

(1986) 03 KL CK 0012
In the High Court Of Kerala
Case No : A.S. No. 313 of 1984

Sumathy Amma and Another

APPELLANT

Vs

Sankara Pillai Ananthakrishnan Nair and Others

RESPONDENT

Date of Decision : 04-03-1986

Acts Referred:

Transfer of Property Act, 1882 — Section 8

Citation : AIR 1987 Ker 84

Hon'ble Judges : T. Kochu Thommen, J; M.M. Pareed Pillay, J

Bench : Division Bench

Advocate : P.G.P. Panicker and P.B. Mohan Kumar, for the Appellant; P. Sukumaran Nair and A.K. Chinnan, for the Respondent

Final Decision : Allowed

Judgement

Pareed Pillay, J.—Plaintiffs in O.S. 165 of 1982 of the Sub Court, Pathanamthitta are the appellants. Plaintiffs filed the suit for directing the defendants to set up boundary wall on the northern side of their (defendants") property and for recovery of the plaint schedule property which has been trespassed upon by them. Plaintiffs have claimed Rs. 5000/- as mesne profits per annum. The learned Sub Judge dismissed the suit finding that the plaintiffs are not entitled to any reliefs claimed in the plaint.

2. 1st plaintiff and her husband Gopala Pillai purchased Kannimelazhikam Rubber Estate as per documents prior to 1945 and they made their son (2nd plaintiff) as a co-owner as per settlement deed. Total extent of the property has been found on actual measurements to be 19 acres 50 cents though in the documents it has been mentioned as 23 acres 80 cents. It is the case of the plaintiffs that in 1976, the estate was measured and divided into four equal plots as A, B, C and D and the southernmost plot was sold to the 1st defendant's younger brother Gopinathan Nair and the adjoining northern plot to the 1st defendant by means of two registered sale deeds (Exts. A1 and A2) with plans appended thereto. Ext. A2 relates to plot A and Ext. A1 relates to plot B in the plans. Ext. B1 is the

original of Ext. A1. According to the plaintiffs, Plots A and B comprising an extent of 9 acres 75 cents-were thus sold and the remaining northern portion of equal extent remained in their possession. When 1st plaintiff wanted to put up barbed wire fence on the southern boundary of the plaintiffs' property in June 1981 and when pillars were planted, the 3rd defendant removed the same and obstructed the erection of any demarcating boundary between AB and CD plots contending that they can do so only on the northern boundary of the property of the defendants having an extent of 11 acres 90 cents. 1st plaintiff was constrained to construct fence on the PQK line shown in Ext. C4 plan. Defendants have no manner of right over the plaint schedule property which is the area south of the PQK line and north of RB line in Ext. C4 plan.

Defendants contended that the plans appended to Exts. A1 and A2, are not correctly prepared, that the extent of the property in each survey sub-division has been clearly mentioned in the sale deeds and hence plaintiffs cannot retract from it.

3. The crucial question to be decided is as to whether the defendants can claim the extent of property mentioned in the schedules to Exts. A1 and A2 or whether they are entitled only to one half of the actual extent of property found on actual measurement and mentioned specifically in the documents. According to the plaintiffs, defendants can only claim rights over 9.75 acres which is just half of 19.50 acres. Defendants contended that in Exts. A1 and A2 specific survey sub-divisions are mentioned with respective extent and as plaintiffs have conveyed the land as per the said documents, they cannot canvass a contention contrary to the recitals in it. In other words, defendants contended that as per Exts. A2 and A1 sale deeds, plots A and B respectively were conveyed and as per each sale deed the respective defendants are entitled to 5 acres 95 cents each and the plaintiffs cannot claim any portion of the property which has been covered by the aforesaid documents.

4. To resolve the controversy, we have to construe Exts. A1 and A2 sale deeds. We give below the words used in Ext. A1. (similar recitals are found in Ext. A2). (Matter in vernacular omitted -- Ed.)

In these documents it is stated that though title deeds of the plaintiffs disclose the extent of the property as 23 acres 80 cents, the real extent is only 19 acres 50 cents as found on actual measurements and that a plan has been accordingly prepared showing plots A, B, C and D which has been appended. But, it has to be noted that in the schedule to the property in Exts. A1 and A2, the survey sub-division numbers and the extent of the property covered by each survey division have been stated. Extent of the property in the two documents is mentioned as 5 acres 95 cents each.

5. Commissioner has divided the property in two equal halves in Ext. C4 plan, RB line separating them. Commissioner reported the actual extent of the property as 20 acres 44 cents and that it lies within well defined boundaries. In Ext. A1, there

are recitals to the effect that the pathway from the eastern public road leads to B schedule property and it is meant for plots C and D also. The plans appended to Exts. A1 and A2 show the pathway from the public road. It is just south of the demarcating line between plots A and B on the one hand and C and D on the other. From Ext. C4 also it can be seen that the boundary line is just north of the pathway leading from the public road. This is sufficient indication to show that the plans appended to Exts. A1 and A2 and the plan prepared by the commissioner (Ext. C4) tally with respect to the He of the property. Ext. C4 plan and the commission report would show that on actual measurements the entire extent of the property is having an extent of 20 acres 44 cents.

6. 1st plaintiff's brother who is also the uncle of the 1st defendant examined as P.W. 1 has sworn that as per Exts. A1 and A2 only one half of the entire property was sold. It is his evidence that the property was measured at his and 1st defendant's instance. P.W. 1 stated that 1st plaintiff attempted to erect fence on the boundary of the properties of the plaintiffs and defendants and the third defendant prevented the same on the ground that plaintiffs have no manner of right to do so. P.W. 1 asserted that plots A and B belonging to the plaintiffs comprise just half of the entire property the extent being 9 acres 75 cents. P.W. 2 corroborated the evidence of P.W. 1 stating that he tapped the rubber trees in the disputed property. D.W. 1 deposed that Exts. A1 and A2 take in 5 acres 95 cents each. He admitted that the entire property was lying within well demarcated boundaries. It is admitted by him that in the plans plots A and B are separately marked and the recitals in the documents are correct. He pleaded ignorance about the actual extent of plots A, B, C and D. D.W. 3, the 3rd defendant and father of the 2nd defendant, admitted that one half of the entire property is in the possession of the plaintiffs.

7. A document has to be construed as a whole. A stray sentence here and there cannot be picked out to construe a document. To understand the tenor of the document and the intention of the parties it has to be read as a whole. The real intention of parties has to be gathered not merely from what ex facie is stated in the description of the property in the schedule but from the totality of the recitals in the document. It is useful to refer to the decision in AIR 1944 80 (Privy Council) wherein it is held as follows :

"In construing a lease deed for the purpose of finding out what land was included in the lease the whole document must be considered and not merely the so called "description of the property" at the end thereof."

On going through the recitals in Exts. A1 and A2 it can be seen that the parties were aware of the actual extent of the property. If the intention of the plaintiffs was only to sell a particular extent of the property they could have just mentioned it in the sale deeds and there was no necessity to state that the actual extent of the property was measured and found to be 19 acres 50 cents and in accordance with it four plots A, B, C and D have been marked in the plan. On going through Exts. A1 and A2, it would appear that the property sold as per

the aforesaid documents would take in only half of the entire property. In this context, evidence of P.W. 1 and the plans appended to Exts. A1 and A2 are significant. Evidence of D.W. 3 that plaintiffs have rights over one half of the property clinches the issue in favour of the plaintiffs. Mere description of the properties in the schedules in Exts. A1 and A2 giving the survey number and sub-division and extent cannot override the overall impact of the recitals in the documents and the evidence in the case. P.W. 1's explanation is that the survey number and sub-division number and extent were particularly shown in the description of the property only for the purpose of effecting mutation in the revenue records and for nothing else. This is plausible in view of the evidence in the Case.

8. In *Delhi Development Authority Vs. Durga Chand Kaushish*, it is held as follows :

"In construing the documents one must have regard not to the presumed intention of the parties, but to the meaning of the words they have used. If two interpretations of the documents are possible, the one which would give effect and meaning of all its parts should be adopted and for the purpose, the words creating uncertainty in the documents can be ignored."

One principle of construction of documents is that when the property has been sufficiently identified in a deed and subsequent details are inconsistent with it, the latter has to be disregarded. In *Umrao Bapu v. Ramkrishna Bapu* AIR 1938 Nag 93 it is held as follows :

"If there can be an adequate and sufficient description with convenient certainty of what was meant to pass, an erroneous addition to the description will not vitiate it. Where there are two conflicting descriptions of the subject matter of a grant, or two conflicting parts of the same description, that which is the more certain and stable and the least likely to have been inserted inadvertently must prevail, if it sufficiently identifies the subject matter. Preference ought to be given to that element of the description of the subject matter which is most consistent with the intention of the parties to be collected from other parts of the deed, illumined if necessary by the surrounding circumstances."

Assuming that there are inconsistencies in the recitals in the body of documents Exts. A1 and A2 and the description of the properties in the schedule the latter cannot merely be accepted ignoring the former. In this context the plans appended to Exts. A1 and A2 would assume considerable importance.

9. In *K.S. Nanji and Company Vs. Jatashankar Dossa and Others*, it has been held as follows :

"A map referred to in a lease should be treated as incorporated in the lease and as forming part of the said document. Where the map is drawn to scale and is clearly demarcated the Courts are right in accepting the boundaries drawn in the plan without embarking upon an attempt to correct them with reference to the

revenue records."

Counsel for the respondents submitted that in the Supreme Court case the map was drawn to the scale and there was no ambiguity at all and in the case in hand the same is not the position. It is pointed out that as per the commissioner's evidence it can be seen that he was unable to measure the property in accordance with the plans appended to Exts. A1 and A2. But, it has to be noted that the property sold to the defendants along with the rest of the property lay within well demarcated boundaries. As the recitals in Exts. A1 and A2 would show that the property was measured before the sale and as the plans were prepared in accordance with the actual extent and the plans appended to Exts. A1 and A2, their importance cannot be belittled. In this context, it would be useful to refer to the fact that Ext. C4 plan prepared by the commissioner and the plans appended to Exts. A1 and A2 give an identical picture as regards the lie of the property. As already pointed out, the pathway leading from the road to the estate and the gate provided to the property is almost near the boundary line separating the property of the plaintiffs and defendants. Plans appended to Exts. A1 and A2 would go a long way to show that plaintiffs retained northern half of the property and sold the southern half to the 1st defendant and his brother. Very often plans are not appended to documents and the parties are satisfied with the description of the properties and the boundaries. In cases where executants of the documents take particular pains to have plans appended to documents, their importance cannot be lightly ignored as they form part of the documents. Merely on the basis of the measurements given in the description of the property in the schedules to Exts. A1 and A2 it is difficult to accept the contention of the defendants that they are entitled to that much extent of property in utter disregard of the recitals in the documents, about the actual extent found on measurement, plans appended to it and evidence in the case.

10. On a perusal of the documents it would appear that only one half of the property was sold to the defendants as per Exts. A1 and A2. As there is ample evidence that the property is lying within well defined boundaries and as plans were appended to Exts. A1 and A2 after actually measuring and finding out the correct extent in possession it is difficult to accept the contention of the defendants that they were given possession of more extent of property as per the schedule in Exts. A1 and A2. As D.W. 1's evidence also would show that the property was well bounded and as plots were made after actual measurements it is not possible to accept the case of the defendants merely on the basis of the description of the property in the schedule totally disregarding other relevant important considerations. As Exts. A1 and A2 clearly indicate the intention of the plaintiffs and defendants as to what the former wanted to sell and what the latter wanted to purchase, the description of the property in the schedule to the documents cannot be given any overriding importance over the actual area specified in the document as the extent determined on measurement. On a consideration of the evidence, we find that defendants have no manner of right over the property in dispute and that plaintiffs have succeeded in establishing

that they are entitled to recover possession of the property from the defendants.

11. Plaintiffs have claimed mesne profits at the rate of Rs. 5000/- per annum. P. W. 1 deposed that there are approximately 320 rubber trees in the plaint schedule property. According to him, 9 kgms. of rubber sheets could be got from those trees. He stated that 1 kgm. of rubber in 1980 fetched not less than Rs. 15/-. This piece of evidence is not seen challenged in the cross-examination. In para 13 of Ext. C3 mahazar prepared by the commissioner he stated that when he went to the property he found tapping going on in the property in the possession of the plaintiffs and on actual inspection he found 4 1/2 litres of latex obtained from 100 rubber trees. The trees in the plaint schedule property and the neighbouring property in the possession of the plaintiffs and defendants are of the same age. In para. 6 of Ext. C2 report, commissioner estimated that 3 kgms. of rubber sheets could be obtained per day from the suit property. In para 22 of Ext. C3 mahazar, it is stated that there are 320 rubber trees in the disputed property, that 10 litres of latex can reasonably be obtained and that tapping could be done for 200 days in a year. Thus, it can be seen that the claim of mesne profits by the plaintiffs at the rate of Rs. 5000/-per annum is much below than what could be obtained from the suit property. As already pointed out. P.W. 1's evidence regarding the estimated mesne profits has not been controverted even by a suggestion in the cross-examination. Considering the entire aspects of the matter, we hold that the plaintiffs are entitled to mesne profits at the rate of Rs. 5000/- per annum.

12. For the reasons stated above, the judgment and decree of the Court below are set aside and the appeal is allowed with costs. Suit is decreed allowing the plaintiffs to recover the suit property (the property in between PQK and RB lines in Ext. C4) with mesne profits at Rs. 5000/- per annum. Plaintiffs are granted arrears of mesne profits at the above rate from June 1981 (date of trespass by defendants) and future mesne profits at the same rate from the date of suit till date of decree and thereafter for a period of three years or till recovery of possession whichever event happens first.