

Devi and Others Vs. Venugopal

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Court : Chennai

Decided On : Jul-21-2016

Judge : P. Kalaiyarasan

Appeal No. : S.A.No. 2129 of 2002

Appellant : Devi and Others

Respondent : Venugopal

Judgement :

(Prayer: Second Appeal is preferred under Section 100 of the Code of Civil Procedure against the Judgment and Decree, dated 12.07.2002 made in A.S.No.21 of 2002 on the file of the Additional District Judge (Fast Track Court), Tirupattur, Vellore District, confirming the Judgment and Decree, dated 30.10.2000 made in O.S.No.991 of 1996 on the file of the District Munsif, Ambur.)

1. This Second Appeal is filed against the Judgment and Decree, dated 12.07.2002 made in A.S.No.21 of 2002 on the file of the Additional District Judge (Fast Track Court), Tirupattur, Vellore District, confirming the Judgment and Decree, dated 30.10.2000 made in O.S.No.991 of 1996 on the file of the District Munsif, Ambur.

2. The plaintiffs, who had lost in the Courts below are the appellants in this Second Appeal. The plaintiffs filed the suit for the relief of permanent injunction. The parties herein will be referred to according to their rank in the suit.

3. The suit property originally belonged to Yegappa Gounder, as per the partition deed, dated 16.11.1955. The property devolved on his son Sathyamurthy, after the death of his father and mother. Sathyamurthy also died on 02.09.1995. Thereafter, the plaintiffs, being legal heirs of Sathyamurthy have been in possession and enjoyment of the suit property. The defendant attempted to trespass into the suit property on 25.04.1996 and 28.06.1996 and his attempt was thwarted by the plaintiffs with the help of others. Therefore, the present suit.

4. The defendant in his written statement contends that even as per the partition deed, relied upon by the plaintiffs, they are entitled to the property extending over 15 x 75 feet comprised in the suit property. Sathyamurthy, husband of the first plaintiff and his mother Sakunthala executed a mortgage deed in favour of one A.S.Arunachalam, wherein, the measurement is given as 15 x 75 feet. The western portion of the suit property, admeasuring 12 x 75 feet is the property of the defendant's father Duraisamy Gounder, who bequeathed the same in favour of the defendant and he has been in peaceful possession and enjoyment of the same. In pursuance of a panchayat between the plaintiffs and defendant, a partition deed, dated 29.06.1996 was executed, through which, the defendant has been allotted 11 x 75 feet on the western portion of the suit property. The suit has been filed only to defraud the defendant and therefore, the suit is liable to be dismissed.

5. The trial Court, after raising issues, took oral and documentary evidence. The first plaintiff examined herself as P.W.1 and Exs.A.1 to A.12 were marked on the side of the plaintiffs. On the side of the defendant, two witnesses were examined, wherein the defendant himself was examined as D.W.1 and marked Exs.B.1 to B.6.

6. The trial Court, after analysing the divergent contentions of both the parties, by framing several issues, dismissed the suit. Aggrieved against the Judgment, the plaintiffs preferred appeal in A.S.No.21 of 2002 before the Additional District Judge (Fast Track Court), Tirupattur.

7. The lower Appellate Court, after analysing the evidence in detail, dismissed the appeal, confirming the Judgment of the trial Court. Against the concurrent findings

of the Courts below, the present Second Appeal has been filed by the appellants / plaintiffs.

8. While admitting the second appeal, the following Substantial Question of Law is framed :

"The Courts below failed to follow the ruling reported in 1984 (97) Law Weekly Page 365, wherein it was held that boundaries will prevail over the extent."

9. Heard Mr. K.R.A.Muthukirushnan, learned counsel appearing for the appellants. No representation for the respondent.

10. The learned counsel appearing for the appellants contend that when there is dispute in the extent, the boundaries will prevail and as per the boundaries shown in the document, plaintiffs are entitled to the entire suit property and therefore, both the Courts below erroneously decided the suit against the plaintiffs.

11. The learned counsel appearing for the appellants cited our High Court Judgment, Dina Malar Publications v. Tiruchirapalli Municipality, reported in (1984) 97 LW 365, for his contention that boundaries should prevail when there is discrepancy or dispute with respect to the extent. In paragraph 9 of the Judgment, it has been held as follows :

"The property in question bears a sub-divided town survey No.371/2, with an extent of 2400 sq.ft. The property in question is not an unsurveyed area or an area in respect of which the extent is in doubt. In laying down the principle that the boundaries should prevail over the extent, in the above decisions, the learned Judges have applied the following principles : - (1) In case of doubtful or varying extents in the documents of title relating to the property, boundaries should be preferred to the extent; (2) Only in the absence of definite material to show the actual extent intended to be sold the boundaries should outweigh the doubtful extent mentioned in the document; (3) If the recitals in the documents and the circumstances of the case show that a lesser extent only was conveyed than the area covered by 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. Bearing in mind, the above said principles we will have to examine the facts of this case."

12. In this case, in the partition deed, through which plaintiffs claim title and the mortgage deed executed by their predecessors marked as Ex.A.1 and Ex.B.1, the extent is specifically given as 15 x 75 feet. Confirming the above extent, the plaintiffs and defendant executed partition deed, Ex.B.2, dated 29.06.1996 among themselves with respect to a portion of the suit property. Through this document, the plaintiffs and defendant agreed for allotment of 11 x 75 feet in favour of the defendant and 1 x 75 feet in favour of the plaintiffs, in the disputed extent, 12 x 75 feet. Therefore, by executing the said partition deed, the plaintiffs themselves admit that they are entitled to the suit property, by extent wise and not by boundary wise. Thus, there is clear evidence as to the intention of the parties with reference to the extent of the suit property. Therefore, the appellants / plaintiffs cannot claim that extent should prevail over the boundaries on the basis of the above Judgment. Hence, the substantial question of law is answered against the appellants and in favour of the respondent. It is also clear from the partition deed, dated 29.06.1996 that the plaintiffs are not entitled to the entire extent, as per the four boundaries shown in the plaint schedule.

13. For the aforesaid reasons, this Court does not find any merit in the appeal and the same deserves to be dismissed. Accordingly, the Second Appeal is dismissed. The parties shall bear their own costs.

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