

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.12.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.534 of 2015 and
M.P.No.1 of 2015

1.Ranganathan
2.Venkataraman
3.Perumalsamy
4.Kandasamy

... Appellants/Defendants 1 to 4

vs.

1.Sannamiammal (deceased)
2.S.Venkateswaran
3.S.Balaji
4.S.Karthikeyan
5.Sakunthala
6.Saravanan
7.Poornima

... Respondents 1 to 4/Plaintiffs 1 to 4

... Respondents 5 & 6/Defendants 5 & 6

..7th Respondents

(R7-Lrs of Deceased R1
vide Court Order dated
5/6/2015 in MP 1/14 in
SA SR.70288/13)

Prayer:- This Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 22.07.2010 in A.S.No.116 of 2010 on the file of the learned Principal Subordinate Judge, Salem confirming the judgment and decree dated 18.09.2009 in O.S.No.708 of 2003 on the file of the learned II Additional District Munsif, Salem.

For Appellants : Mr.V.Sekar

For RR2 to 4 & 7 : Mr.A.Tamilvanan

For RR5 to 7 : No Appearance

JUDGMENT

The defendants 1 to 4 in O.S.No.708 of 2003 on the file of the learned II Additional District Munsif, Salem are the appellants herein. The respondents 1 to 4 herein are the plaintiffs and the respondents 5 and 6 herein are the defendants 5 and 6 in the suit. The said suit was filed by the respondents 1 to 4 herein for permanent injunction to restrain the defendants

from in any manner interfering with the right of the plaintiffs to use the suit property comprised in two survey numbers as pathways to reach their land comprised in S.No.10/11. The trial Court by decree and judgment dated 18.09.2009 decreed the suit as prayed for. As against the same, the appellants herein filed an appeal in A.S.No.116 of 2009 on the file of the learned Principal Subordinate Judge, Salem. By decree and judgment dated 22.07.2010, the First Appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court. Challenging the same, the appellants/defendants 1 to 4 are before this Court with this second appeal.

2.During the pendency of this second appeal, the first respondent Mrs.Sannamiammal died and the seventh respondent herein was therefore, impleaded as her legal representative. This second appeal has come up today for admission. I have heard the learned counsel for the appellants and I have also perused the records carefully.

3.The case of the plaintiffs is as follows:-

The plaintiffs are the owners of the property comprised in S.No.10/11 at Elampillai Village in Salem Taluk. On the immediate East of the property of the plaintiffs, the property belonging to the defendants 1 to 4 is situated. According to the plaintiffs, on the Northern and southern side of the property of the defendants 1 to 4, there are two pathways running on the North South direction connecting the property with the Kakkapalayam to Elampillai Village main road. According to the plaintiffs, these two pathways are public roads over which, the plaintiffs have got every right to use the pathway situated on the North of the property of the defendants comprised in S.No.10/13 and the pathway situated on the South of the property of the defendant situated in S.No.10/23. These two properties are the suit properties. Since, the defendants attempted to disturb their right to use these two properties as pathways to reach the Elampillai main road, the plaintiffs were impelled to file the present suit.

4.According to the appellants/defendants 1 to 4, they have purchased the suit properties which are situated on the East of the plaintiffs' property in the year 2002 under Ex.A.13. According to them, the total extent of the property so purchased by them under Ex.A.13 is 3305 sq.ft. According to the appellants, the measurement of the property so purchased by them are East West on the Northern side 27 feet; East West on the Southern side 31 ½ feet; North South on the Eastern side 113 feet and North South on the Western side 113 feet. According to the appellants, the pathway which is running towards West from Elampillai main road reaches their land and beyond that, it does not go to the plaintiffs' land and thus, according to the

appellants, the plaintiffs are not entitled for the relief as prayed for in the suit.

5. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiffs, two witnesses were examined and 13 documents were exhibited. On the side of the defendants, two witnesses were examined and 1 document was exhibited. During the pendency of the trial, an Advocate Commissioner was appointed, whose report was marked as Ex.C.1 and the plans prepared by him were marked as Exs.C.2 and C.3.

6. Having considered all the above, the trial Court decreed the suit which was confirmed by the First Appellate Court. Hence, the appellants are before this Court with this second appeal.

7. In this second appeal, the learned counsel for the appellants would submit that the Courts below were not right in decreeing the suit based only on Ex.A.11 which is a copy of the Field Measurement Book. The learned counsel would point out that in Ex.A.11 there was no proper measurement given and even if the said measurement is accepted then, the same would not reflect the actual extent of the property purchased by the appellants. According to him, though, the appellants have purchased an extent of 3305 sq.ft as per Field Measurement Book, the extent shown is far less. Therefore, according to the learned counsel, the Courts below ought not to have relied on Ex.A.11. He would further submit that as a matter of fact, the pathways leading towards West from Elampillai main road would reach only up to the property of the appellants/defendants 1 to 4 and it does not go up to the property of the plaintiffs. Thus, according to the learned counsel, the Courts below were not right in granting the decree as prayed for by the plaintiffs.

8. The learned counsel for the respondents 1 to 4/plaintiffs would vehemently oppose this second appeal. He would point out that even in the sale deed under Ex.A.13, by which, the appellants claim title, it has been very clearly mentioned that there are pathways on the Northern side as well as on the Southern side of the property purchased by the appellants. The learned counsel would further submit that so long as the Field Measurement Book, which is a public document, remains unaltered, it is not possible for the defendants 1 to 4 to plead against the same. The learned counsel would further submit that, absolutely, there is no question of law at all involved in this second appeal.

9. I have considered the above submissions.

10.As I have already pointed out, admittedly, the suit pathways are comprised in S.No.10/13 and 10/23. The pathway which is situated in S.No.10/23 according to Ex.A.11 runs towards West from Elampillai main road up to the property of the plaintiffs' comprised in S.No.10/11. Similarly, according to Ex.A.11, the pathway comprised in S.No.10/23 leads towards West from Elampillai main road and reaches the property belonging to the plaintiffs comprised in S.No.10/11. In other words, the pathway comprised in S.No.10/13 is situated on the North of the property of the appellants and the pathway situated in S.No.10/23 is situated on the South of the property belonging to the appellants.

11.As rightly pointed out by the learned counsel for the respondents 1 to 4, so long as the Field Measurement Book, which is a public document remains unaltered, the plea against the same cannot be accepted. As per Section 114 of the Indian Evidence Act, the presumption is that the measurement given as per the Field Measurement Book is correct. When this was pointed out, the learned counsel for the appellants would submit that such presumption is always rebuttable. It is true. But, in this case, the appellants have not placed any material to rebut the said presumption except relying on Ex.A.13.

12.Now, the question is whether the measurement given in Ex.A.13 is correct, or the measurement given in Ex.A.11 is correct. For the purpose of this suit, in my considered view, this question need not be gone into. It is brought to my notice that the appellants have filed a separate suit in O.S.No.295 of 2014 on the file of the learned Principal Subordinate Judge, Salem for declaration of title for their property measuring 3305 sq.ft. The learned counsel for the appellants would submit that in that suit, it has been admitted that there is a pathway on the Northern side of the said property and the common pathway on the Southern side of the property.

13.The learned counsel for the respondents 1 to 4 would also admit that the said suit is pending. In my considered view, it is for the appellants to establish in the said suit in O.S.No.295 of 2014 that they have got title for 3305 sq.ft of land and the pathways are situated beyond the said property.

14.In my considered view, the findings given in the present suit based on presumption under Section 114 of the Indian Evidence Act that the measurements given in Ex.A.11 are correct, will not be a bar or impediment for the appellants to prove in the other suit in O.S.No.295 of 2014 that the said measurements are not correct.

15. So far as the present suit is concerned, since, in Ex.A.13 itself, there is a mention that there is a pathway on the Northern side of the property of the appellants and there is another pathway on the South of the property of the appellants and since, they lead up to the property of the respondents 1 to 4, in my considered view, the Courts below were right in decreeing the suit as prayed for.

16. According to the revenue records, the pathway situated on the North of the property of the appellants is situated in S.No.10/13, and the pathway situated on the South of the property of the appellants is comprised in S.No.10/23. In such view of the matter, on facts, the Courts below were right in decreeing the suit as prayed for.

17. I do not find any perversity in the said concurrent findings of the Courts below and also I do not find any substantial question of law at all involved in this second appeal warranting admission of the same.

18. In the result, the second appeal fails and accordingly the same is dismissed and the decree and judgment of the First Appellate Court is hereby confirmed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Salem.

2. The II Additional District Munsif,
Salem.

+1cc to Mr.A.Tamil Vanan, Advocate, S.R.No.67497
+1cc to Mr.Sekar, Advocate, S.R.No.67315

S.A.No.534 of 2015

kji (CO)
srg(18/01/2016)