

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26..11..2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.769 of 2015
and
M.P.No.1 of 2015

S.Mohan ... Appellant/Defendant

-Versus-

Gnanasekar ... Respondent/Plaintiff

This second appeal is filed U/s 100 of CPC as against the decree and judgement dated 07.02.2015 made in A.S.No.58 of 2014 by the learned Subordinate Judge, Namakkal, confirming the decree and judgement dated 15.04.2014 made in O.S.No.144 of 2009 on the file of the learned Additional District Munsif, Namakkal.

For Appellant: Mr.T.Dhanyakumar

JUDGMENT

The defendant in O.S.No.144 of 2009 on the file of the learned Additional District Munsif, Namakkal, is the appellant herein. The plaintiff in the suit is the respondent. The said suit was filed for a decree for permanent injunction restraining the defendant from in any manner interfering with the enjoyment of the suit pathway and also for mandatory for the removal of the obstructions put up by the defendant on the suit pathway. The trial, by decree and judgement dated 15.04.2014 decreed the suit as prayed for. Aggrieved by the same, the defendant preferred an appeal in A.S.No.58 of 2014 before the learned Subordinate Judge, Namakkal. By decree and judgement dated 07.02.2015, the first appellate court dismissed the appeal thereby confirming the decree and judgement of the trial court. That is how, the defendant is now before this court with the present second appeal.

2. This second appeal has come up today for admission.

3. I have heard the learned counsel for the appellant and also perused the records carefully.

4. The case of the plaintiff in brief is as follows: The suit property is a pathway comprised in S.No.292/2A2 and 292/2B2 at S.Nattamangalam Village, Namakkal District. According to the plaintiff, he has got right to use the same as pathway. In Ex.A.1 partition deed dated 16.09.1924 and in the subsequent partition deed under Ex.A.2 dated 25.05.1991, the suit property has been mentioned as path way. The defendant has got no right to prevent the plaintiff from using the same as common pathway to reach is lands. It is further contended that the defendant has made some obstructions on the same and therefore, he has prayed for permanent injunction restraining the defendant from putting up any further obstructions and also for mandatory injunction directing the defendant to restore the suit pathway and in the event the defendant failed to do so, for removal of the obstructions made on the suit pathway.

5. But, the defendant contended that the suit property absolutely belongs to him and he has got the same under a registered Will executed by his grand father in the year 1973.

6. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, 2 witnesses were examined and 10 documents were exhibited. On the side of the defendant also 2 witnesses were examined and as many as 4 documents were exhibited. Besides the above, Advocate Commissioner's reports and sketches were marked as Exs.C.1 to C.4 and an extract taken from the A-Register maintained by the revenue authority concerned is marked as witness document under Ex.X-1.

7. Having considered all the above, the trial court decreed the suit which was later on confirmed by the first appellate court. That is how, the defendant is now before this court with the present second appeal.

8. In this second appeal, it is contended by the learned counsel for the appellant that the courts below have committed error in appreciating both the oral and documentary evidences and thereby committed error in granting decree as prayed for. The learned counsel for the appellant would point out that as per the Will exhibited under Ex.B.1, the defendant has proved that he has got absolute title for the suit property and the plaintiff has got no right what so ever. According to him, the courts below have given undue weightage for the Advocate Commissioner's Reports and for Ex.X-1 - a copy A-Register extract.

9. I have considered the above submissions carefully.

10. At the out set, I should say that there is no substantial question of law at all involved in this second appeal warranting the admission of the second appeal. The argument of the learned counsel for the appellant and a perusal of the grounds of appeal would go to show that the questions raised therein are only questions of fact and there is no question of law at all involved in the second appeal. Further, the judgments of the courts below also cannot be stated to be perverse. Though it is claimed by the defendant that by virtue of the Will [Ex.B1 dated 04.05.1973, he has got absolute title for the property, the title of his predecessor has not been proved. The courts below have considered the earliest document namely, Ex.A1, partition deed dated 16.09.1924 among Mr.Ramasamy and others and have come to the conclusion that the suit property has all along been used only as pathway by the plaintiff and others to reach their respective land. The Advocate Commissioner's reports would also go to substantiate the same. Thus, on appreciating both oral and documentary evidence, the courts below have come to the right conclusion that the suit property is a common pathway over which the defendant has got no absolute title and he has got no right to prevent the plaintiff and others from using the same as pathway. Thus, I do not find any perversity in the judgments of the courts below and further there is no substantial question of law at all involved in this second appeal even for admission. Therefore, I do not find any reason to interfere with the concurrent findings of the courts below and the second appeal must fail.

11. In the result, the second appeal is dismissed and the decree and judgement of the courts below are confirmed. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kmk

To

- 1.The Subordinate Judge, Namakkal, Namakkal District.
- 2.The Additional District Munsif, Namakkal, Namakkal District.
- 3.The Section Officer, VR Section, High Court, Madras.

+ 1 cc to Mr.T. Dhayakumar, Advocate Sr.64705

Second Appeal No.769 of 2015

KJI (CO)
EU 25.1.16



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