

Dharmakanny Nadar Siviseshamuthu And Ors. vs Mahalingam Nadar Gopalakrishna Nadar And Ors. on 20/4/1962

JUDGMENT

Ramakrishnan, J.

1. This appeal is directed against the judgment and decree of the learned Subordinate Judge, Nagarcoil in A. S. No. 991 of 1957, which arose out of the decision of the District Munsif of Nagarcoil, in O. S. No. 60 of 1953. The facts, in so far as they are relevant for the disposal of the second appeal are briefly the following. The suit property is Survey No. 13911/A. 29 cents in extent, in the village of Needukara. On 22-1-1941, under the sale deed Ex. A. 1, first defendant purchased a property, the description of which is in the following terms :

"Out of 14-1/2 cents forming the western half of Survey No. 13911/A after excluding 7-1/2 cents acquired for Circar road, 7 cents which have not yet been sub-divided and which are situate to the west and east of the road."

It is common ground that actual measurements made during the trial of the suit by the Commissioner of the road which cut across the above survey number diagonally from north-east to south-west came to only 4-1/2 cents. Therefore, as against the 7 cents which, according to the calculation in the sale deed, Ex. I, would remain after excluding the road portion, the actual portion which remains is 10 cents.

About 11 years later, the vendor of the first defendant executed another sale deed, Ex. C to the plaintiff wherein he described the property conveyed thus:

"I am conveying to you in the 14-1/2 cents in the western halt of Purvey No. 13911/A after excluding the portion covered by the road and after excluding the portion conveyed already, the remaining portion, which has not yet been sub-divided, which lies to the north and south of the road and which is 6-1/2 cents in extent."

The dispute between the parties has arisen consequent on the fact that if under Ex. 1 sale deed the area should prevail instead of the boundaries, plaintiff's title would be restricted to 7 cents as recited in the schedule; but if the boundaries are to prevail, the area would be ten cents. Taking advantage of this discrepancy, the first defendant's vendor seemed to have executed Ex. C sale deed to the plaintiff nearly 11 years later, in 1952. But, even in executing Ex. C, he overshot the mark and described the area which he could convey on the basis of differences in area as 6-1/2 cents instead of the actual difference of 3 cents. Both the trial Court as well as the appellate Court were called upon to construe the effect of these documents. Their finding was that the title of the first defendant under the earlier sale deed should prevail and plaintiff's later sale deed would give him no title to any portion of the western half of the survey number in question after excluding the portion covered by the road. The basis of their finding is that in the circumstances of the case the boundary should prevail and not the area, and the lower appellate Court also took into account the subsequent conduct of the parties to find out what was the property which was sold in fact. Oral evidence as to subsequent enjoyment was also considered by the Courts below in order to find out how the parties understood the tenor of the document. The finding on this aspect of the conduct of the parties and also on the evidence was in favour of the first defendant. The suit was dismissed and the appeal also was dismissed. The second appeal is filed by the plaintiff.

2. It is well established by several decisions of courts that where the boundaries in a document are vague and indefinite, the area should prevail, but where the boundaries are specific and definite the area must be taken as given

only approximately vide *Bholanath Chattopadhyaya v. Mrityunjay Chattopadhyaya*, 153 Ind Cas 532: (AIR 1934 Cal 851). A decision of our High Court in *Subbaya Chakkaliyan v. M. Mutbiah Gounden*, 19 Mad LW 245: (AIR 1924 Mad 493) of Krishnan and Waller, JJ. has also put the position thus:

"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?."

A similar view is also expressed in the *Palestine Kupat Am Bank Co-operative Society Ltd. v. Government of Palestine*, AIR 1948 PC 207 "In construing a grant of land a description by fixed boundaries is to be preferred to a conflicting description by area."

Per contra the learned counsel for the appellant referred to the decision of the Lahore High Court in *Thakardas v. Mir Zaman*, AIR 1931 Lah 349 of a single Judge. That decision dealt with a sale deed in respect of a certain land, the length as well as breadth of which was clearly stated. The legitimate inference, which, the court held, should be drawn from the way in which the area was described and worded was that the parties were not left in any doubt as to the measurement, and that it was unnecessary to discuss the question of boundaries. Looking more closely into the facts of that case, it is seen that the property was described not by its area, but by its length and breadth, the measurements of which were given precisely. The property sold was a house site with definite measurements. The facts of that case are clearly different; because in the case of such a house site where length and breadth measurements are clearly given the actual length and breadth measurements should be held to prevail and boundaries do not acquire significance.

But, in the present case, we have certain specific circumstances which have to be given weight. In Ex. 1, the property sold is part of a definite survey number. Once the property sold is described as a survey number, its boundaries can be clearly localised with reference to the survey plan. Cutting across the survey number is a Sircar road and this road is next described as the boundary of two portions sold which lay on either side of the road. The boundaries of the properties sold were therefore the limits of the survey number on the one hand and the limits of the road on the other. After the property was circumscribed by these limits it was then described also by area. This is therefore a clear case of precise and accurate description in a document of the property sold by its boundaries. The measurement by area should therefore be considered only approximate. In the later document of the plaintiff, the very fact that the vendor himself committed a mistake about the remaining area would show that the parties to both the documents the vendor on the one hand and the vendees on the other, had no clear idea of the area occupied by the Sircar road. There was an over-estimate of the area occupied by the road in the earlier sale with the result that the area conveyed to the plaintiff, was somewhat greater than that described in the sale deed; in the second sale deed there was an under-estimate. It is only when a Commissioner went and took actual measurement of the road that the exact area occupied by the road could be determined. Therefore, this is a clear instance where the property has been sold by precise description of boundary but the area comprised therein has been described only approximately. Consequently, I hold that the general principles laid down by the decisions cited above that the description by boundaries should prevail where the boundaries are exact and where the area is approximate should be applied to this case, and that therefore, the decree dismissing the suit is a proper one. The second appeal is dismissed with costs. No leave.