



S.A.(MD) Nos.757 and 758 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD) No.757 and 758 of 2016

and

C.M.P.(MD) No.6134 of 2017

S.A.(MD) No.757 of 2016:

1.Veerachamy

2.Subburaj

... Appellants/Appellants/
Plaintiffs

Vs

Koodappan (Died)

1.Ponnuthai

2.Nammalvar

... Respondents 1 & 2/

Respondents 2 & 3/Defendants 2 & 3

3.Seethalakshmi

4.Chandra Sekar

5.Nithya

6.Prema

7.Eswari

... Respondents 3 to 7/

Respondents 4 to 8/LRs of D1

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 16.07.2015 made in A.S.No.1 of 2014 on the file of the Sub Court, Aruppukottai confirming the judgment and decree



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dated 16.04.2007 made in O.S.No.50 of 2002 on the file of the District
Munsif's Court, Aruppukottai.

For Appellants : Mr.G.Marimuthu

For RR1 & 3 to 7 : Mr.V.Perumal

For R2 : No appearance

S.A.(MD) No.758 of 2016:

Veerachamy ... Appellant/Appellant/
1st Defendant
Vs

Koodappan (Died)

1.Ponnuthai ... 1st Respondent/2nd Respondent/
3rd Plaintiff
2.Nammalvar ... 2nd Respondent/3rd Respondent/
2nd Defendant

3.Seethalakshmi

4.Chandra Sekar

5.Vithya

6.Prema

7.Eswari

... Respondents 3 to 7/
Respondents 4 to 8/Nil

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside
the judgment and decree dated 16.07.2015 made in A.S.No.2 of 2014 on the
file of the Sub Court, Aruppukottai confirming the judgment and decree
dated 16.04.2007 made in O.S.No.201 of 2001 on the file of the District
Munsif's Court, Aruppukottai.



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For Appellant : Mr.G.Marimuthu

For RR1 & 3 to 7 : Mr.V.Perumal

For R2 : No appearance

COMMON JUDGMENT

1.1. S.A.(MD) No.757 of 2016 is arising out of a suit filed by the appellants in O.S.No.50 of 2002, seeking declaration that the suit property is a common lane and for mandatory injunction to remove the wall put up by the respondents so as to affect the common enjoyment. The appellants' suit was dismissed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the same, the appellants are before this Court by way of S.A.(MD) No.757 of 2016.

1.2. S.A.(MD) No.758 of 2016 is arising out of a suit filed by 1st respondent and 2 others in O.S.No.201 of 2001 for declaration of title, injunction and also mandatory injunction to remove rain water drain pipe and other pipes facing the suit property put up by the appellant. The suit filed by the 1st respondent and 2 others was also in respect of the very same



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lane portion. The suit was decreed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Hence, aggrieved by the same, the appellant/first defendant in that suit has come up with S.A. (MD) No.758 of 2016. The respondents 3 to 7 are legal representatives of deceased 1st plaintiff Koodappan who died pending first appeal.

1.3. Both the suits were tried together along with another suit filed by the second respondent and evidence was recorded in the suit filed by the first respondent in O.S.No.201 of 2001.

1.4. According to the contesting respondents in S.A.No.758 of 2016, the suit property is a lane portion that lies in between the houses of the respondents and the appellant. The respondents claimed that the suit property was their exclusive property, as they purchased the same from one Govindaraj under sale deed dated 26.05.1981. The respondents also claimed that the appellant was their eastern neighbours and when they tried to put up new construction after demolishing their old house, attempted to encroach



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upon the suit lane portion. Therefore, suit came to be filed seeking declaration of exclusive title and mandatory injunction to remove the rain water drain pipe put up by the appellant.

2. The appellant herein (S.A.(MD) No.758 of 2016) filed a written statement denying the averment of the respondents that the suit lane portion belonged to them exclusively. According to the appellant, the suit property is a common passage and both the appellant and the respondents are entitled to use the same. It was also alleged that the appellant and his predecessors in title had been using the suit lane as a common passage. The appellant claimed right over the suit property under Ex.B.12 partition deed dated 27.11.1992. Thus, by claiming right of enjoyment over the suit lane portion, the appellant sought for dismissal of the suit. Subsequently, the appellant in S.A.No.758 of 2016 along with the second appellant in S.A.(MD) No.757 of 2016, filed a suit for declaration that the suit property is a common pathway and for mandatory injunction to remove the wall put up by the respondents in O.S.No.50 of 2002 on a similar pleading in his written statement filed in



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the respondents' suit. The said suit was resisted by the respondents herein by making similar averments as contained in their plaint in O.S.No.201 of 2001.

3. The trial Court, on appreciation of oral and documentary evidences available on record, came to the conclusion that the suit lane portion is the exclusive property of the respondents and decreed the suit filed by the respondents and dismissed the suit filed by the appellants. Aggrieved by the same, the appellants herein filed two first appeals in A.S.Nos.1 and 2 of 2014 on the file of the Sub Court, Aruppukottai. The first appellate Court confirmed the findings of the trial Court and aggrieved by the concurrent findings against them, the appellants are before this Court.

4. The learned counsel for the appellants tried to assail the judgments and decrees of the Courts below on the ground that the first appellate Court failed to frame proper points for consideration and thereby violated the mandatory provisions of Order 41 Rule 31 of Code of Civil Procedure. The



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learned counsel further submitted that both the Courts below assumed that the unit *thachu kambu* mentioned in the respective title documents of the parties is equivalent to '3 feet', but however, one *thachu kambu* is equivalent to only 2.75 feet. It is the submission of the learned counsel for the appellants that if one unit of *thachu kambu* is taken as 2.75 standard feet, then the conclusion of the Courts below that the entire suit property belonged to the respondents would go wrong.

5. Based on the title documents produced by the respondents viz., Exs.A.1, A.2 and A.3, the Courts below came to a factual conclusion that the width of the property of respondents is 12 *thachu kambu* (carpentry scale). Likewise, based on the title documents of the appellant in S.A.(MD) No.758 of 2016 viz., Ex.B1 to Ex.B.5, the Courts below came to a factual conclusion that the width of the appellant's property is 14-3/4 *thachu kambu* (carpentry scale). While the appellant was examined as D.W.1, he had categorically admitted that one *thachu kambu* is equivalent to 3 feet. Therefore, both the Courts below proceeded on the footing that one *thachu*



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kambu is equivalent to 3 standard feet. The learned counsel for the appellants tried to assail the said finding by submitting that one *thachu kambu* is equivalent to 2.75 standard feet. However, the argument advanced by the learned counsel for the appellants is against the evidence of his own party. Therefore, the argument against admission of the appellants cannot be permitted to be advanced. Therefore, this Court proceeds that one *thachu kambu* is equivalent to 3 standard feet.

6. As per Ex.C.4 plan submitted by the Advocate Commissioner, the width of the respondents' house 'AE' is shown as 31½ feet. The width of the suit lane 'AB' is shown as 4 feet. Therefore, 'AE' + 'AB' is equal 35½ feet. As per the title documents of the respondents, they are entitled to 36 feet. Therefore, both the Courts below came to a factual finding that the suit lane portion falls within the measurement found in the title documents of the respondents viz., Exs.A.1, A.2 and A.3.



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7. It is not the case of the appellants that the suit lane exclusively belonged to them as per their title documents. They only claim common right of passage over the suit lane. It is not specifically pleaded by the appellants that the suit lane falls within the property covered under their title documents. In such case, there must be a reference in the title documents of the appellants that they have got right of common passage over the suit lane. In the absence of any such reference in the title documents of the appellants in respect of the suit lane, their claim for right of common passage over the suit lane cannot be accepted. While the appellant in S.A.(MD) No.758 of 2016 was examined as D.W.1, he categorically admitted that in the title documents of the appellant, there was no reference about the common passage.

8. A perusal of the plaint plan filed by the appellant in S.A.(MD) No. 758 of 2016 in his suit in O.S.No.50 of 2002 would make it clear that he can have access to his backyard only through the lane portion that situates on the eastern side of his house. On the other hand, he may not have any direct



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access to his backyard through the suit lane, which lies on the western side of his house, in view of the fact that in between the suit lane portion and the backyard of the appellant, the lane belongs to Nammalvar, the second respondent is situated. Therefore, both the Courts below on appreciation of oral and documentary evidence available on record came to the conclusion that the respondents proved their exclusive right over the suit lane and the appellants failed to establish their claim that the suit property was a common lane.

9. The learned counsel for the appellants vehemently contended that the judgment passed by the first appellate Court is vitiated for its failure to frame proper points for determination. The first appellate Court framed the following points for consideration:

- “(i) Whether A.S.No.1 of 2014 is to be allowed or not;
- (ii) Whether A.S.No.2 of 2014 is to be allowed or not;
- (iii) What is the other relief the appellants in A.S.No.1 of 2014 is entitled to; and



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(iv) What is the other relief the appellant in A.S.No.2 of 2014 is entitled to.

10. Though the points for determination framed by the first appellate Court are not specific, the real controversy in the suit was decided by the first appellate Court with reference to the title documents of respective parties and the Advocate Commissioner's report and plan. The real controversy in the suit is whether the suit lane portion is the exclusive property of the respondents or common passage for both the parties as claimed by the appellants. After perusing the evidences available on record as mentioned earlier, the first appellate Court came to the conclusion that the respondents established their exclusive right over the suit lane portion and the appellants failed to prove their claim of common right of way or passage over the suit property. Therefore, the mandate under Order 41 Rule 31 of Code of Civil Procedure has been substantially complied with. Consequently, the said submission made by the learned counsel for the appellants is rejected.



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11.1. In view of the discussions made earlier, I do not find any substantial question of law in these second appeals. Therefore, both the second appeals are dismissed.

11.2. In fine, (i) both the second appeals are dismissed; and (ii) in the facts and circumstances of the case, there would be no order as to costs.

22.02.2023

NCC: Yes/No

Index: Yes/No

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To

1.The Sub Judge,
Aruppukottai.

2.The District Munsif,
Aruppukottai.

Copy To

The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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