



SA No. 1104 of 2011

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-07-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 1104 of 2011 &

M.P.Nos.1 to 3 of 2011,

CMP Nos.18641 of 2021, 27193 of 2023 and 3991 of 2024

1. R.Dhanavalli,
W/o.Raghavan
 2. R.Saravanamoorthy,
S/o.Raghavan
 3. R.Harikrishnan,
S/o.Raghavan
 4. R.Gopalakrishnan,
S/o.Raghavan
 5. R.Prabhakaran,
S/o.Raghavan
 6. R.Anandalakshmi,
D/o.Raghavan
- All are residing at No.10,
Narayana Maistry II Street, Villivakkam,
Chennai -49.

..Appellant(s)

Vs

E.Sarojini Devi,
W/o.Late Eswaran,
5, Narayana Maistry II Street,
Villivakkam, Chennai - 49.

..Respondent(s)



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Prayer: Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 12.04.2011 passed in A.S.No.442 of 2009 on the file of the learned II Additional Judge, City Civil Court, Chennai confirming the Judgment and the Decree dated 31.08.2009 passed in O.S.No.5742 of 2008 before the learned XIII Assistant Judge, City Civil Court, Chennai

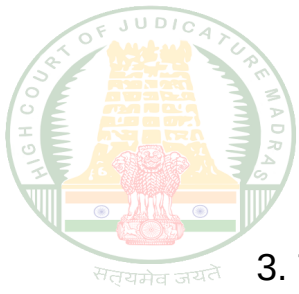
For Appellant(s): Mr.V.M.Venkat Ramana

For Respondent(s): Mr.J.Bharathi Raja

J U D G M E N T

This Second Appeal has been preferred by the appellants as against the Decree and Judgment passed by the learned II Additional Judge, City Civil Court, Chennai in A.S.No.442 of 2009 dated 12.04.2011 as against the Decree and Judgment passed in O.S.No.5742 of 2008 dated 31.08.2009 on the file of learned XIII Assistant Judge, City Civil Court, Chennai.

2. For the sake of convenience and brevity, the parties herein are referred as plaintiff and defendants, as referred before the trial court.



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3. The respondent herein has filed the suit for mandatory injunction directing the defendants to remove the construction over the common passage and remove the stair steps put up by them and for costs. The trial court partly decreed the suit by directing the defendants to remove the stair steps to the extent of 3 X 5 feet in the common passage. Aggrieved by the said Decree and Judgment, the defendants have preferred the Appeal Suit. The First Appellate Court dismissed the Appeal Suit by confirming the Decree and Judgment passed by the trial court. As against the same, the present Second Appeal has been preferred by the defendants.

4. The case of the plaintiff before the trial court is that the suit property is a common lane measuring, East to West about 6 feet, North to South 152 feet running from Narayana Maistry Second street, on the North towards the South comprised in Survey No.154 of Block no.45, Villivakkam, Chennai. The said lane is situated at in between the plaintiff's land western side and on the eastern side of the defendants' property. The plaintiff and her predecessors have been in possession and enjoyment of the suit property. Already one Kanniammal and seven



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others including the defendants have filed the suit in O.S.No.2636 of 2008 on the file of the learned XIII Assistant Judge, City Civil Court, Chennai for the relief of permanent injunction restraining the plaintiff and others for the usage of the said passage. In the said suit, the plaintiff alone contested and the said suit was dismissed as against the plaintiff. The defendants are co-owners of the property at No.10, Narayana Maistry Second Street, Villivakkam. Now, the plaintiff reliably understand that the defendants are putting up construction in the ground floor and extended first floor over the passage to an extent of 3 feet X 25 feet and also put up staircase to the extent of 3feet X 10 feet and thereby blocked the passage. Therefore, the plaintiff filed the suit for mandatory injunction to remove the said encroachment.

5. The case of the defendants before the trial court are that the suit filed by the plaintiff is not maintainable. It is true that there is a common passage running east to west 6 feet and north to south 152 feet through Narayana Maistry Second Street on the north towards the south in between plaintiff's and defendants' land. The plaintiff has not identified the property properly. In fact, originally, the property was purchased by



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one Kathirvelu and others, through registered sale deed dated 04.04.1937 and subsequently, the same has been settled to the 2nd defendant's father, namely, Raghavan on 27.07.1978. After the demise of the said Raghavan, the suit property belonged to the defendants. In the eastern side of the defendants' property, the said six feet common lane is available for common use. As the said common passage was encroached by the plaintiff, the defendants filed the suit in O.S.No.2636 of 1988 before the learned VIII Assistant Judge, City Civil Court, Chennai and to demolish the hut raised by the plaintiff in the said common passage, but the said suit was dismissed. In fact, the plaintiff only encroached the common passage and now, she is interfering with the defendants' enjoyment of the property. The defendants had not constructed compound wall in their property and the same is open, there is no encroachment, as alleged by the plaintiff in the plaint, therefore, the suit is liable to be dismissed.

6. Based on the above said pleadings and on hearing both sides, the trial court has framed the following issues for trial:-

“1. Whether the plaintiff is entitled to mandatory injunction, as prayed for?”



2. To what other reliefs, the plaintiff is entitled to?

Before the trial court, on the side of the plaintiff, witness, P.W.1 was examined and marked Exhibits A.1 to A.19. On the side of the defendants, witness D.W.1 was examined and marked Exhibits B.1 to B.4. After analysing the evidences adduced on both sides, the trial court partly decreed the suit by directing the defendants to remove the 3X6 feet staircases, which is blocking common pathway.

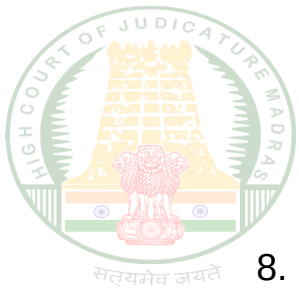
7. Aggrieved by the said Decree and Judgment passed by the trial Court, the defendants have preferred the Appeal Suit. The First Appellate Court has framed the following points for determination:-

“1. Whether the respondent / plaintiff is entitled for mandatory injunction as prayed for?

2. Whether the appeal has to be allowed or not?

3. To what other points the parties are entitled to?”

After hearing both sides and perusing the records, the First Appellate Court dismissed the Appeal Suit by confirming the Decree and Judgment passed by the trial court. As against the said Decree and Judgment, the present Second Appeal has been filed by the defendants.



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8. The learned counsel appearing for the appellants would submit that the respondent, being the plaintiff, has filed the suit for mandatory injunction to remove the sun shade over the passage and the stair case constructed blocking the passage. In fact, there is no any encroachment in the common lane by the appellants / defendants. Per contra, the appellants only encroached the common passage in their land. The respondent / plaintiff's land is situated in S.No.154 and the passage is situated in Survey No.151. The defendants' land is situated in S.F.No.136. The plaintiff has not clearly identified the property where the alleged encroachment was made by the defendants and no Commissioner was appointed to find out the alleged encroachment. Further, without any evidence and any identity of the encroached portion the trial court has granted decree. The First Appellate Court also without considering the identification of the property, came to erroneous conclusion that there is an encroachment. Without any materials only based on the oral evidences, the courts below have decreed the suit.

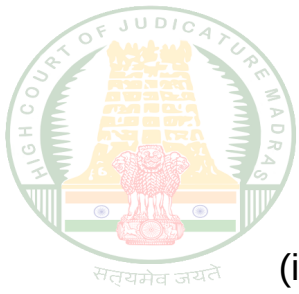
8.1. In fact, during the pendency of the Second Appeal, the Commissioner was appointed, the Commissioner has filed the Rough Sketch and Plan and as per Commissioner Report, Sketch and Plan,



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there is no encroachment from the side of S.F.No.136 in the passage situated in S.F.No.151 and there is an encroachment in the Survey No.151 passage, from the side of adjacent to the S.F.No.154, which belonged to the plaintiff, who encroached the passage situated in Survey No.151, therefore, from the Commissioner Report and Plan, it is very clear that within the boundary of the defendants, there is no any encroachment made in Survey No.151 which is a common passage, whereas there is an encroachment in S.F.No.151 by the plaintiff Survey No.154. Moreover, the passage is situated in Survey Number 151, but in the plaint, the description of the property has been mentioned as Survey No.154. The courts below erroneously held that D.W.1 admitted that he encroached the property, in fact, D.W.1 had categorically stated that he constructed building in his land and no where he admitted that he constructed building in the common passage. There are no records to show that actually there is an encroachment in Survey No.151 passage by the appellants / defendants, therefore, prayed to set aside the decree and Judgment passed by the courts below by allowing this Appeal.

8.2. Further, the learned counsel appearing for the appellants has relied on the following judgments of the Hon'ble Supreme Court:-



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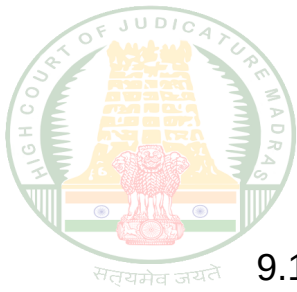
(i) Bondar Singh & Ors., Vs. Nihal Singh & Ors., reported in AIR

2003 SC 1905

(ii) Shreepat Vs. Rajendra Prasad and Others reported in (2000)

3 M.L.J. 84 (S.C.)

9. The learned counsel appearing for the respondent would submit that the plaintiff filed the suit for mandatory injunction, since the defendants encroached the common passage by raising stair case blocking the passage and also constructed sunshade, the plaintiff filed a suit. In order to prove the case, on the side of the plaintiff, witness, P.W.1 was examined and marked Exhibits A.1 to A.19. On the side of the defendants, witness D.W.1 was examined and marked Exhibits B.1 to B.4. As per the evidence P.W.1 and the documents filed, the trial court came to a conclusion that there is an encroachment by putting up stair case in the common passage, thereby decreed the suit to remove the stair case situated in the common pathway. The Appellate Court also after analysing the evidences adduced on both sides, correctly dismissed the appeal, as there is an encroachment by the appellants / defendants, therefore, prayed to dismiss the appeal.



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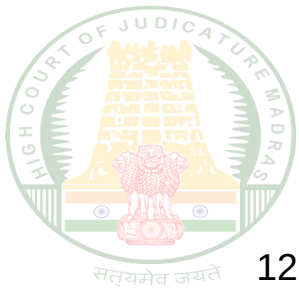
9.1. That apart, already the defendants have filed a suit in respect of the same property as against the plaintiff, alleging that she encroached the property and the same was dismissed, now, due to that enmity, encroached the property and causing disturbance to the respondent / plaintiff, thereby the courts below have correctly appreciated the facts and decreed the suit by directing the defendants to remove the encroachment made in the common passage, thereby the Second Appeal is liable to be dismissed.

10. Heard the learned counsel appearing on both sides and perused the entire documents placed on record.

11. At the time of admitting the Second Appeal, on 24.01.2024, this Court formulated the following Substantial Questions of Law for consideration:-

“1. Whether the courts below are right in decreeing the suit for a mandatory injunction when the appellants are bound to establish the identity of the property and encroachment made?

2. Whether the findings of the courts below are perverse by misinterpreting the evidence of DW2 that requires interference under Section 100 of Civil Procedure Code.”



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12. In this case, there is no dispute that there is a common lane between the properties of the plaintiff and the defendants. According to the plaintiff, the defendants encroached the common lane and put up sunshade and stair case by blocking the common passage, therefore, she filed the suit for mandatory injunction. The defendants denied the encroachment as alleged in the plaint, thereby the plaintiff has to prove the alleged encroachment. In order to prove the case, on the side of the plaintiff, witness, P.W.1 was examined and marked Exhibits A.1 to A.19. On the side of the defendants, witness D.W.1 was examined and marked Exhibits B.1 to B.4. In the plaint, the plaintiff mentioned that suit property has construction portion, made by the defendants first floor extending into east to west three feet and north to south twenty five feet over and above common passage and also put up stair steps to the extent of 3 X 5 feet in the common passage comprised in T.S.No.154 Block No.45. Once the defendants denied the encroachment, it is the duty of the plaintiff to prove that there is an encroachment and the said encroachment has to be properly identified by the plaintiff.

13. Further, in order to identify the alleged encroachment, there are no records produced by the plaintiff that where the alleged



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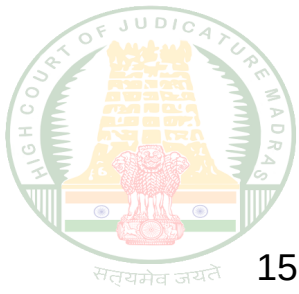
encroachment has been made. In order to identify the property, the plaintiff has not taken steps to appoint commissioner to note down physical features and to identify the property, thereby the plaintiff failed to prove the identity of the property. Further, the 2nd defendant categorically stated in the evidence that he constructed the building in his land and nowhere he stated that he encroached the passage, while so, the courts below without understanding the evidence of the D.W.2 erroneously held that D.W.2 admitted that he encroached the passage property. The courts below have extracted the evidence of D.W.1 where he denied the encroachment and according to the evidence, he only constructed the house in his land. The courts below failed to consider that the suit property has not been properly identified by the plaintiff and the plaintiff failed to take steps for appointment of Commissioner to identify the property, however, both the courts have erroneously decreed the suit without proper identification.

14. Moreover, during the pendency of the Second Appeal, an Advocate Commissioner was appointed by this Court and he also filed a report and plan, as per Commissioner Report and plan the suit property



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is a common path way situated in S.No.151 and the defendants property has been situated in S.No.136. The plaintiff's property has been situated in S.No.154. The said properties have been identified through the qualified surveyor. As per the Commissioner's Report, the breadth of the passage on the northern side is 4.2 meter and it is visibly seen that in the common passage 2.8 meter on the eastern side is encroached by laying stones and sands and also half of the building was constructed in the common passage adjacent to the survey no.154. When he started to survey the land in S.No.154 from the rear property, which is accessible for survey and also surveyed the property and came to know that the building, which was clearly encroached the common passage and a hut is also present in the common passage nearing in S.No.154 and it was clearly visible that the front portion of the common passage is only used for the purpose of encroachment, whereas the property of the defendants in S.No.136, the surveyor measured the property from rear portion to front portion and found that the stair case of the building comes within survey No.136 and no encroachment was made in the common passage in S.F.No.151 and surveyor also gave a report to that effect and also enclosed the photographs.



15. Therefore, from the report of the surveyor and the Commissioner Report, it is clear that there is no any encroachment made by the defendants in the common passage and the alleged stair case are within the Survey No.136, which belongs to the defendants, therefore, the courts below without identifying the properties and also by misinterpreting the evidence of D.W.2, granted decree for mandatory injunction and the same are perverse.

16. At this juncture, it is relevant to rely the Judgments relied on by the learned counsel appearing for the appellants (i) Bondar Singh & Ors., Vs. Nihal Singh & Ors., reported in AIR 2003 SC 1905 (ii) Shreepat Vs. Rajendra Prasad and Others reported in (2000) 3 M.L.J. 84 (S.C.). On a careful perusal of the above said judgments relied on by the learned counsel for the appellants, it is clear that once the suit is filed for declaration and possession and other side seriously disputed with regard to the area of the property, the Courts should issue a survey commission to locate the property in dispute and find out whether it formed part of one survey number of the other. Therefore, the plaintiff has to identify the property. If the findings of the subordinate courts on the facts are contrary to evidence on record or perverse, such findings can be set



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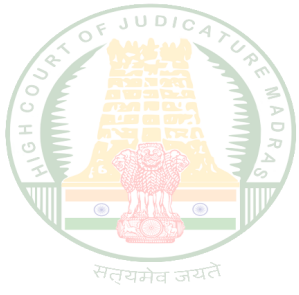
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aside by the High Court in an Appeal under Section 100 of CPC. In the case on hand also, the plaintiff has not identified the property properly and the courts below misinterpreted the evidence of D.W.2 and D.W.2 no where admitted that the construction was made in the common passage, whereas, in the evidence it is stated that he only constructed the house in his property, therefore the findings of the court below, on facts, are contrary to the evidence on record and the same are perverse. Therefore, the Substantial Questions of Law are answered in favour of the appellants. Accordingly, the present Second Appeal is liable to be allowed.

In the result, the Second Appeal is allowed and the Decree and Judgment passed in O.S.No.5742 of 2008 dated 31.08.2009 on the file of learned XIII Assistant Judge, City Civil Court, Chennai confirmed by the First Appellate Court in A.S.No.442 of 2009 dated 12.04.2011 on the file of learned II Additional Judge, City Civil Court, Chennai are set aside, and the suit in O.S.No.5742 of 2008 is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

17-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

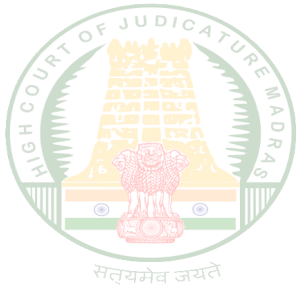


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To

1. The II Additional Judge, City Civil Court, Chennai
2. The XIII Assistant Judge, City Civil Court, Chennai



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P.DHANABAL J.

ssd

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