



S.A.No. 861 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2024

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No.861 of 2014
and M.P.No.1 of 2014

S.Duraikannu

... Appellant / Plaintiff

Vs.

1. Jayaraman
2. Guruswamy
3. G.Venkat
4. G.Arun

... Respondents / Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree of the learned Subordinate Judge at Vellore dated 24.06.2013 in A.S.No.63 of 2011 confirming the decree and judgment passed by the District Munsif Court, Katpadi in O.S.No.561 of 2009 dated 19.04.2011.

For Appellant : Mr.A.Palaniappan

For R2 to R4 : Mr.P.Chandrasekar

R1 : Not ready



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JUDGMENT

Heard Mr.A.Palaniappan, the learned counsel for the appellant and Mr.P.Chandrasekar, the learned counsel for the respondents 2 to 4.

2. The plaintiff is the appellant who had filed a suit for permanent injunction and lost the suit before the trial Court. The plaintiff preferred the first appeal and the same got dismissed by confirming the judgment of the trial Court. Now the present Second Appeal has been filed by the plaintiff.

3. The short averments made in the plaint filed by the plaintiff are as follows:

The plaintiff had purchased the suit property on 17.10.1973 through a registered sale deed and from then onwards the plaintiff is in enjoyment and possession of the same. On the eastern side of the suit property there is a lane with a width of 5 ft. and on further east of the lane the defendant's house is situated. As the defendants have tried to encroach the lane, the plaintiff was not able to use the lane and hence he has filed the suit for permanent injunction.



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WEB COPY 3. The defendants resisted the suit by filing the written statement in which it is averred as follows:

The defendants did not cause any obstruction in the lane. There is no lane with a measurement of 5 ft. as alleged by the plaintiff. It is false to state that there was a lane and the defendants have tried to encroach the same. Hence, the suit should be dismissed.

4. On the basis of the above pleadings, the following issues have been framed by the trial Court:

“ 1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ?

2. What relief the plaintiff is entitled to ?

Additional issue:

Whether there is a road on the east of the suit property with a breadth of 5 feet ? “

5. During the course of trial on the side of the plaintiff four witnesses have been examined as P.W.1 to P.W.4 and Exs.A1 to A4 were marked. On the side of the defendants, the second defendant examined as D.W.1 and Exs.B1 to B4 were marked. The third party documents have been marked as



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Exs.X1 and X2.

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6. At the conclusion of the trial and considering the evidences available on record, the trial Court has dismissed the suit and the first appeal preferred by the plaintiff also got dismissed by confirming the judgment of the trial Court. Now the present second appeal has been filed by raising various substantial question of law.

7. Mr.A.Palaniappan, the learned counsel for the appellant / plaintiff submitted that the sale deed of the appellant dated 17.06.1993 itself would show the existence of the lane but the Courts below did not appreciate the same and dismissed the suit.

8. Mr.P.Chandrasekar, the learned counsel for the respondents 2 to 4 / defendants submitted that the grandfather of the fourth defendant was in possession of the house site in Bhramapuram village and after his death, the patta was granted to the suit property; the plaintiff is the adjacent house owner and he has got no right or interest in the defendant's property; moreover, there is no lane with a width of 5 ft., as alleged by the plaintiff; the Courts below have rightly appreciated the materials on record and



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rendered the finding; hence, the judgment of the courts below should be confirmed.

9. The sale deed of the plaintiff dated 17.06.1993 has been marked as Ex.A1; the subject matter of the sale deed has been shown with the following boundaries:

“ நா.டி. காட்டுபாடி ச.டி.யை சேர்ந்த பிரம்மபுரம் கிராமத்தில் எங்களுடைய பிரதூராஜிதம் நாங்கள் அனுபவித்து வரும் காலி மனையானது கிராம நத்தம் சர்வே 319/6ஏ, 2.26 இதில் சுப்பிரமணியம் வீட்டிற்கு வடக்குவீதிக்கு, மேற்கு எங்கள் வேறு காலி மனைக்கு தெற்கு, நடராஜன் வகையறா புன்செய்க்கு கிழக்கு, இதன் மத்தியில் கி.மே. அடி 21, வ.தெ.அடி.91. இதன் மத்தியில் உள்ள காலி மனையை கிரையம் செய்திருக்கிறேன்.”

10. The above lines from the sale deed does not show any lane measuring 5ft. width on the eastern side of the property between the plaintiff's site and the defendant's site. Even though the appellant / plaintiff has stated in his plaint that there is a lane with a width of 5ft. running on the eastern side of his site, in the schedule of the property the measurement and features of the lane has not been shown. The first appellate Court has observed that the plaintiff has failed to establish that there was a lane



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situated on the eastern side of the plaintiff's site and that it has been subdivided and that it runs from a particular point to another point etc.

Excepting the self made rough sketch which is marked as Ex.A3, none of the title deeds or the revenue records like FMB sketch would show the existence of the lane as pleaded by the plaintiff.

11. It is not the claim of the plaintiff that the lane alleged to be measuring 5 ft., was let out by both the plaintiff and the defendants in between their sites. The stand taken by the plaintiff is that it is a common lane and that the defendants tried to encroach the same. If it is a common lane and it is used for public purposes, the plaintiff ought to have examined the Officials of the municipal / corporation by calling up on the town survey sketch and the records in order to prove that there existed a lane and that has been encroached by the defendants.

12. Without any basis and without proving any *prima facie* documents to show the very existence of the lane, the plaintiff had filed the suit and that has been properly appreciated by both the courts below. At some point of time, the plaintiff had filed an application seeking appointment of Commissioner for the purpose of inspecting the property. In the absence of



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any basic documents to show the existence of pathway, the first appellate court dismissed the application seeking appointment of Commissioner by stating that it is an unnecessary exercise.

13. As the trial Court and the first appellate Court have not omitted to appreciate any vital piece of evidence or circumstances brought before the Court by the plaintiff, I do not find any question of law much less a substantial question of law arises in this Second Appeal.

14. In the result, the Second Appeal is dismissed and the judgment and decree dated 24.06.2013 made in A.S.No.63 of 2011 on the file of the learned Sub-ordinate Judge at Vellore, is hereby confirmed and the suit in O.S.No.561 of 2009 on the file of the District Munsif Court, Katpadi is dismissed. No costs. Connected miscellaneous petition is closed.

28.11.2024

Index:Yes/No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

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R.N.MANJULA, J.

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To:

1. The Sub-ordinate Judge
Vellore.
2. The District Munsif,
Katpadi.

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