



S.A.Nos.238 & 239 of 2017, 875 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 08.02.2024	Judgment Pronounced on 08.03.2024
------------------------------------	--------------------------------------

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.Nos.238 & 239 of 2017 & 875 of 2018
and C.M.P.Nos.5586 of 2017 & 23355 of 2018

S.A.No.238 of 2017:

Murugan

..Appellant

Vs.

Mohanasundaram

.. Respondent

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the common judgment and decree dated 04.11.2016 passed in A.S.No.13 of 2015 on the file of the Sub Court, Rasipuram, reversing the judgment and decree dated 26.02.2014 made in O.S.No.102 of 2011 on the file of the District Munsif Court, Rasipuram.

For Appellant : Mr.T.Dhanyakumar

For Respondent : Mr.N.Manokaran



S.A.Nos.238 & 239 of 2017, 875 of 2018

S.A.No.239 of 2017:

Murugan

..Appellant

Vs.

1.Mohanasundaram
2.Maadheswari
3.Baskar

.. Respondents

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the common judgment and decree dated 04.11.2016 passed in A.S.No.14 of 2015 on the file of the Sub Court, Rasipuram, reversing the judgment and decree dated 26.02.2014 made in O.S.No.167 of 2010 on the file of the District Munsif Court, Rasipuram.

For Appellant : Mr.T.Dhanyakumar

For Respondents
For R1 : Mr.N.Manokaran

For RR2 & 3 : Mr.C.Jagadish

S.A.No.875 of 2018:

1.Madheswari
2.Baskar

..Appellants

Vs.

1.Mohanasundaram
2.Murugan

.. Respondents



S.A.Nos.238 & 239 of 2017, 875 of 2018

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the common judgment and decree dated 04.11.2016 passed in A.S.No.14 of 2015 on the file of the Subordinate Court, Rasipuram, reversing the judgment and decree dated 26.02.2014 made in O.S.No.167 of 2010 on the file of the District Munsif Court, Rasipuram.

For Appellants : Mr.C.Jagadish

For Respondents

For R1 : Mr.N.Manokaran

For R2 : No ready

COMMON JUDGMENT

These Second Appeals have been filed against the judgments and decrees dated 04.11.2016 passed in A.S.Nos.13 & 14 of 2015 on the file of the Sub Court, Rasipuram, reversing the judgments and decrees dated 26.02.2014 made in O.S.Nos.102 of 2011 & 167 of 2010 on the file of the District Munsif Court, Rasipuram.

2.Second Appeal Nos.238 and 239 of 2017 are at the instance of the 1st defendant in O.S.No.167 of 2010 and the plaintiff in O.S.No.102 of 2011 and Second Appeal No.875 of 2018 is arising out of the suit in O.S.No.167 of 2010 and the 2nd defendant is the appellant in the said Second Appeal.



S.A.Nos.238 & 239 of 2017, 875 of 2018

WEB COPY

3.The suit in O.S.No.167 of 2010 has been filed by the 1st respondent in S.A.Nos.238 and 239 of 2017 for the relief of declaration, declaring the plaintiff's right over the cart track and for a consequential permanent injunction to restrain the defendants therein, from interfering with such right of the plaintiff and another prayer that has been sought for in the said suit is for mandatory injunction to remove the encroachments put up by the 1st defendant.

4.The suit in O.S.No.102 of 2011 has been filed for declaration that the suit property belongs to the plaintiff and that the defendant (plaintiff in O.S.No.167 of 2010), should be restrained by a permanent injunction from interfering with the plaintiffs' peaceful possession and enjoyment of the said property. Both the suits were resisted by the respective defendants reiterating their averments and allegations in their respective suits.

5.The Trial Court, on assessing the oral and documentary evidence adduced by the parties, proceeded to decree the suit. The Trial Court tried the suits independently and ultimately, has dismissed O.S.No.167 of 2010 and



S.A.Nos.238 & 239 of 2017, 875 of 2018

decreed O.S.No.102 of 2011. The plaintiff in O.S.No.167 of 2010 and the defendant in O.S.No.102 of 2011 preferred A.S.No.13 of 2015 as against the decree in O.S.No.102 of 2011 and A.S.No.14 of 2015 as against the decree in O.S.No.167 of 2010.

6.The First Appellate Court also decided the appeals separately and ultimately, allowed both the appeals and reversed the judgments and decrees of the Trial Court in both the suits.

7.Aggrieved by the reversal findings rendered by the First Appellate Court, the above two Second Appeal Nos.238 and 239 of 2017 have been preferred by the 1st defendant in O.S.No.167 of 2010 and the plaintiff in O.S.No.102 of 2011 and the third Second Appeal No.875 of 2018 is at the instance of the 2nd respondent in A.S.No.14 of 2015.

8.The issues involved in all the three Second Appeals are intertwined and related to each other. In fact, S.A.No.238 of 2017 has alone been admitted by this Court on 05.04.2017, on the following substantial questions of law:



WEB COPY



S.A.Nos.238 & 239 of 2017, 875 of 2018

1. Whether the Suit is barred by Limitation?

2. Whether is any event the right of the plaintiff is extinguished for non user and no creation of the pathway ever since the date of purchase continuously for more than the statutory period till the date of filing of the suit?.

9.Second Appeal No.875 of 2018 is arising out of O.S.No.167 of 2010.

Therefore, if the above substantial questions of law are decided, it would put at rest on all the contentious issues in all the three second appeals.

10.I have heard Mr.T.Dhanyakumar, in S.A.Nos.238 and 239 of 2017 for the appellant and Mr.C.Jagadish, in S.A.No.875 of 2018 for the appellant and Mr.N.Manokaran, learned counsel for the contesting respondent in all the three Second Appeals (sole respondent in S.A.No.238 of 2017 and 1st respondent in S.A.No.239 of 2017 as well as in S.A.No.875 of 2018).

11.Ex.A7 is the sketch of the suit property. An Advocate Commissioner was appointed and his report has been filed as Ex.C1. The Advocate Commissioner has also filed a sketch, which is marked as Ex.C2. According to the learned counsels for the appellants, the dispute between the



parties mainly concerns with the lay of their respective properties. Therefore, the sketch, that has been filed and relied on by the parties assumes significance and equally, the report of the Advocate Commissioner and the sketch filed by the Advocate Commissioner would also become very relevant. According to the plaintiff in O.S.No.167 of 2010, there is a 20 feet wide pathway abutting his property on the northern side and leading to Mettukadu Road. The said 20 feet pathway also connects Sabapathi Mill Street on the western side, through a 7 ½ feet passage.

12. According to the Advocate Commissioner's report in Ex.C2, the 7 ½ feet passage leading to Sabapathi Mill Street is shown as 8 ½ feet pathway and it turns on the northern side, where it widens to an extent of 14 ½ feet and again turns East, where it is measuring 18 feet opposite to the 1st defendant's property. It again turns towards North and it has a width of 20 feet, till it reaches Mettukadu Road. The bone of contention is with regard to whether the properties of the defendants lie to the North of the 7 ½ feet passage leading to Sabapathi Mill Street, in which the plaintiffs complain of encroachment made by the 2nd defendant or not. As per Ex.A7, sketch, the 7 ½ feet passage is lying to the South of the defendants property and at the



junction of the plaintiffs properties and it turns towards North and it is a 20 feet passage until it reaches and meets Mettukadu Road also on the northern side.

13.Contrary to Ex.A7, Sketch, the Advocate Commissioner's report gives an entirely different picture. There is no passage of a width of 20 feet in between the plaintiffs property and the defendant's properties. The plaintiffs' property is shown immediately adjoining the 1st defendant's property and to the North of the properties belong to the plaintiff as well as the defendants, there is an 18 feet pathway to the west of the 3rd defendant's property. There is a shed in the pathway with one end of the pathway joining Sabapathi Mill Street on the western side and the other end of the pathway meeting the 14 ½ feet pathway, which also adjoins the 3rd defendant's property and at the corner of the 3rd defendant's property, it take a turn towards East, where there is an 18 feet pathway.

14.In view of the contradiction in the lay of the suit properties between the plaintiff's version and the Advocate Commissioner's version, the point that has to be determined is as to whether the plaintiffs' case that in between his



S.A.Nos.238 & 239 of 2017, 875 of 2018

property and the defendants' property there is a 20 feet pathway or not. As per the Advocate Commissioner's report, the only 20 feet pathway available is the one, which is running South to North, meeting Mettukadu Road on the northern side. The 7 ½ feet passage referred by the plaintiffs probably appears to be the 8 ½ feet passage which the Advocate Commissioner has shown in the sketch. However, as per the plaintiffs' case, there are only two passages in straight lines, one having a width of 7 ½ feet, connecting Sabapathi Mill Street on the western side and meeting the plaintiff's property on the eastern side and the other one being a straight 20 feet passage running between the plaintiffs and the defendant's property from the junction of the 7 ½ feet passage on the southern side and running North to reach Mettukadu Road on the northern side.

15.In view of the above discrepancy, the boundaries mentioned in the registered Sale Deeds in favour of the contesting parties and also their oral evidence would become relevant to decide this aspect. In Ex.A1, Sale Deed which is executed in favour of the plaintiff's vendor the boundaries are mentioned as hereunder:

"20 அடி அகல தென்வடல் ரோடுக்கும்
கிழக்கு பிளாட் நெ.12 ஆக உள்ள மனை



WEB COPY



S.A.Nos.238 & 239 of 2017, 875 of 2018

நிலத்துக்கு மேற்கு 20 அடி அகல கீழ்மேல்
ரோட்டுக்கும் வடக்கு தெற்கு."

16.Ex.A2 is the Sale Deed executed in favour of the plaintiff in O.S.No.167 of 2010 and in the Sale Deed, the boundaries are mentioned as hereunder:

"ஷை மனை நிலத்திற்கு மேற்புரம் உள்ள தென்வடல் ரோடிலும் வடபுரமும், தென்புரமும் உள்ள ஷை கிழமேல் ரோடுகளிலும் ஷை ரோடுகளிலும் மேற்புரம் உள்ள தென்வடல் ரோடிலும், ஷை தென்வடல் ரோடில் வடபுரம் பிரிந்து கிழக்கிலிருந்து மேற்கு நோக்கி உள்ள கிழமேல் ரோடில் ஷை கிழமேல் ரோடில் மேற்புரம் கடைசியில் பிரிந்து தெற்கிலிருந்து வடக்கு நோக்கி உள்ள தென்வடல் ரோடிலும் ஷை தென்வடல் ரோடின் வடபுரம் கிழமேலாக உள்ள மேட்டுக்காடு ரோடுக்கு ஆள், கால்நடை, வண்டி, லாரி முதலிய வாகனாதிகள் முதலியவைகள் போக வர ஏற்பட்ட தட பாத்தியம் மற்றும் மேற்கூறிய தென்வடல் தடத்தில் தென்புரம் கடைசியில் பிரிந்து கிழக்கிலிருந்து மேற்கு நோக்கி 7 1/2 அடி அகலத்தில் உள்ள கிழமேல் தடத்திலும் மேற்கூறியபடி ஏற்பட்ட தட பாத்தியமும் ஆக இவைகள் பூராவும் சேர்ந்ததுதான் இந்த சுத்தக் கிரையத்திற்குச் சம்மந்தப்பட்டது."

17.Ex.A5 is the Sale Deed in favour of the appellant in S.A.No.875 of 2018 and Ex.B5 is the Sale Deed executed in favour of Baskar and Visvanathan and Ex.B6 is the Sale Deed executed in favour of the Baskar alone. The boundaries mentioned in all these documents are as hereunder:



S.A.Nos.238 & 239 of 2017, 875 of 2018

"20 அடி அகலத்தில் உள்ள கிழமேல் ரோடுக்கும் தெற்கு. முத்துக்கவுண்டர் நிலத்திற்கும் வடக்கு. ஆறுமுகத்துக்குப் பாத்தியப்பட்ட பிளாட் எண்.23 உள்ள மனைநிலத்துக்கும் கிழக்கு. S.நடராஜனுக்குப் பாத்தியப்பட்ட பிளாட் எண்.26 உள்ள மனைநிலத்துக்கும் மேற்கு."

" ஐடி சொத்திற்கு சபாபதி மில் தெரு தடத்திற்கு கிழபுரமாக உள்ளதும், ஐடி சபாபதி ஜெயபால் இவர்களுக்கு சொந்தமான மில்லுக்கும், சபாபதி விவசாய நிலத்திற்கும் சுப்ரமணி வீட்டிற்கும் எஸ்.நடராஜன் வீட்டிற்கும் இவைகளுக்கு தென்புரத்திலும், பி.மோகனசுந்தரத்தின் விவசாய நிலத்திற்கு வடபுரத்திலும் உள்ள 7 1/2 அடி அகல கிழமேல் தடத்தின் வழியாகவும் இதன் வடபுரமான அதாவது இக்கிரைய நிலத்திற்கு மேல்புரமாக எஸ்.நடராஜன் அவர்களால் விடப்பட்ட 15 அடி அகல தென்வடல் தடத்தின் வழியாகவும், அதிலிருந்து இக்கிரைய நிலத்திற்கு வடபுரமாக எஸ்.நடராஜன் அவர்களால் விடப்பட்ட 20 அடி கிழமேல் தடத்தின் வழியாகவும்."

"மாதேஸ்வரிக்கு கிரையம் செய்து விட்ட சொத்துக்கும் (மேற்கு) 15 அடி அகல தென்வடல் தடத்துக்கும் (கிழக்கு) நடராஜன் அவர்களால் விடப்பட்டுள்ள 20 அடி அகல கிழமேல் பாதைக்கும் (தெற்கு) மோகனசுந்தரம் அவர்களுக்கு பாத்தியப்பட்ட விவசாய நிலத்துக்கும் (வடக்கு)."

18.A copy of the Sale Deed dated 11.06.1997 in favour of the appellant in S.A.No.238 and 239 of 2017 is marked as Ex.A1 in O.S.No.102 of 2011. The boundaries mentioned in the said Sale Deed are as hereunder:

" எனக்கு பாத்தியப்பட்ட இதர நிலங்களுக்கும் கிழக்கு சடையன் காலிமனை நிலத்துக்கும்



WEB COPY



S.A.Nos.238 & 239 of 2017, 875 of 2018

மேற்கு வடக்கு தெற்கு
முத்துக்கவுண்டர் 20 அடி அகல கிழமேல் ரோடுக்கும்
விவசாய நிலத்துக்கும்

19.The plaintiff in O.S.No.167 of 2011, while being examined as P.W.1, has stated in his cross-examination that he has stated that even prior to his purchase, the 1st defendant, namely Murugan, appellant in S.A.Nos.238 and 239 of 2017 had purchased the immediately adjoining northern (melpuram) side property. He has further stated that on the southern side of the properties belonging to himself and the defendants 1 to 3, there are agricultural lands. He has also stated in his Sale Deed that the northern and southern sides have been shown as roads. He has admitted that the northern and southern boundaries in his Sale Deed are described as roads. He also admitted that on the southern side of his plot, there is no road and only his land is situate. This categorical admission of the plaintiffs in O.S.No.167 of 2010 clearly affirms the report of the Advocate Commissioner and falsifies the plaint sketch in Ex.A7.

20.Though the learned counsels for the respondents placing reliance on the decision of *Natesa Gounder Vs. Raja Gounder & Others* reported in **2012 5 L.W. 649** and in *Hero Vinoth (Minor) Vs. Seshammal* reported in



2006 (5) SCC 545 would contend that self serving documents cannot be pressed into service and relying on the ratio laid by the Hon'ble Supreme Court in *Hero Vinoth (Minor)'s* case with regard to easement of necessity, the grant may be express or also by necessary implications. The Hon'ble Supreme Court held that the scope of the grant of easement could be determined by the terms of the grant between the parties alone. When there is nothing in the terms of the grant, that it would be limited in time, such grant would not be one of necessity. The Hon'ble Supreme Court further held that if it is a permanent arrangement uncontrolled by any condition, that permanency in user must be recognized and the servient tenement will be recognized and the servient tenement will be permanently burdened with that disability.

21.It is further held that the burden of the servient owner in such a case is not on any concessional basis, but by way of legal obligations, enabling the dominant owner to use his land. However, I am unable to apply the ratio laid down in the above cases to the facts of the present case. It is not as if the plaintiff has no access to his property. He has come with a case as if the properties of the defendants and his property are divided by 20 feet passage



and that his access to Sabapathi Mill Street is 7 ½ feet through a passage over which the 2nd defendant has encroached and in such circumstances, he has come forward with the present suit including seeking mandatory injunction to remove the alleged encroachment. However, from his own evidence it is seen that the properties of the plaintiff and the defendant are adjoining each other and there is no road lying to the South of the plaintiffs' plot, but only agricultural lands.

22.The learned counsel for the respondents would try to justify the said admission of the P.W.1 that since the plaintiff owned agricultural lands to the South of the plaintiffs' property as well as the defendants property, P.W.1 had only referred to the southern portion being the agricultural lands, when he meant that there was no road to the South of his property. However, I am unable to countenance the said line of argument for the simple reason that P.W.1 has categorically referred to his plot and differentiated it from his agricultural lands. Therefore, the evidence of P.W.1 clearly supports the Advocate Commissioner's sketch alone and not Ex.A7, plaint sketch. The First Appellate Court has clearly fell in error in reversing the well considered and well merited findings rendered by the Trial Court in dismissing O.S.No.167 of 2010 and decreeing in O.S.No.102 of 2011.



S.A.Nos.238 & 239 of 2017, 875 of 2018

WEB COPY

23. For all the above reasons, the substantial questions of law are answered in favour of the appellants herein. In fine, these Second Appeals are allowed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petitions are closed.

08.03.2024

Index : Yes/No
Speaking Order/Non-Speaking Order

ata

To

1. The Sub Court, Rasipuram.
2. The District Munsif Court, Rasipuram.
3. The Section Officer, V.R. Section, High Court, Madras.



WEB COPY



S.A.Nos.238 & 239 of 2017, 875 of 2018

P.B.BALAJI., J.

ata

Pre-delivery judgment made in

S.A.Nos.238 & 239 of 2017

& 875 of 2018

08.03.2024