

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2015

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Second Appeal No.226 of 2012

and

M.P.No.1 of 2012

Narmatha

... Appellant/Plaintiff

Versus

Padma

... Respondent/Defendant

Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 29.09.2011 made in A.S.No.51 of 2010 on the file of the Additional Subordinate Judge, Mayiladuthurai, confirming the judgment and decree dated 26.02.2010 made in O.S.No.92 of 2008 on the file of the Additional District Munsif, Mayiladuthurai.

For Appellant : Mr.S.Subbiah

For Respondent : Mr.S.Sounthar

JUDGMENT

The unsuccessful plaintiff before the courts below has preferred the Second Appeal challenging the decree passed in a suit for permanent injunction in O.S.No.92 of 2008 on the file of the Additional District Munsif Court, Mayiladuthurai and confirmed in A.S.No.51 of 2010 on the file of the Additional Subordinate Court, Mayiladuthurai.

2.The defendant in that suit also had filed a suit in O.S.No.270 of 2007 for permanent injunction, which was decreed by the trial

court and on appeal by the appellant herein in A.S.No.54 of 2010, it was allowed and the suit was dismissed. Against the same, S.A.No.599 of 2013 was filed by the appellant herein, which was subsequently withdrawn on 13.04.2015. The above reference is made in view of the common judgment passed in the suit as well as in the appeal.

3.The property in dispute between the parties is a 2 feet lane. The plaintiff, who is the appellant herein, had filed O.S.No.92 of 2008 seeking permanent injunction restraining the defendant/respondent herein from interfering with the peaceful possession and enjoyment of the suit property including the 2 feet lane. The said suit is laid on the strength of the sale deed executed by one Rasul Beevi Vagaira, who conveyed certain properties including the suit properties. After the said sale of a portion of the above mentioned property, the plaintiff had been enjoying the same in her exclusive right and possession. As the defendant tried to interfere with her peaceful possession, the suit was laid.

4.The suit was opposed by the defendant/respondent herein contending that the entire property in S.No.1321 belonged to the father-in-law of the defendant/respondent herein, who settled a portion of the property in favour of the respondent's husband Jayaraman and the remaining portion to his brother Rajendran. The common lane was 4 feet which was running in between the portion allotted to Jayaraman and Rajendran. The said Rajendran sold his portion to one Mohammed Yahaiah on 12.10.1994 in which sale deed, there is a mention about the said lane. Thereafter the said portion was sold to the plaintiff. In the said property, a portion of the same was sold to the respondent herein along with 2 feet lane. Ex.B5 is the acknowledgement by the plaintiff consenting that the defendant/respondent herein had right over 2 feet lane, which is the subject matter of the dispute in the present suit.

5.Before the trial Court, the plaintiff examined one Ravichandran as PW.1 and marked Exs.A1 to A7 and the defendant examined one Jayaraman as DW.1 and marked Ex.B1 to B8. Besides that Exs.C1 to C3 were marked as Court documents.

6.Considering the oral and documentary evidence adduced on both sides, the trial Court dismissed the suit. On appeal also, the suit was dismissed. Aggrieved plaintiff filed this Second Appeal.

7.At the time of admission of the Second Appeal, the following substantial question of law is formulated for consideration:-

" i) Whether the letter purported to be one a consent letter relating to the use of an immovable property either conferring a right or extinguishing a right is admissible in evidence, without its registration under Section 17 of the Registration Act ?

ii) Whether the purchaser under a document was conferred with a specific right clearly stipulated under the document, whether such a purchaser is entitled to claim anything in excess of such a right conferred to him or her?

iii) When the evidence was not recorded in common both oral as well as documentary, is it legal on the part of the trial Court and the appellate Court to render a common judgment and as such, confusing the issues, from the pleadings of both the parties and leading to miscarriage of justice?"

8. Heard the learned counsel appearing on both sides and perused the materials available on record.

9. The courts below had dismissed the suit based on the principle of estoppel in view of Ex.B5 executed by the appellant herein acknowledging the right the respondent has over the suit lane. Having executed the above mentioned document, the courts below had held that the appellant was estopped from claiming any right over the suit property. It is contended by the counsel for the appellant that the courts below ought not to have relied upon Ex.B5 as the same was not registered under Section 17 of the Registration Act. The learned counsel for the appellant/plaintiff had further contended that the document was subsequently disputed. When there was a dispute with respect to the execution of the said document, wherein a right is conferred upon the respondent, it was argued by the learned counsel that the same ought to have been registered as required under Section 17 of the Registration Act.

10. However, the Courts below had compared the signatures in the above mentioned document Ex.B5 with that of the admitted signatures in other documents filed by the plaintiff/appellant herein. On such comparison, the appellate court had come to the categorical conclusion that Ex.B5 was validly executed by the plaintiff/appellant

herein. The said finding, which is factual, cannot be interfered in a Second Appeal as the comparison done by the Court cannot be said to be so perverse on the face of the record warranting this Court to interfere with the same.

11. Similarly the dispute with respect to usage of 2 feet common land has to be established by the plaintiff. The existence of the said lane and its common usage has been mentioned in the parent deed viz., sale deed dated 12.10.1994, which is marked as Ex.B3, executed by Rajendran in favour of one Mohammed Yahiah. From the above said document, the right of common usage of the defendant/respondent herein can be inferred to be a pre-existing one. But under Ex.B5 document, the plaintiff though not conferred any such above mentioned right of common usage, chose to acknowledge the pre-existing right of common usage. In such circumstance, Ex.B5 cannot be neglected by the courts for want of registration as the same neither confers any right nor extinguishes any right.

12. It was further argued by the learned counsel for the appellant/plaintiff that the respondent/defendant cannot claim any right over the remaining 2 feet lane in excess of what has been conveyed under the above mentioned sale deed. The courts below, on a careful consideration of the parent deeds, had come to the categorical conclusion that there was an existence of 4 feet lane with common usage for all the title holders in S.No.1321. The sale deed by the appellant/plaintiff in favour of the respondent/defendant also confirms the same. In such circumstance, the appellant/plaintiff cannot deny the claim of the respondent's/defendant's right over the remaining 2 feet lane in excess of what is conveyed under the above said sale deed.

13. The learned counsel for the appellant further contended that the suits ought not to have been tried jointly. As the dispute was in respect of 2 feet lane measuring about 56.6 feet length is a common lane and which is common in both suits, the trial Court had taken them for consideration together. But when the suits are between the same parties and the issue involved is substantially the same, there is no legal impediment for the trial Court to try the suits in common. In view of the findings that Ex.B5 even assuming that the same has been executed by the appellant in favour of the respondent with respect to an immovable property without registration under Section 17 of the Registration Act is inadmissible in evidence, is rejected and the questions of law are answered against the appellant/plaintiff.

14.In the result, the Second Appeal is dismissed confirming the judgments and decrees of the courts below, thereby dismissing the suit. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mra

To

1. The Additional Subordinate Judge,
Mayiladuthurai.
2. The Additional District Munsif,
Mayiladuthurai.

COPY TO

The Section Officer,
V.R.Section,
High Court, Madras - 104

+lcc to Mr.S.Subbiah, Advocate, S.R.No.40120
+lcc to Mr.S.Sounthar, Advocate, S.R.No.39409

Second Appeal No.226 of 2012
and
M.P.No.1 of 2012

SV(CO)
CA(24/08/2015)

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