



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.01.2016

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

S.A.No.60 of 2008

and

M.P.No.1 of 2013

M/s.Blue Brothers
(Scientific Opticians)
144/R Royapettah High Road,
Luz Corner, Mylapore,
Chennai - 600 004.

...Appellant/2nd
Defendant

Vs.

1.D.Balaraman

2.Smt.Mohaideed Fathima

...Respondents/2nd
Plaintiff/1st Defendant

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the decree and judgment of the learned VII Additional Judge, City Civil Court, Chennai dated 30.08.2007 made in A.S.No.522/2006 confirming the decree and judgment of the learned VII Assistant Judge, City Civil Court, Chennai in O.S.No.13613 of 1996 dated 09.06.2006.

For Appellant : Mr.R.Subramanian
For R.1 : Mr.V.Ragavachari

JUDGMENT

The second defendant in O.S.No.13613 of 1996 on the file of the learned VII Assistant Judge, City Civil Court, Chennai is the appellant herein. The first respondent is the second plaintiff in the suit and the second respondent is the first defendant in the suit. Mr.D.Ramachandran was the first plaintiff and one Mr.D.Balaaraman is the second plaintiff in the said suit. Mr.Ramachandran died during the pendency of the suit and his legal representatives were not brought on record. The said suit was filed by the plaintiffs for a declaration that the defendants have got no exclusive right to use the suit property which according to the plaintiffs is a common passage and also for mandatory injunction to remove the obstruction put up on the same by the defendants. The trial Court by decree and judgment dated 09.06.2006 decreed the suit as prayed for. As against the



same, the appellant/second defendant filed an appeal in A.S.No.522 of 2006. The learned VII Additional Judge, City Civil Court, Chennai, by decree and judgment dated 30.08.2007 dismissed the appeal thereby confirming the decree and judgment of the trial Court. Challenging the same, the appellant is before this Court with this second appeal.

2.This Second appeal has come up today for admission. I have heard the learned counsel for the appellant and the learned counsel for the first respondent who has entered appearance by way of Caveator and I have also perused the records carefully.

3.The case of the plaintiffs is that the suit property is a common passage running East West direction from the Muttukad Road towards West. This is a common passage, over which, the plaintiffs and the defendants have got right to use.

4.But, the case of the defendants is that the suit property is not a common pathway at all which was purchased by the first defendant from the plaintiffs' predecessors in title. From the first defendant, the suit property was changed many hands and finally, one Mrs.Banni Bai W/o Mr.Paranthaman, has purchased the suit property. Mr.Paranthaman is one of the Directors of the appellant which is a partnership firm. The second defendant/appellant took a specific plea that since, the suit property belongs to Mrs.Banni Bai, she is a necessary party to the suit and hence, the suit is liable to be dismissed for non impleading of the necessary party. He has also took up the plea that the suit property is not a pathway, as it is claimed by the plaintiffs.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiffs, two witnesses were examined and as many as 8 documents were exhibited. On the side of the appellant/second defendant, Mr.Paranthaman was examined as D.W.1 and as many as 10 documents were exhibited.

6.Having considered all the above, the trial Court decreed the suit which was confirmed by the First Appellate Court. That is how the appellant/second defendant is before this Court with this second appeal.

7.In this second appeal, the learned counsel for the appellant amount other things would submit that the Courts below ought to have dismissed the suit because, a specific plea was taken that the suit property is not a pathway and it belongs to Mrs.Banni Bai W/o Mr.Paranthaman. But, this was not duly considered by the Courts below is his grievance. The learned counsel would further submit that neither first defendant nor the second defendant is the owner of any property anywhere near the suit property. Neither they claimed any title or right over the suit property. When that be so, according to the learned counsel, it is strange that the Courts below have granted the



decree as prayed for in favour of the plaintiffs and as against the defendants.

8. The learned counsel for the first respondent/second plaintiff would vehemently oppose this second appeal. According to him, the suit property is only a pathway which is used as a common passage by the parties who have got lands to reach the lands situated on the West of the pathway. In other words, according to the learned counsel, this is only a pathway leading from Mutukad road to reach the lands situated on the West of the property sold by the plaintiffs' vendors including the plaintiffs who still retain certain properties. According to the learned counsel, when large extent of the properties were sold in the suit survey number, the suit property was retained by the plaintiffs' vendors as a common passage.

9. So far as the non impleading of Mrs. Banni Bai is concerned, the learned counsel would submit that on that score, the well considered decree and judgment of the trial court which was confirmed by the First Appellate Court need not be interfered with by this Court.

10. I have considered the above submissions.

11. In this second appeal, from the submissions of the learned counsel on either side and on perusal of the records, I find the following substantial question of law:-

"Whether the suit is bad for non-joinder of a necessary party, namely, Mrs. Banni Bai "

12. Admittedly, the first defendant does not claim any right over the suit property. Neither he owns any property situated anywhere near so as to use the suit property at least as a pathway. The appellant herein who is the second defendant in the suit is a partnership firm. The appellant also does not claim any title or right over the suit property or any other property situated anywhere near so as to use the suit property as a pathway. From these facts culled out from the pleadings, it is crystal clear that the defendants have got no claim at all over the suit property.

13. When that be so, it is strange that the Courts below have granted decree in favour of the plaintiffs and as against the defendants. In the written statement, filed by the appellant, it has been very clearly stated that the suit property was purchased in the year 1993 by Mrs. Banni Bai and thus, Mrs. Banni Bai is the absolute owner of the suit property. Even after the same was brought to the notice of the plaintiffs, they did not choose to implead Mrs. Banni Bai as a party to the suit. Suppose if the present decree and judgment of the Courts below are allowed to sustain, this would only create chaos and confusion in executing the same, because, the said decree and judgment would not bind Mrs. Banni Bai who is stated to be the



absolute owner of the suit property according to the second defendant.

14. In my considered view, in the absence of Mrs. Banni Bai, there can be no effective adjudication on the issues raised by the plaintiffs. Thus, I hold that Mrs. Banni Bai is a necessary party to the suit. Therefore, the suit is bad for non-joinder of a necessary party. When this was pointed out, the learned counsel for the first respondent submitted that, in that event, the suit may be remanded back to the trial Court, leaving it open for the plaintiffs to implead Mrs. Banni Bai, as one of the defendants and to have fresh adjudication. The said statement is recorded.

15. In view of the said position, I answer the substantial question of law in favour of the appellant and on that score, I am inclined to set aside the decree and judgment of the trial Court confirmed by the First Appellate Court. I am also inclined to remand the matter back to the trial Court for fresh disposal in accordance with law after affording sufficient opportunity to the parties.

16. In the result, the second appeal is allowed and the decree and judgment of the trial Court and confirmed by the First Appellate Court is hereby set aside and the suit in O.S.No.13613 of 1996 is remanded back to the trial Court, with a direction to the trial Court to permit the plaintiffs to implead Mrs. Banni Bai as one of the defendants in the suit and afford opportunity to the parties to file additional pleadings and also to let in additional evidence, if any, and then, dispose of the suit, in accordance with law. It is further directed that at any rate, the trial Court shall dispose of the suit, within a period of nine months from the date of receipt of a copy of this judgment. The parties are directed to appear before the trial Court on 05.02.2016. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

jbm

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar

TO

1. THE VII ADDL JUDGE, CITY CIVIL COURT, CHENNAI.
2. THE VII ASST JUDGE, CITY CIVIL COURT, CHENNAI.
3. THE SECTION OFFICER, V.R.SEC. HIGH COURT, MDS.

- + 1 CC TO Mr.V.Ragavachari, Advocate Sr 858
+ 1 cc to Mr.R.Subramanian, Advocate Sr 836

TEJ/CO
KR/21/1/16