

JUDGMENT

Srinivasan, J.

1. The first defendant in O.S. No. 298 of 1975, having failed in the courts below, has preferred this second appeal challenging the concurrent findings of the two courts. The question turns upon the construction of Ex. A-1, the Will executed by one Rajalakshmi Ammal on 10.7.1972. The plaintiff is the adopted son of Srinivasa Iyer, husband of Rajalakshmi Ammal. The first defendant is the son of Gopala Iyer, brother of Srinivasa Iyer. Though it is not really relevant, it may be mentioned that the plaintiff was the natural son of Gopala Iyer and he was taken in adoption by Gopala Iyer's brother Srinivasa Iyer. Rajalakshmi Ammal died on 15.11.1974 and the present suit was filed on 14.8.1975. Though the plaint schedule originally described one item of property in Survey No. 145/2C, later, it was amended by introducing a second item in Survey No. 145/4. As regards the second item there is no dispute between the parties as the first defendant conceded the title of the plaintiff to the said item. It is only the first item which is in dispute.

2. In the Will, two items of properties were bequeathed in favour of the appellant herein. The first item bequeathed under the Will is not the subject-matter of dispute. It is only the second item, which is subject-matter of bequest that is in dispute in this appeal. The description of the said item in the Will is as follows:

3. According to the plaintiff, by the said bequest, what was given to the first defendant by the testatrix was only a land of extent of about 5 cents with some buildings including a water shed building. There is no dispute between the parties that the survey number is mentioned wrongly in the Will as 145/26. Whereas the correct number is 145/2C. The extent is mentioned as 68 cents but according to the plaintiff, the total extent of the Survey Number is 73 cents and an extent of 5 cents was covered by the house site of one Ramaswamy, which is mentioned as the southern boundary in the description of the property. The case of the first defendant is, the entire extent of 68 cents in Survey No. 145-2C was bequeathed to him under the Will. The Courts below have accepted the case of the plaintiff and held that what was given to the appellant/first defendant was only land of about an extent of 5 cents comprising certain buildings including the water shed building.

4. Learned Counsel for the appellant contents that the principle of 'false demonstratio non nocet' will apply in this case. According to him, the property is clearly described by survey number and the extent thereof and the intention of the testatrix is very clear that she bequeathed the entire survey number of the said extent. It is contended that there is a mistake in the description of the boundaries and such mistake cannot be given any importance and it has to be ignored by applying the aforesaid doctrine. Reliance is also placed on the words

It is contended that the total extent of 68 cents in the said survey number has been bequeathed as evident on applying the aforesaid doctrine.

5. My attention is drawn by the senior Counsel for the appellant to the following passages in Halsbury's Laws of England, Fourth Edition, Vol. 50.

455. False demonstratio non nocet: It is a rule of construction, which applies to all written instruments and not to Wills alone, that if, of various terms used to describe a subject matter (whether a person or property) some are sufficient to ascertain the subject matter with certainty but others add a description which is not true, these other terms are not allowed to vitiate the gift. The rule in full is false demonstratio non nocet cum de corpore constat and the second part of this maxim is an essential part of it. The false

description must merely be added into that which is otherwise clear, although it need not come at the end of the sentence. The characteristic of cases within the rule is that the description so far as it is false applies to no subject at all and so far as it is true applies to one only.

457. Limits of the rule: The rule of false demonstratio is limited by a second rule of no less importance, namely that additional words are not rejected as a false description if they are capable of being read as accurate words of restriction. If, therefore, it is doubtful whether the words of the will import a false reference or description, or whether they are words of restriction that limit the generality of former words, the court never presumes error or falsehood and the latter construction is preferred. Accordingly, where there exists some subject as to which all the descriptions are true, and some subject as to which part is true and part false, the words are considered to be words of true restriction, so that they refer to that subject only as to which all the descriptions are true.

6. Reference is made to the judgment in *Anderson v. Berkley* (1902) 1 Ch. D. 936 and the following passage therein.

It is not a rule, however, that, where the description is made up of more than one part, and one part is true but the other is false, then, if the part which is true describes the subject or object of the gift with sufficient certainty, the untrue part will be rejected, and will not vitiate the gifts.

7. A Division Bench of this Court in *Krishnamurthy v. Venkataramanappa* (1947) 2 M.L.J. 247 extracted the above passage from Halsbury and applied the doctrine of falsa demonstratio.

8. Reliance is also placed on a judgment of mine in *Madhavan v. Kannammal* (1989) 1 M.L.J. 136, wherein I have pointed out that it is not proper for the court to adopt a construction which would lead to a redundancy of certain words used by the testator, that any construction of a document must be in such a manner that it should give a meaning to all words used by the testator and that the entire document must be taken into consideration and the language used by the testator has to be considered before the interpretation is given.

9. Per contra, learned Counsel for the plaintiff submits that if the entire property in Survey No. 145/2C was intended to be given, the boundaries would have been different. According to him, the southern boundary was nanja land belonging to the testatrix and the eastern boundary of the Survey No. was also a nanja land belonging to her. It is submitted that though there is no dispute with regard to the western and northern boundaries, the description, of the eastern and southern boundaries clearly shows that what was intended to be given was only a small extent of land with certain buildings thereon. It is submitted that the house site of Ramaswamy, referred to as southern boundary, indicates that what was given to the legatee was the property situated on the north thereof and nothing more than that, My attention is drawn to the rough plan filed along with the plaint in which Ramaswamy's site is shown as A, B, C, D and the property, which according to the plaintiff, was bequeathed to the first defendant, is shown as C, D, E, F. It is contended that if the testatrix wanted to give any property larger than C, D, E, F, she would not have been mentioned A, B, C, D as southern boundary. Similarly, it is argued that the eastern boundary of the entire survey number is a nanja land of the testatrix and the fact that she had mentioned only a coconut grove as the eastern boundary would itself show that what was given to the first defendant was only the property marked as C, D, E, F. It is submitted that R.S. No. 145/2C contained several coconut trees and that was the only property which could have been shown as a coconut grove and situated on the eastern side of the bequeathed property. It is also argued that if really, the entire Survey No. 145/2C had been bequeathed, the description of the property would have included the coconut trees standing thereon and it would not have been confined to the buildings situated on the

western end. Reliance is placed upon the report of the Commissioner which shows the number of trees in Survey R.S. No. 145/2C, as 59 out of which 36 were yielding trees.

10. Reliance is placed upon the judgment of this Court in Subbayya Chakkiliyan v. Muthiah Goundan 46 M.L.J. 182. The Division Bench of this Court held that ordinarily when a piece of land is sold with definite boundaries, unless it is 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 the measurements. From the facts of the case, it was found that the whole of the lands within the boundaries mentioned, belonged to the judgment-debtor and there was no reason for the court to hold that a smaller extent was made the subject-matter of the court auction sale. The Bench took care to say that, "unless it is clear from the circumstances surrounding the sale that a smaller extent than what is covered by the boundaries was intended to be sold". The ruling cannot help the plaintiff in the present case. In P.K.A.B. Co-operative Society v. Government of Palestine A.I.R. 1945 P.C. 207, the Judicial Committee held that in construing the grant of land a description by fixed boundaries is to be preferred to a conflicting description by area and the statement as to area is to be rejected as false demonstratio. On the facts it was found by the Judicial Committee that the boundaries were not in dispute and the description was by fixed boundaries. There was only a conflicting description with regard to the area and therefore, the Privy Council held that the boundaries will prevail over the extent mentioned in the document.

11. A single Judge of this Court relying upon the aforesaid judgment held in Siviseshamuthu v. Gopalakrishna, that where the property sold is part of a definite survey number and in the sale deed the 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.

12. Reliance is also placed on the judgment of another single Judge in Church of South India v. Raja Ambrose (1978) 2 M.L.J. 620. The learned Judge has however taken care to hold that the question depends upon the intention of the parties as expressed in the relevant conveyance deed.

13. Thus, the crucial question to be decided is what was the intention of the testatrix when she bequeathed two properties in favour of the first defendant under the Will. I have already extracted the description of the disputed property as found in the Will. While giving the four boundaries, the testatrix has taken care to describe that it included the lands and the buildings such as water shed building and other buildings. The crucial works are however found in i.e., the second item of property comprising 68 cents of total extent. If the testatrix had intended only to give a very small extent of 5 cents, there was no necessity for her to mention the total extent of the survey number as such. According to the plaintiff, the boundaries given in the description do not pertain to the survey number. The boundaries relate only to the extent of 5 cents, according to the plaintiff. If that is so the testatrix would have mentioned only the extent of 5 cents and left it there. But, instead, she had taken care to say that the second item of property comprised a total extent of 68 cents. That itself shows that she laid emphasis on the extent of land given by her and she had also mentioned the Survey Number 145/2C though, it is, admittedly, by mistake, shown as 145/26 in the Will. Now, turning to the boundaries, it is seen that the eastern boundary is shown as her coconut grove and the southern boundary is shown as the house site of Ramaswamy. In so far as Ramaswamy's house site is concerned it is situated on the southern part admittedly. Though the rough plan of the plaint shows as if it is situated within A, B, C, D, the plaintiff did not take care to point out the same to the Commissioner to demarcate it or indicate the same in the Commissioner's plan. The plaintiff also has not spoken to it in his deposition to make the position

clear. As regards the eastern boundary, admittedly, a portion of Survey No. 145/4 measuring 122 links north to south and 85 links east to west, is situated on the eastern side of Survey No. 145/2C. Commissioner's Plan shows the said portion as D, E, F, H. The total measurement of C, H, north to south is 251 links out of which 122 links north to south represents the length of Survey No. 145/4. That means it is occupying almost one half of the north to south length of the eastern part of Survey No. 145/2C. It is not improbable that she chose to mention that land as her coconut grove as admittedly the land is used only for raising coconut trees. The major part of Survey No. 145/4 is situated on the north of 145/2C on the eastern side indicated in the Commissioner's plan as M, N, O, P, H. In that portion, there are 127 coconut trees as found in the Commissioner's report. In the portion marked as D, E, F, H, there are 23 coconut trees. The contention that in R.S. No. 145/2C, there are more number of coconut trees than in portion of R.S. No. 145/4, marked as D, E, F, H, is without any substance. The extent of 145/2C is much larger as it occupies an area of 68 cents whereas the portion of R.S. No. 145/4 marked as D, E, F, H, is a very small extent, within which there are 23 coconut trees. Thus, the description of eastern boundary as a coconut thope belonging to the testatrix, will fit in if the portion marked as D, E, F, H, is taken to be the said eastern boundary of the property bequeathed to the first defendant. So also the description of the house site of Ramaswamy as situated on the south of the property bequeathed to first defendant will also fit as it forms part of the southern boundary though to a small extent.

14. Thus the factors which are in favour of the interpretation sought to be put forward by the first defendant are supported by overwhelming evidence of the circumstances of the case. The plaintiff has not adduced sufficient evidence to prevent the said inference from such factors.

15. It is to be noticed that the plaintiff alleged in the plaint that there was a ridge at the place marked as C, F, in the rough plan attached to the plaint thus dividing the property bequeathed to the first defendant and the remaining portion of R.S. No. 145/2C. But he has not chosen to show the said ridge to the Commissioner when he visited the property. There is no evidence on record to show that there is such a ridge. If really, there had been a ridge like that the plaintiff would have shown it to the Commissioner and seen that it was mentioned in the report of the Commissioner and shown in his plan.

16. It is not in dispute that several properties have been given to the plaintiff as residuary legatee by Rajalakshmi Ammal. It is quite improbable that Rajalakshmi Ammal gave a very small extent of 5 cents only to the first defendant in that Will. There is no doubt that she intended to give an extent of 68 cents of land to him. The fact that coconut trees are not mentioned in the description of the land, is wholly irrelevant. The testatrix though it fit to refer only to the buildings as one of them was a watershed and it was referred to for the purpose of clear identification.

17. Neither of the courts below has approached the question in the proper perspective. The courts below failed to note that the intention of the testatrix should be ascertained for the purpose of deciding the dispute in the suit. Instead, the courts below have proceeded as if the only question is whether boundaries will prevail or the extent would prevail. The courts below have also placed reliance on certain irrelevant matters, such as photographs of the place taken at the instance of the plaintiff by P.W. 2 I have gone through the entire evidence of P.W. 2 and seen the photographs marked at Exs. A-7 to A-9. They do not in any way help the plaintiff in this case as regards his claim for item No. 1 of the suit property. The judgments of the courts below are clearly vitiated inasmuch as they have failed to keep in mind the real test to be applied in this case for deciding the controversy between the parties.

18. My attention is drawn to the claim in the written statement by the first defendant for an extent of 73 cents in R.S. No. 145/2C. Obviously that claim was

based on a mistaken extent given by the plaintiff in the copy of the plaint, which was served on the defendant. Though in the original plaint, the extent is mentioned only as 68 cents in paragraph 4 of the copy of the plaint, which was served on the defendants, the extent is mentioned as 73 cents. As the said portion was written in ink by hand, a mistake has crept in. The contention of the defendants was obviously based on the said mistake. The plaintiff cannot take advantage of the said contention and claim title to the suit property.

19. I have no hesitation to hold that the judgments of the courts below are wholly unsustainable inasmuch as they have failed to ascertain the intention of the testatrix from the facts and circumstances of the case for the purpose of deciding the issue, which arose before them for decision. Consequently they require to be set aside. It is seen that the decree drafted by the trial court has referred to the rough plan filed by the plaintiff along with the plaint and referred to the markings therein overlooking that the said plan is not correct and not in accordance with the plan filed by the Commissioner. If the decree of the trial court wanted to refer to any plan, it should have referred only to the Commissioner's plan. Now that I am setting aside the decree with regard to the item No. 1, I do not think it necessary to refer to either of the plans. Suffice it to hold that the suit is dismissed with regard to Item No. 1 in the plaint schedule and the decree with regard to Item No. 2 in the plaint schedule stands, confirmed.

20. The second appeal is allowed. The judgments and decrees of the courts below in A.S. No. 39 of 1983 on the file of Sub Court, Nagapattinam and O.S. No. 298 of 1975 on the file of District Munsif, Tiruvarur are set aside and the suit O.S. No. 298 of 1975 is dismissed insofar as it relates to item No. 1 of the plaint. The decree granting past profits and directing enquiry in the mesne profits from the date of commencement of the suit, is also set aside and decree for recovery of possession of item No. 2 of the plaint schedule is alone confirmed. Having regard to the relationship of the parties, there will be no order as to costs.