

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.306 of 2012

and

M.P.No.1 of 2015 and M.P.No.2 of 2015

1. K.Veeraraghavalu

2. V.Sriganesh

... Appellants /Plaintiffs

Vs.

1. S. Santhiya

2. M.V.Shanmugam

... Respondents/Defendants

This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree dated 24.06.2011 made in A.S.No.126 of 2009 on the file of the learned VI Additional Judge, City Civil Court, Chennai partly reversing the Judgment and Decree dated 28.03.2008 made in O.S.No.4407 of 2005 on the file of the learned XVI Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.K.Seshadri

For R.1 : No appearance

For R.2 : Mr.R.Subramanian for
Dr.P.Vasudevan

JUDGMENT

Though, the Miscellaneous Petition is listed today, by consent of both parties, the Second Appeal itself is taken up for disposal.

2. The plaintiffs in O.S.No.4407 of 2005 on the file of the learned XVI Assistant Judge, City Civil Court, Chennai, are the appellants herein. The respondents are the defendants in the suit. The said suit was filed for declaration of easementary right of pathway and for consequential relief permanent injunction to restrain the defendant from interfering with the same. The first defendant was the original owner of the suit property and from whom, the second defendant has purchased the same. The suit was dismissed by the trial court by a Judgment and Decree dated 28.03.2008. As against the same, the plaintiffs filed an appeal in A.S.No.126 of 2009 on the file of the learned VI Additional Judge, City Civil Court, Chennai. By Judgment and Decree dated 24.06.2011, the Lower Appellate Court partly allowed the appeal thereby granting decree in respect of 3 ½ feet North South and 45 feet East West to be used as common pathway by the plaintiffs and the second defendant. As against the same, the

plaintiffs are before this Court with this Second Appeal, since, they are aggrieved that their prayer for exclusive right to use the suit property as pathway has been denied and instead, the Lower Appellate Court has granted decree declaring that it is a common pathway between the plaintiffs and the second defendant.

3. Today, when the appeal was taken up for hearing, the plaintiffs/appellants have filed M.P.No.2 of 2015 under Order XXIII Rule 3 C.P.C., reporting that the matter has been amicably settled between the parties and the same has been reduced into a compromise memo. The plaintiffs/appellants have prayed for recording of the compromise and to dispose of the appeal in terms of the said compromise.

4. The plaintiffs/appellants are present before this court. When they were enquired by this Court, they confirmed that they have compromised the matter and the terms are incorporated in the compromise memo. They submitted that decree may be passed in accordance with the compromise memo. The learned counsel for the appellants also submitted the same.

5. The first defendant has not appeared before this court as he has already sold away the suit property to the second defendant and he had also remained exparte before the Courts below. Despite service of notice, the first defendant has not appeared before this Court also.

6. The second respondent who is present before this Court would also submit that compromise is true and decree may be passed in terms of the compromise memo. The learned counsel appearing for the second respondent also confirms the same.

7. In view of the same, I am satisfied that the compromise is real and genuine and therefore, I am inclined to accept the same. Accordingly, I am inclined to allow M.P.No.2 of 2015 and to partly allow this Second Appeal in terms of the compromise memo.

8. In the result, M.P.No.2 of 2015 is allowed. The compromise memo dated 18.03.2015 is accepted and accordingly, S.A.No.306 of 2012 is partly allowed and there shall be a decree in terms of the compromise memo. The compromise memo and the sketch filed along with the same shall form part of the decree. There shall be no order as to cost. Consequently, connected miscellaneous petition in M.P.No.1 of 2015 is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The VI Additional Judge,
City Civil Court, Chennai.

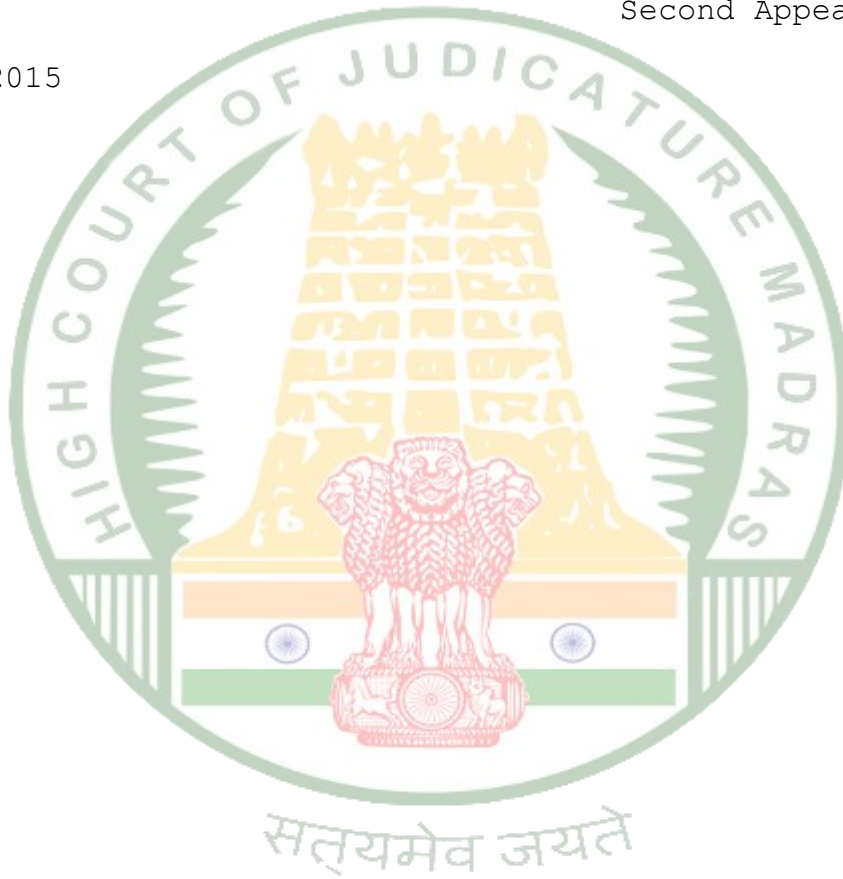
2.The XVI Assistant Judge,
City Civil Court, Chennai.

1 cc to Dr.P.Vasudevan , Advocate Sr.No.15909

1 cc to Mr.M.Venkata Krishnan , Advocate Sr.No.15632

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pmk.23.7.2015



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