

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.9 3 0 of 2 0 0 1

A. Bal a k r i s h n a n

Appellant (s)

V E R S U S

Nagappan & Ors.

Respondent(s)

Date: 2 3 / 0 8 / 2 0 0 7 This Petition was called on for hearing today.

C O R A M :

HON' B L E MR. J U S T I C E H. K. S E M A

HON' B L E MR. J U S T I C E L O K E S H W A R S I N G H P A N T A

For Petitioner(s)

Dr. A. Fra ncis Julian, S r .Adv.

Mr. Sumit Ku m a r ,Adv.

for M/s Arputha m, Aruna & Co.,Adv.

For Respondent(s)

Mr. S. Bal a k r i s h n a n, S r .Adv.

Mr. Subra mo niu m P r a s a d,Adv.

UPON hearing counsel the Court made the following
O R D E R

Appeal is allowed in terms of the signed order.

(Ganga Thak u r)
P S to Registrar

(Anand Singh)
Court Master

(Signed order is placed on the file)

I N T H E S U P R E M E C O U R T O F I N D I A

C I V I L A P P E L L A T E J U R I S D I C T I O N

C I V I L A P P E A L N O. 9 3 0 O F 2 0 0 1

A. B A L A K R I S H N A N
(S)

...A P P E L L A N T

Versus

N A G A P P A N & O R S.
T

..R E S P O N D E N
(S)

O R D E R

This appeal is preferred by the defendant in Original Suit

No.2 9 / 8 3 . It is unfortunate that the matter is still pending. The plaintiffs' suit is for a declaration of title and permanent injunction restraining the defendant from peaceful possession of the properties. The trial Court decreed the suit. On appeal being preferred by the defendant, the appellate court reversed the decree of the trial Court. Plaintiffs preferred second appeal before the High Court and the High Court by the impugned judgment, set aside the appellate decree and confirmed the decree passed by the trial Court. Aggrieved thereby, this appeal has been preferred by the defendant.

It is well settled principle of law that the plaintiff must give such particulars as will enable the defendant and the Court to ascertain from the plaint whether in fact and in law the course of action did arise as alleged or not.

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In paragraph 1 of the plaint, the plaintiff says as follows:

"The property described in Schedule 'A' hereunder is the eastern most one acre out of the total area of 2 acre 37 cents in old Survey No.1 3 9 8 / 2 5 Kaliyal village. The entire two acre 3 7 cents form B schedule property herein. So A schedule property is part of B schedule property."

Thereafter in paragraph 7 of the plaint the plaintiff stated as under:

"In the said sale deed dated 1 1- 1 0- 1 9 7 7 a mistake happened to creep in regarding the resurvey Number of plaint A schedule property. The sale deed is not only for the suit property but also for certain other items. In regard to plaint A schedule property the resurvey number was stated as 1 2 4 / 1 by mistake. Plaintiffs have now come to know that the correct resurvey number of the property is 124/ 2. R.S. No.1 2 4 / 1 is a small area of about 3 0 cents that exclusively belongs to the plaintiffs under other title."

Finally the plaintiff prayed the following relief.

"A. The absolute title and possession of the plaintiffs over plaint A

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schedule property may be declared, and consequently.

B. The defendant may be restrained permanently by an injunction from trespassing into plaintiff A schedule property and from disturbing in any manner plaintiffs' peaceful possession of plaintiff A schedule property.

C. The western limits of plaintiff A schedule property may be demarcated on land and plaintiff may be allowed to have a permanent boundary put up along the line of demarcation.

D. The defendant may be directed to pay all costs of this suit to the plaintiffs."

We have gone through the entire contents of the plaint. In our considered opinion, the entire relief prayed thereon is defective, inconsistent and vague. Such plaint even though did not deserve consideration.

It appears that because of this confusion created in the plaint, the property has not been properly identified, boundaries are not demarcated to

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ascertain what is the schedule property of A, B, C and D. This has led the court to appoint the Court Commissioner to verify the plot, demarcate the boundary and identify the schedule plot.

Going through the content of the entire plaint there is no claim of the plaintiffs with regard to R.S. No.1 2 4 / 3 . Counsel for the plaintiffs now claims the schedule property C, which is R.S. No.1 2 4 / 3 in the Commissioner's report.

From the Commissioner's report and map appended in the report it is disclosed that schedule A property R.S. No.1 2 4 / 2

consists of an area of 5 5 cents, which is in the possession of the plaintiffs. Schedule B property R.S. No. 1 2 4 / 3 consists of 8 2 cents which is in the possession of the defendant. Schedule C property consists of one acre. This is also under R.S. No.1 2 4 / 3 . Schedule D property consists of 1 5 cents. This property also comes under R.S. No.1 2 4 / 3 .

Apart from that, the plaintiff has not claimed any property under R.S. No.1 2 4 / 3 . It is shown that schedule property A falling under R.S. No.1 2 4 / 2 the area consisting of 5 5 cents is shown to have been in the possession of the plaintiff.

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In the above facts and circumstances, the first appellate court was justified, and correctly so, decreed the suit in favour of the plaintiffs to the extent of one acre in R.S. No. 1 2 4 / 2 . In that view of the matter, both the trial Court and the High Court were erroneous in decreeing the property under R.S. No.1 2 4 / 3 in schedule C to the extent of one acre and RS. No.1 2 4 / 3 in schedule D property to the extend of 1 5 cents in favour of the plaintiffs.

In the result, the decree of the trial Court and the High Court in respect of schedule property C under R.S. No. 1 2 4 / 3 to the extent of one acre in favour of plaintiffs are hereby set aside. The decree of the first appellate court is restored.

The appeal is allowed in the above terms. No order as to costs.

.....J .
(H.K. S E M A)

.....J .
(LOK E S H W A R SING H P A N T A)

August 23, 2007 .