



CRP. No.812 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. No. 812 of 2018

1.K.Dhana Lakshmi
2.K.Vasanth
3.K.Devi
4.K.Pushpa Latha
5.K.B. Rajendran

...Petitioners/Plaintiffs

Vs.

1.M.C. Thennarasi
2.Muthuraman
3.Farida Begum
4.Mohd. Azeezullah
5.Jayawadhi

...Respondents/Defendants.

PRAYER : This Civil Revision Petition is filed under Section 227 of the Constitution of India, to set aside the judgment and decreetal order dated 24.11.2017 passed in CMA No. 92 of 2015, on the file of XIXth additional Judge, City civil Court, Chennai confirming the fair and decreetal order dated 18.04.2015 in respect of passage portion in I.A No. 17292 of 2014 in O.S No. 6407 of 2014 on the file of XVIIIth the Assistant Judge, City Civil



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Court, Chennai.

For Petitioners : Ms.K.Dhanalakshmi (Petitioner-in-person)
For R1 : Refused
For R2 to R5 : No appearance

ORDER

Challenging the impugned judgment and decreetal order dated 24.11.2017 passed in CMA No. 92 of 2015, on the file of XIX additional Judge, City civil Court, Chennai, the petitioners filed this petition.

2. The petitioners herein filed suit for the relief of permanent injunction restraining the respondents herein/defendants, their agents, nominees, servants or anybody claiming on behalf of the defendants from in any manner disturbing the peaceful possession and enjoyment of plaintiffs in the suit property namely, old No. 25 A, New No. 32, Dr.Ambedkar First Street, Villivakkam, Chennai – 600 049 as decribed in the suit scheduled property. The Suit properties are described as follows:

Entire house portion of 1350 square feet and passage portion of 264 square feet with passage wall on the northern side old survey No. 368/1, Block No. 61, T.S No. 24 PT, Konnur Village, Villivakkam, Chennai – 600 049. In corporate division new No. 95(Old division No. 63), New zone No. 8 (Old No. 4) in corporation old Ass. No. 04/6387275/00001 and new assessment No. 08/095/2638/0000.

Land extent 1350 square feet measurements:



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East to West at southern side: 112 feet

East to west at Northern side: 110 feet

North to South at Eastern side: 20 feet

North to South at Western Side: 25 feet

Passage extent 264 square feet measurements

Passage length at southern side : 57 feet

Passage width at Eastern side : three feet and nine inches

Passage Width at Road side(Western) five feet and six inches

3. The contention of the plaintiff is that house portion 1350 square feet along with passage 264 square feet was allotted to the first respondent in partition suit O.S NO. 1287 of 1986 and the same was sold to plaintiff's mother's vendor Ashraf Unnisssa through sale deed dated 28.01.1992 in turn she sold the property to K.Sampurana (plaintiff's mother) through sale deed/Ex.B2 dated 29.12.2000. As per the said sale deed common passage measuring total extent of 264 square feet was exclusively allotted to the plaintiff's mother, even in the partition deed executed between defendants 1 and 2 in the year of 2014 the plaintiffs' house passage was shown as one of the boundary thereby the plaintiffs contend that suit passage 264 square feet was enjoyed by them exclusively in which the defendants have no rights but they admitted to put up passage wall obstructing petitioners from using the passage but the said passage is only way to reach their house since the defendants threatened them their enjoyment hence the plaintiffs/petitioners



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filed suit and also filed interim application seeking temporary injunction in

IA No. 17292 of 2014, the said interim application was strongly objected by the respondents/defendants stating that suit passage 264 square feet is common passage in which neither the plaintiff's nor the defendants have exclusive right but the plaintiff's are claiming exclusive right over the common passage. Further they also contend that plaintiff's vendor having no exclusive right over the common passage through sale deed thereby denied that it is not exclusive passage to the plaintiffs and claimed that it is common passage. Hence prayed to dismiss the interim injunction petition.

5. On hearing both sides submissions, the Trial Court allowed the petition by granting modified injunction restraining the respondents from interfering with the petitioners peaceful possession and enjoyment in respect of petitioners house at 1350 square feet and interim injunction restraining the respondents from interfering with the petitioners ingress and egress to their house through the passage measuring 3.9 feet on the eastern side and 5 feet on the western side x 57 feet North to South measuring 264 square feet till the disposal of the suit.

6. Aggrieved over the modified interim injunction order the respondents filed CMA 92 of 2015, on the file of the XIX Additional City



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Civil Court, Chennai, after considering the oral and documentary evidence the lower appellate Court dismissed the said petition. Furthermore, the Court observed that when the property was sold to the mother of the appellant's vendor granting road to use the common passage exclusively in her favour, but her vendor's vendor not conferred with such right but all those facts and its validity and relevancy of those documents can be decided only after the full Trial and impugned order was confirmed by the first appellate Court.

7. Challenging the said findings the revision petitioner filed this petition. The appellant Rajendran appeared in person for him and on behalf of his sisters submitted that the Court below failed to appreciate the title deeds and other relevant documents and passed one side order i.e passage is common to the respondents. In fact, as per the sale deed stands in the name of his mother she purchased 1,350 square feet land along with passage through registered document dated 27.12.2000 after that her mother obtained sub division patta and also obtained sanctioned sewage line connection passes through the suit passage only which itself clearly shows that passage in their custody but all these facts was ignored by the Trial Court as well as lower appellate Court therefore order passed by the lower



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Court is liable to be set aside. Hence prayed to allow this petition.

WEB COPY 8. Per contra, the learned counsel appearing for the respondent submitted that suit passage was 264 square feet which is common passage and the plaintiff is having no exclusive right over the same it was rightly appreciated by the both the Court below. The appellants replied that originally first respondent Thennarrasi sold the property to Ashraff Uniisa on 28.01.1992 in which the second respondent Muthuraman is one of the witness and after her purchase she put up passage wall dividing passage between Muthuraman and the petitioners but the Court below failed to appreciate all these aspects.

9. On perusal of records relied by the petitioners prime facie reveals that there was a partition deed Ex.B4 dated 21.01.2014 in which suit passage is mentioned as one of the boundaries is described as follows:

ஏ சொத்து விவரம்

மொத்த சொத்து

வடசென்னை பதிவு மாவட்டம் கொன்னூர் உப பதிவு மாவட்டம், சென்னை மாவட்டம்இ புரையவாக்கம் பெரம்பூர் வட்டம்இ சென்னை மாநகராட்சி எல்லைக்கு உட்பட்டதும், கொன்னூர் கிராமம் சர்வே எண்கள். 368, 368.1 இல் அடங்கிய பழைய கதவு எண். 25, புதிய கதவு எண். 34ல் அடங்கியதுமான 746 சதுரடிகள் கொண்ட மனையும் அதில் 369.6 சதுரடிகள் கொண்ட ஒட்டு வீடும்.

நான்கு பக்க எல்லைகள்

வடக்கில் ஜெயவதி சந்தானம் 5 அடி வழிபாதை
தெற்கில் ராஜேந்திரன் 4 சகோதரிகள் வீட்டு மனையின், கூடப்பாதை
கிழக்கில் வழக்கு எண் 1287/86 படி முத்தூராமன்
மேற்கில் டாக்டர், ஆம்பேத்கர் தெரு



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சி சொத்து விவரம்

(இரண்டாவது பார்ட்டி திரு. முத்துராமன் அடையும் பாகம்)

மேற்படி ஏ சொத்தில் கிழக்கில் அமைந்த மனைக்கு நான்கு எல்லைகள்
ஜெயந்தி சந்தானம் வழிபாதை மற்றும் இதில் ஏ பார்ட்டி தென்னரசி அடையும் சொத்து
ராஜேந்திரன் 4 சகோதரிகள் வழி பாதை
இதில் பி பார்ட்டி திரு.முத்துராமன் 1287/86 படி அடைந்த சொத்து
முதல் பார்ட்டி தென்னரசி அடையும் சொத்து மற்றும் டாக்டர். அம்பேத்கர் தெரு,

10. By relying said boundaries description the petitioners argued that it clearly shows that there is a passage in 264 square feet which is enjoyed by the petitioners exclusively but the Court below failed to appreciate those aspects. Though it was prime facie established by the petitioners, the Court below granted modified injunction as such is liable to be set aside. On bare perusal of partition deed Ex.P4 it clearly reveals that there was partition effected between first and second respondent herein and some property was allotted to the share of second respondent in which one of the boundaries is shown as (ராஜேந்திரன் 4 சகோதரிகள் வீட்டு மனை வழிகள் பாதைக்கு தெற்கு) this document is admitted by the second respondent in his counter submission. If the petitioners prayed for temporary injunction, the petitioners bound to prime facie establish that they are entitled for such relief. Considering the recitals of the partition deed respondents 1 and 2 admits that suit passage is belongs to the petitioners. Furthermore, the respondents 1 and 2 having direct access to their property from Ambedkar road. But the petitioners



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having only suit passage to reach their house if at all any interference made in that passage it cause great hardship to the petitioners. Furthermore the petitioners are being unmarried persons standing before this Court argued in person which itself shows that they are very much disturbed by the respondents and others. Therefore this Court inclined to allow this petition by set aside modified temporary injunction granted by the Court below in favour of the petitioners. Hence the respondents are directed to not to cause any interference of petitioners' enjoyment of the suit passage till disposal of the suit. However both parties are entitled to advance evidence to prove their claim without influence of this observation. Accordingly I.A NO. 17292 of 2014 in O.S No. 6407 of 2014 is allowed. Furthermore, suit was filed in the year 2014 hence the Trial Court is directed to dispose the suit within a period of six months from the date of receipt of a copy of this order.

10. In result, this Civil revision petition is allowed. No cost. Consequentially connected miscellaneous petition is closed.

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T.V.THAMILSELVI,J.

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