
(2006) 08 AP CK 0038
In the Andhra Pradesh High Court
Case No : SA No. 511 of 1993

Chetti China Appalaswamy and Others	APPELLANT
Vs	
Poona Laxmi	RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

Citation : (2007) 1 ALD 204

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : V.C.H. Naidu and I.A. Naidu, for the Appellant; K. Subrahmanyam and K.V. Narasimha Murthy, for the Respondent

Judgement

P.S. Narayana, J.—On 14.10.1993 this Court made the following order:

Admit. The substantial question of law that arises for consideration is whether having regard to the facts and circumstances, the lower appellate Court is justified in not following the principle applied by the trial Court that measurements will prevail over the boundaries.

Submissions of Sri V.C.H. Naidu:

2. Sri V.C.H. Naidu, the learned Counsel representing die appellants would submit that die following substantial question of law would arise for consideration in the second appeal.

Whether the plaintiff has right to claim beyond the area under Ex. A1 on the ground that the boundaries prevail over the extents in the facts and circumstances of the case?

3. The learned Counsel while elaborating his submissions had taken this Court through the findings recorded by the learned Principal District Munsif, Visakhapatnam in O.S. No. 1501 of 1980 and also the learned HI Additional District Judge, Visakhapatnam in A.S. No. 64 of 1990. The learned Counsel would contend that when specific measurements were given in the title deed, merely

because boundaries had been mentioned, the same cannot be taken advantage of and the rest of the property in between cannot be claimed by the respondent herein-the plaintiff in the suit. The learned Counsel also would maintain that in such a case general principle boundaries, prevail over the extents cannot be made applicable. Even otherwise, the learned Counsel would maintain that in a suit for declaration of title, the plaintiff may have to either succeed or fail on his/her own strength and cannot rely upon the weakness of the case of the defendants. The learned Counsel also had taken this Court through the report of the Commissioner and would maintain that even the report of the Commissioner was not appreciated in proper perspective and hence in any view of the matter inasmuch as the facts are not in serious controversy, the appellants are bound to succeed and the judgment and decree of the Court of first instance may have to be restored by setting aside the judgment and decree made by the appellant Court. The learned Counsel also placed reliance on certain decisions.

Submissions of Sri Subramanayam:

4. Sri Subramanayam, the learned Counsel representing the respondent-plaintiff would maintain that the plaintiff filed the suit for declaration of title relating to the vacant space shown as EFCD in the plaint plan and for consequential relief of permanent injunction. The learned Counsel also would contend that the plaintiff was examined as PW 1 and the Commissioner was examined as PW 2 as against this evidence, the evidence of DW1 is available. The documentary evidence Exs. A1 to A20 and also Exs. C1 to C3 and Ex. B1 had been relied upon. The learned Counsel also would contend that it is not as much the Court of first instance totally negated the relief. The learned Counsel in all fairness would say that the declaration of title relating to ABCD portion had been negated giving liberty to the plaintiff to purchase ABCD from the defendants if they are willing to sell the same. The Counsel also would contend that however, for me rest, the suit was partly decreed. The learned Counsel also would comment that aggrieved by that portion of the judgment and decree of the Court of first instance, the matter was carried by way of appeal A.S. No. 64 of 1990 on the file of the III Additional District Judge, Viskhapatnam and the learned Judge after considering all the aspects came to the conclusion that the plaintiff is bound to succeed and accordingly decreed the suit as prayed for. The learned Counsel also would contend that in the light of the report of the Commissioner and also in the light of the findings recorded by the appellate Court, the said findings being well considered findings, such findings need no disturbance at the hands of this Court and hence, the second appeal is liable to be dismissed. The learned Counsel also placed reliance on certain decisions in this regard.

5. Heard the Counsel and perused the judgment and decree of the Court of first instance and also the judgment and decree of the appellate Court.

Pleadings of parties:

Plaint:

6. The respective pleadings of the parties in O.S. No. 1501 of 1980 on the file of the Principle District Munsif, Visakhapatnam are as hereunder:

That the plaintiff and her mother purchased a house site of an extent of 5 1/2 cents, comprising in Patta No. 635 and Survery No. 80/5 in the village of Chattivanipalem hamlet of Mindi in Visakhapatnam Taluk along with the thatched house under registered sale deed dated 11.8.1972 from the 1st defendant who is the manager of their joint family. The vacant site purchased under the above said sale deed extended upto Autonagar road and nothing was retained by the plaintiff and the defendants for any portion of the land in between the plaintiffs site and the Autonagar road. On 24.8.1976 the mother of the plaintiff executed a registered relinquishment deed relinquishing her right over the property purchased from the 1st defendant under registered sale deed dated 11.8.1972. As such the plaintiff became the owner of the entire property under the above said sale deed. The plaintiff has constructed a house in a portion of the vacant site purchased from the 1st defendant and left some vacant space in front of her house towards north and the other vacant space left out between the plaintiffs house along with her site abuts Autonagar. It is originally contemplated that the road upto Autonagar should be between 60 to 75 feet road and therefore the road is likely to be widened. The plaintiff and her family members could approach the road i.e., the way to Autonagar only through the open place in front of plaintiffs house as shown in ABCD in the plaint plan. The defendants who have no manner of any right, title, possession or enjoyment are trying to encroach upon the front space left out by the plaintiff as shown ABFE and also the open space covered by ABCD in the plaint plan. They intended to raise thatched sheds proclaiming that they will vacate only in case the way to Autonagar is widened. As there are houses on the other three sides of the plaintiffs house, the only way accessible for the plaintiff to approach the road is through ABCD open space. The entire open space is contiguous area abutting the road i.e., way to Autonagar. Even by easement of necessity, the plaintiff and her family members have to reach the road only through open space ABCD and through their front place ABFE. The defendants with their supporters and henchmen are trying to raise foundations and construct thatched houses to defeat the lawful rights of the plaintiff and her family members. Hence, the suit for declaration of the plaintiffs right of usage through the vacant site ABCD and for a consequential injunction restraining the defendants, their men and supporters and servants restraining them not to interfere with the peaceful possession and enjoyment of the plaintiff in using the same for passage and approach road.

Written Statement:

7. Written statement was filed by the defendants pleading as hereunder:

The defendants filed their written statement stating that the 1st defendant sold 5 1/2 cents of land to the plaintiff under registered sale deed dated 11.3.1972 giving the measurements of all the four sides of the land. There was a proposal by the State Government to acquire some land in that survey number for the

purpose of laying a road to Autonagar. The extent of land that was going to be acquired was not known to the defendants. As the defendants had constructed a thatched house and residing in it for more than 20 years before the above sale in favour of the plaintiff, they sold 5 1/2 cents of land to the southern side of their thatched house so that the plaintiff might not be affected by the said acquisition by the State Government. Hence, the allegation of the plaintiff that the vacant land purchased by the plaintiff and another extended upto Autonagar road and nothing was retained by the defendants for any portion of the land between the land purchased by the plaintiff and another and the Autonagar road is false. The defendants left out 10 feet width of land on the western side of the site sold to the plaintiff for the purpose of using it as a road. The plaintiff constructed her house in the entire land purchased by her with doors and windows opening into the road portion left out by the defendants. The plaintiff is using the said road as passage to reach the Autonagar road. The plaintiff did not leave any vacant site in front of the house in the North. The allegation that the plaintiff and her family members could approach the Autonagar road only through the open space in front of her house is false. On the western side of the plaintiffs house there is 10 feet road which was left by the defendants for passage to the plaintiff to reach the Autonagar road. Hence, there is no easement of necessity as she is otherwise provided for by the defendants by leaving ten feet wide road for her passage. The plaint plan filed by the plaintiff is not correct. The plaintiff with an intention to grab the vacant space between her site and the Autonagar road filed the suit with false allegations. Hence the suit may be dismissed.

Issues settled by Court of first instance:

8. The Court of first instance settled the following issues:

1. Whether the plaintiff has got title to and possession of the site shown as EFCD of the plaint plan?
2. Whether the plaintiff is entitled for declaration as prayed for?
3. Whether the plaintiff is entitled to the consequential permanent injunction as prayed for?
4. Whether the plaint plan is correct?
5. To what relief?

9. The plaintiff had examined herself as PW 1. The Advocate-Commissioner who had inspected suit locality and filed the report was examined as PW 2. On behalf of the plaintiff in the suit Exs. A1 to A20 were marked. On behalf of the defendants, DW 1 was examined and Ex. B1 was marked and Exs. C1 to C3 also were marked. As already referred to supra, on appreciation of evidence available on record, the Court of first instance decreed the suit partly and aggrieved by the same, the matter was carried by way of appeal A.S. No. 64 of 1990 on the file of the III Additional District Judge, Visakhapatnam and the learned Judge at Para 8 framed the following point for consideration:

Whether the plaintiff is entitled for relief of declaration and consequential relief of permanent injunction as prayed for?

10. The learned Judge also proceeded to discuss oral and documentary evidence in detail in Paras 9 to 14 and ultimately came to the conclusion that the plaintiff is entitled for declaration and permanent injunction as prayed for with costs throughout. Aggrieved by the same, the present second appeal is preferred.

11. Ex. A1 is the registered sale deed under which the first defendant sold 5 1/2 cents site to the plaintiff and her mother and the mother had relinquished her right in favour of plaintiff by virtue of a registered relinquishment deed dated 24.8.1976-Ex. A2. In both these deeds, the northern boundary is shown as road. The western boundary is shown as 11 feet width of site left as Rahadari site. PW 1 deposed in detail about her case relating to the construction of the house in the year 1978 and all other factual details. PW 2 is the Advocate-Commissioner, who had measured the property in possession and enjoyment of the plaintiff and reported that the building of the plaintiff as well as the site within her fixed boundaries with reference to stones are being within dimensions of 40" 8" from north to south in the east, and 55" 9" on the east to west on the north and the shape of the house being rectangular and triangular shape. Ex. A3 is the special notice issued to PW 1. By the Executive Officer, Gram Panchayat. Ex. A4 is the tax receipt. Ex. A5 is the report of P. Narsimha Rao to Sub-Inspector of Police dated 17.10.1980. Exs. A6 and A7 are the postal acknowledgements. Ex. A8 is the letter of messenger. Ex. A9 is yet another postal acknowledgement. Ex. A10 is yet another report of P. Narsimha Rao to Sub-Inspector of Police, Visakhapatnam dated 30.1.1981. Ex. A11 is the postal acknowledgement and Exs. A12 to A17 and A19 the photos and negatives. Ex. A18 and A20 are the plans. Ex. C1 is the warrant, Ex. C2 is the notice by the Commissioner and Ex. C3 is the Commissioner's report. It is stated that neither of the parties raised any objections to the report of the Commissioner. DW 1 in substance deposed what had been pleaded in the written statement referred to supra and Ex. B1 is the registration extract of the sale deed dated 4.3.1983. The appellate Court had taken into consideration, the recitals and the boundaries specified in Ex. A1 and had also taken into consideration, the findings recorded by the Court of first instance and appreciated the oral and documentary evidence available on record at length and came to the conclusion that the plaintiff is entitled to the reliefs prayed for in the plaint. It is needless to say that the Court of first instance also partly decreed the suit. Strong reliance was placed on the decision of the a Division Bench of this Court in *Sajana Granites, Madras and Another Vs. Manduva Srinivasa Rao and Others*, , where the Division Bench held that where the plaintiff filed the suit for declaration of title, the plaintiff to succeed only on the strength of his own title and not on the weakness of the case of defendant aid the defendants need not plead and prove possible defects in plaintiffs title and even if defendants fail to establish their own title, plaintiff must be non-suited if he fails to establish his title. Reliance also was placed on *K. Venkatasubba Reddy Vs. Bairagi Ramaiah (died)* by LRs., , wherein it was held that relief cannot be

granted if disputed property is in excess of title deed of plaintiff and the plaintiff cannot succeed on weakness of the defendant's case and the plaintiff must establish his own case on the strength of his own title deed and the title deed of the plaintiff does not extend to disputed site, such plaintiff is not entitled to the relief of declaration and injunction prayed for and the law applicable to ejectment suits also would be applicable to suits for declaration of title.

12. As can be seen from the findings recorded by the Court of first instance and also the appellate Court in substance, the dispute or controversy between the parties appears to be that in between northern boundary road and the site specifically sold to plaintiff and her mother under Ex. A1, some more site is leftover relating to this property and some other site, the parties had gone on trial, adduced oral and documentary evidence and as already specified supra the plaintiff in the suit partly succeeded in the Court of first instance and being aggrieved by the negatived portion, preferred the appeal and ultimately obtained decree as prayed for before the appellate Court.

13. Though the suit was partly decreed, for that portion of the relief which had been negatived this is a reversing judgment and second appeal was preferred raising the aforesaid substantial question of law which had been framed by this Court and which had been argued, framing the substantial question of law slightly in a different fashion. In *The Palestine Kupat Am Bank Co-operative Society Limited v. Government of Palestine and Ors.* AIR 35 1948 PC 207, their Lordships of the Privy Council held that in construing grant of land and description by fixed boundaries is to be preferred to a conflicting description by area. The statement as to area is to be rejected as *falsa demonstratio*.

14. In *Thalari Nookayya and Ors. v. Konathala Jaggarao and Ors.* 1955 ALT 571, the learned Judge of this Court held that when a piece of land is sold with definite boundaries, unless it is very clear from the circumstances surrounding the sale that a larger or smaller extent than what is covered by the boundaries was intended to be sold, the boundaries must prevail over the description of the area sold. In English Law the statement as to area therein would be rejected as *falsa demonstratio* and the same principle is applicable here. Errors as regards the statement of area are likely to occur in the case of unsurveyed lands, but the boundaries if they are well defined and ascertainable with certainty, give an accurate idea of the land intended to be conveyed under the deed. In such cases, as between the vendor and the purchaser the entire extent of land comprised within the boundaries, be it more or less than the area described, is the subject of bargain and any excess or deficiency in area does not amount to a breach of warranty. In *Dharmakanny Nadar Siviseshamuthu and Others Vs. Mahalingam Nadar Gopalakrishna Nadar and Others*, , it was held that where the property sold is part of a definite survey number and in the sale deed exact boundaries of the part sold are given and the area mentioned is only approximate, the description by boundaries should prevail in ascertaining the actual property sold under the document. In *Subbayya Chakkiliyan Vs. Manjam Muthia Goundan and*

Another, it was held:

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 measurements.

15. Same view was expressed in *Bhola Nath Chattopdhyay Vs. Mrityunjoy Chattopdhyay and Others*,

16. There cannot be any dispute or controversy relating to this general proposition that normally the boundaries prevail over the extents. But the question is whether the same principle to be applied even in the case of small vacant sites wherein the sale deed are executed with definite specific measurements given in relation to the sale of the vacant sites like house sites etc"? This general principle cannot be extended in its full vigor. May be the question may have to be decided depending upon the facts and circumstances of a given case. However, this question need not detain this Court any longer for the reason that in the light of the report of the Commissioner and also after going through the recitals of Ex. A1 and evidence of PW. 1 thoroughly, the appellate Court recorded reasons in detail and ultimately came to the conclusion that the plaintiff is entitled to the whole extent of area falling within the boundaries specified in Ex. A1. It is needless to say that these are all findings relating to facts which had been arrived at by the appellate Court on appreciation of evidence. It is needless to say that when the Commissioner had inspected and filed a report, if the parties are disputing the same, they are expected to file the objections to such report of the Commissioner, the same was not done. Apart from this aspect of the matter, the Commissioner was examined as PW 2. The evidence of Commissioner-PW. 2 had been dealt within elaboration by the appellate Court and findings had been recorded at length. In the light of the appreciation of the evidence available on record made by the appellate Court in detail, this Court is of the considered opinion that the said factual findings need no disturbance at the hands of this Court. Even otherwise, it appears that Ex. B1 was brought into existence only subsequent to the filing of the suit. This aspect also had been taken into consideration. The way in which the appellants herein-defendants made attempt to take law into their own hands also had been dealt with at length. The conduct of the parties may also have to be taken into consideration while deciding a particular case.

17. On overall appreciation of the facts and circumstances, the evidence of PW 1, PW 2 and also the documentary evidence available on record-Exs. A1 to A2 and Exs. C1 to C3 in particular and the elaborate findings recorded by the appellate Court, this Court is of the considered opinion that these controversies relate to facts only and hence, the substantial question of law raised and argued before this Court does not arise in the facts and circumstances of this case and hence, the second appeal being devoid of merit the same shall stand dismissed. But however, in the peculiar facts and circumstances without costs.