



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.56 of 2015 and M.P.No.1 of 2015

Shanmughasundaram

.. Appellant/Defendant

-Vs-

Sivasankar

.. Respondent/ Plaintiff

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 14.08.2014 made in A.S.No.56 of 2012 on the file of the Principal District Judge, Ariyalur, reversing the judgment and decree dated 27.08.2008 passed by the learned District Munsif, Ariyalur in O.S.No.341/2005 and to set aside the same.

For Appellant : Mr.V.Bhiman
for M/s.Sampathkumar and Associates

For Respondent: ...

J U D G M E N T

The defendant in O.S.No.341 of 2005 on the file of the learned District Munsif, Ariyalur is the appellant herein. The respondent is the sole plaintiff in the suit. The plaintiff filed the suit for declaration of his right to use the common pathway which is a suit property herein and for consequential relief of injunction to restrain the defendant from preventing the plaintiff from enjoying the same along with others. He had also prayed for Mandatory Injunction to remove the encroachment in the suit property by the defendant. By decree and judgment dated 27.08.2008, the trial court dismissed the suit in its entirety. As against the same, the respondent herein filed an appeal in A.S.No.56 of 2012 on the file of the learned Principal District Judge, Ariyalur. By decree and judgment dated 14.08.2014, the lower appellate court allowed the appeal thereby setting aside the decree and judgment of the trial court and decreed the suit. As against the same, the appellant is before this Court with this Second Appeal.



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2. This Second Appeal has come up before me for admission. I have heard the learned Counsel for the appellant and I have also perused the records carefully.

3. The case of the plaintiff is that the suit property is a common lane to be used by the plaintiff and the defendant. The suit property was allotted to the plaintiff's father Venkatachalampillai and the defendant as per the partition deed dated 16.07.1966 Ex.A.1. In the said partition deed, the suit property was described as 'C' Schedule property and it was agreed to be kept as common for the use of both the plaintiff and the defendant. The defendant's house is situated just on the south of the suit lane and his property is situated on the west of it. According to the plaintiff, it is only the access for him to reach the main road which is situated on the east of the suit property.

4. The case of the defendant is that there is no such property measuring 4 feet x 89 feet as described in 'C' Schedule property of the partition deed Ex.A.1 as on ground. It is further stated that there is a lane on the north of his property which is in a zigzag manner and the same is now in possession of one Radhakrishnan and others who are his Pangalis. It is also stated that the suit property shall form part and parcel of the defendant's property and the plaintiff has got no interest whatsoever over the same.

5. Based on the above, the trial court framed appropriate issues. On the side of the plaintiff, two witnesses were examined and 7 documents have been exhibited. On the side of the defendant, one witness was examined and 1 document has been exhibited. The Commissioner's Report and Sketch were marked as Ex.C.1 and Ex.C.2. Having considered the same, the trial court dismissed the suit in its entirety. The appeal filed by the respondent was allowed by the lower appellate court. That is how the appellant/defendant is before this Court with this Second Appeal.

6. In this appeal, it is contended that there is no such property as suit property which is situated on the north of the property of the defendant. The property of the defendant is described as Item No.2 in the 'B' Schedule property in Ex.A.1 Partition Deed. It is further contended that the lower appellate court has not considered the Commissioner's Report and other documents in its proper perspective.

7. I have considered the above submissions.

8. In paragraph 5 of the Written Statement, the appellant has stated as follows:



"5. There is no such property as 4 feet 89 feet as found in the 'C' schedule partition document as on ground''. (sic)

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In paragraph 6 of the written statement, it is stated as follows:

"... and thus it is in a slanting zigzag and not in a straight line and this particular remaining portion is now with Radhakrishnan and others who are pangalis. This portion specifically lies to the north of the defendant's compound wall."

In paragraph 9 of the written statement, he has stated as follows:

"9. In fact the suit property is part and parcel of this defendant's property and plaintiff nor his predecessor in interest had any right over the same."

9. The above pleadings of the appellant would go to show that he is not definite about his own case. But the Commissioner measured the suit property, correlated the same with Ex.A.1 partition deed and found that there is a lane which is situated on the north of the property belonging to the defendant. During evidence, the appellant/defendant himself has admitted that the lane is actually situated and it is a common lane. In Ex.A.1, the suit property has been described as a common lane. P.W.2 has also stated about the existence of the pathway and the same being used by the plaintiff also. On appreciating all the above, the lower appellate court has rightly come to a conclusion that the suit property is a common lane over which the plaintiff has got right to use and the defendant is liable to remove the encroachment i.e. iron rods mentioned as B1, B2 and B3 in the plaint. Thus, the findings are on facts. I do not find any perversity in the said findings. There is no question of law much less a substantial question of law involved in this Second Appeal. In view of all the above, I do not find any reason to even admit this Second Appeal as there is no substantial question of law involved.

10. In the result, the Second Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

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- 1.The Principal District Judge, Ariyalur
- 2.The District Munsif, Ariyalur.

1 cc to m/s. Sampath Kumar, Associates, Sr Advocate Sr. 6531

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