judgment and decree by way of reversing the judgment and decree passed by the

trial Court. Under the said circumstances, apart from the substantial questions of law raised on the side of the appellants/plaintiffs, the only point that has to be decided in the present Second Appeal is as to whether the plaintiffs are having right, title and interest over the suit property.

11. It is an admitted fact that in the trial Court, an Advocate Commissioner has been appointed and he inspected the suit property and its adjoining properties and he filed his report and plan and the same have been marked as Exhibits C-1 and C-2. In Exhibit C-2, Com-missioner's plan, the suit property has been shown as "a, b, c, d" measuring 134.4 square feet. Further it is seen from Exhibit C-2 that the property of the plaintiffs is situate immediately on the southern side of the suit property and the property of the defendants 2 and 3 is situate in Survey No. 12/1 on the northern side of the suit property.

12. It is also equally an admitted fact that the suit property and its adjoining northern and southern properties are originally belonged to SP. Nagappa Chettiar. The said SP. Nagappa Chettiar is the adoptive father of Sornam Chettiar and the said Sornam Chettiar is the husband of the first plaintiff and father of the remaining plaintiffs. The said SP. Nagappa Chettiar has executed the sale dated 12.12.1974 in favour of SP. Nagammai Achi. The registration copy of the same has been marked as Exhibit A-1 and original sale deed dated 12.12.1974 has been marked as Exhibit B-1. Therefore, Exhibits A-1 and B-1 are one and the same.

13. The rival claim put forth on either side is based upon Exhibit B-1. In Exhibit B-1, house of SP. Nagappa Chettiar has been shown as southern boundary. The suit property has not been shown as southern boundary of the property covered under the said sale deed.

14. The learned counsel appearing for the appellants/plaintiffs has strenuously contended that in Exhibit B-1, specific extent of 1200 square feet has been mentioned and since specific extent of 1200 square feet has been mentioned in Exhibit B-1, the predecessors in title of the defendants 2 and 3 and defendants 2 and 3 are not entitled to claim more than that of 1200 square feet and the suit property is situate immediately on the southern side of the said 1200 square feet and the same belongs to the plaintiffs and since the defendants 2 and 3 have made illegal claim over the same by way of denying title of the plaintiffs, the present suit has been instituted for the reliefs sought for in the plaint and the trial Court has rightly decreed the suit. But, the first appellate Court has erroneously dismissed the same and therefore, the judgment and decree passed by the first appellate Court are liable to be set aside.

15. In support of the contention raised on the side of the appellants/plaintiffs, the decision [Dina Malar Publications Vs. The Tiruchirapalli Municipality and Others](#), is relied upon, wherein this Court has held that "in cases of doubtful or varying extents in documents of title relating to the property, boundaries should be preferred to the

extent. Only in the absence of definite materials to show the actual extent intended to be sold, the boundaries should outweigh the doubtful extent mentioned in the document. If the recitals in the document and the circumstances of the case show that a lesser extent only was conveyed than the area covered by the boundaries and there is clear evidence as to the intention of the parties with reference to the extent conveyed, then the extent should prevail over the boundaries."

16. In order to remonstrate the contention put forth on the side of the appellants/plaintiffs, the learned counsel appearing for the 1st respondent/2nd defendant has befittingly contended that in Exhibit B-1 clear southern boundary has been given and if really the vendor under Exhibit B-1 has intended to retain the suit property, definitely the same should be shown as southern boundary of the property covered under Exhibit B-1 and since the suit property is situate immediately on the northern side of the house of vendor under Exhibit B-1, the Court can very well come to a conclusion that the suit property has also been conveyed under Exhibit B-1, even though in Exhibit B-1 the extent has been erroneously mentioned as 1200 square feet and the trial Court without considering the correct proposition of law has erroneously decreed the suit. But, the first appellate Court has rightly dismissed the same and therefore, the judgment and decree passed by the first appellate Court do not warrant interference.

17. In support of the contention raised on the side of the respondents, the following decisions have been relied upon:

(a) In Roohnisha Beevi and 15 others Vs. A.M.M. Mahudu Mohamed and 29 Others , this Court has held that

In case of conflict, usually boundaries predominate and the rest is regarded as erroneous or inaccurate descriptions.

(b) In Dharmakanny Nadar Siviseshamuthu and Others Vs. Mahalingam Nadar Gopalakrishna Nadar and Others , it has been held that

ordinarily when a piece of land is sold with definite boundaries, unless it is very clear from the circumstances surrounding the sale that a smaller extent than what is covered by the boundaries was intended to be sold, the rule of interpretation is that boundaries must prevail as against measurement.

(c) In The Church of South India Trust Association through its power of Attorney Agents C.E. Soundiraraj and Another v. Raja Ambrose (died) and Another (1978) 2 MLJ 620, it is held that

the principle of construction of grants made under instruments in writing seems to be now well-settled not only in this country, but in many other systems as well. The principle accords with common sense and might be stated broadly, thus: The subject-matter of the grant would depend on the intention of the parties as expressed in the relevant conveyance deed. Where the deed sets out the extent and

measurements correctly, there can be no difficulty in determining the subject-matter of the grant. But where no measurements are given or the extent mentioned in the deed is either vague or is only a rough and ready approximation, one has to look to other indications in the deed in order to fix the identity of the property which is the subject of the grant. If the deed in question sets out the boundaries of the property conveyed, then these boundaries will have to be accepted as a clear reflection of the intention of the grantor and they will conclude not only the exact positioning of the property conveyed, but also its true extent. The boundaries given in the deed will also, in such cases, prevail over the measurements given in the deed, if these are given as approximations.

(d) In [Kamakshi Ammal Vs. R. Ranganathan Chettiar and another](#) it is that

if the deed of conveyance gives both the extent and the boundaries, the Court will have to determine what the intention of the parties was at the time of the grant, having due regard to the law of evidence. The problems can arise only when there is inconsistency and both the area and the boundaries are specific. First, we have to ascertain if there is real inconsistency between the boundaries and area, or is the inconsistency only seeming? There can be no hard and fast rule in a matter of this kind that when both the boundaries and area are given and both cannot stand together, the intention was to convey the entire extent covered by the boundaries. Equally, reference to the area, particularly when it is not precise, cannot falsify the conveyance by boundaries. One test is, which of them is precise and capable of identification and easy location on the ground, for the attempt should be to give effect to the grant according to terms. We have to find out which of them may be discarded and which taken for identification of the grant, as the governing mark or the substantial or true part of the description.

18. From the conjoint reading of the decisions referred to supra, it is made clear that in a case like this, the surrounding circumstances and also intention of parties are very much essential for deciding as to whether the boundaries prevail over area, or area prevails over boundaries.

19. In the instant case, it is an admitted fact that the original owner of the suit property and its adjoining northern and southern properties has executed Exhibit B-1 on 12.12.1974 in favour of Nagammai Achi, wherein his house property has been shown as southern boundary. The suit property is situate immediately on the northern side of his house. If really he wanted to retain the suit property, his house which situates immediately on the southern side would not have been shown as southern boundary and in Exhibit B-1 the suit property must be shown as southern boundary. But, in Exhibit B-1 as pointed out in many places, house of the vendor has been shown as southern boundary. Therefore, it is quite clear that the vendor under Exhibit B-1 has intended to convey the entire property which situates immediately on the northern side of his house. Further, in the instant case, no surrounding circumstances are available for the purpose of coming to a conclusion that the

vendor under Exhibit B-1 has intended to convey only 1200 square feet. Therefore, it is quite clear that in the instant case, the Court can safely come to a conclusion that the boundaries given in Exhibit B-1 would prevail the extent mentioned therein. Since the boundaries mentioned in Exhibit B-1 would prevail over the extent mentioned therein, it is very clear that the plaintiffs are not having any semblance of right, title and interest over the suit property.

20. The present suit has been instituted for the reliefs of declaration and perpetual injunction. It has already been pointed out that the plaintiffs are not having any manner of right, title and interest over the suit property and therefore, the plaintiffs are not entitled to get the reliefs sought for in the plaint.

21. On the side of the appellants/plaintiffs, an inert attempt has been made by way of relying upon the deposition given by D.W. 1. In fact, D.W. 1 has stated in his evidence during the course of cross examination to the effect that during rainy seasons, the plaintiffs have used to let out rain water through the suit property and that itself would not clothe any right, title and interest over the suit property.

22. It has already been discussed and pointed out to the effect that the boundaries mentioned in Exhibit B-1 would prevail the extent mentioned therein. Since the boundaries mentioned in Exhibit B-1 would prevail over the extent mentioned therein, the entire argument put forth on the side of the appellants/plaintiffs is of no use and the substantial questions of law raised on their side are not relevant for the purpose of deciding the question of law involved in the present case and therefore viewing from any angle, the present Second Appeal deserves to be dismissed. In fine, this second appeal deserves dismissal and accordingly is dismissed without cost. The judgment and decree passed in Appeal Suit No. 106 of 2011 by the Sub Court, Devakottai are confirmed. Connected Miscellaneous Petition is also dismissed.