

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.1067 of 2015

and

M.P.No.1 of 2015

and

Second Appeal No.1068 of 2015

and

M.P.No.1 of 2015

S.A.No.1067 of 2015

1. Gnanasargunam

2. Devadasan

... Appellants/Appellants/  
Defendants

-VS-

Dakshinamurthy

... Respondent/Respondent/Plaintiff

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree of Principal Sub Court, Mayiladuthurai, dated 16.02.2015 made in A.S.No.37 of 2009 confirming the judgment and decree of Principal District Munsif Court, Mayiladuthurai dated 24.04.2009 made in O.S.No.302/2008.

For Appellants : Mr.S.Sounthar

For Respondent : Mr.K.Mohanamurali

S.A.No.1068 of 2015

Gnanasargunam

... Appellant/Appellant/Plaintiff

-VS-

1. Dakshinamurthy

2. Karunakaran

3. Prasath

... Respondents/Respondents/  
Defendants.

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree of Principal Sub Court, Mayiladuthurai, dated 16.02.2015 made in A.S.No.50 of 2009 confirming the judgment and decree of Principal District Munsif Court, Mayiladuthurai dated 24.04.2009 made in O.S.No.307/2008.

For Appellant : Mr.S.Sounthar

For Respondents : No appearance.

#### J U D G M E N T

Second Appeal No.1067 of 2015 is filed by the defendant in a suit for bare injunction filed by the respondent in the above appeal. Second Appeal No.1068 of 2015 is filed by the plaintiff in a suit for bare injunction filed against the respondents herein in the above appeal. In other words, there are two suits filed for the relief of the bare injunction by the respective parties before the Court below in respect of the same property and both the suits are decided against the Appellants herein. To put it more clear, the injunction suit filed by the appellant in S.A.No.1068 of 2015 came to be dismissed whereas the other injunction suit filed by the respondents in S.A.No.1067 of 2015 came to be decreed concurrently by both the Courts below. The dispute between the parties is in respect of a lane lying between their respective properties.

2. According to the appellants, the suit property is a lane and the respondents are not entitled to interfere with their enjoyment of the said lane. Both the Courts below, based on the factual aspects of the matter and the evidence let in by the parties, rejected the case of the appellants.

3. Heard, the learned counsel appearing for the appellants and the learned counsel appearing for the respondents.

4. Both these appeals are listed today under the caption "Notice of Motion" and therefore, this Court has to see whether any substantial question of law arises for consideration of this Court for entertaining these Second Appeals for further hearing on such substantial question of law.

5. It is not in dispute that the present appeals are arising out of two injunction suits filed by the respective parties, one against the other. It is also not in dispute that in both the suits the subject matter is the one and the same viz., a lane lying in between the properties of the respective

parties. The appellants herein filed their suit for injunction by claiming that they are having right over the lane with which the respondents cannot interfere with such possession and enjoyment. But the fact remains that already a suit for declaration and for permanent injunction filed by the appellant's mother in O.S.No.812 of 1981 in respect of the same dispute came to be dismissed for default. It is also seen that in the said suit, a report of the Advocate Commissioner was filed indicating that the present case as projected by the appellants before the Trial Court is not factually correct. No doubt, the learned counsel appearing for the appellants contended that the earlier suit filed by the mother of the 1<sup>st</sup> appellant was only dismissed for default and not on merits and therefore, that would not operate as resjudicata. Needless to say that such question can be gone into and decided, provided the appellants have come to the Court with clean hands and filed the present suit disclosing all the material facts including the facts about the earlier suit which was dismissed, even though for default. Admittedly, the appellants as the plaintiffs in their suit has not disclosed the said fact in the plaint and on the other hand, such fact was brought to the notice of the Court below only at the instance of the respondents.

6. Thus, it is evident that the appellants have approached the Court below by filing the present second suit for bare injunction by suppression of material facts. A person who suppresses material fact before the Court is not entitled to seek indulgence of the Court, if such fact so suppressed, goes to the root of the matter. No doubt, the learned counsel for the appellant sought to contend that a suit dismissed for default would not operate as res judicata and therefore, the said issue can be raised as a substantial question of law. It is true that this Court while exercising power under Section 100 of C.P.C. can entertain a second appeal only when a substantial question of law exists for its consideration. But at the same time, the crucial question that would arise is as to at whose instance, such exercise has to be made, even assuming there exists a substantial question of law. In my considered view, the power conferred on this Court to entertain the second appeal has to be exercised not only when it finds the existence of substantial question of law but also when it finds that the person who seeks such indulgence, is a bonafide person came to the Court with clean hands and without suppression of material facts. If this Court finds on the face of the admitted facts that the suppression of material facts are evident, there is no necessity for exercising its jurisdiction under Section 100 of C.P.C. to entertain a second appeal at the instance of such person. Therefore, I find that the concurrent findings rendered

by the Courts below , based on such facts and circumstances, need not be interfered with, as I do not find any substantial question of law favouring the entertainment of these appeals. Accordingly, both the Second Appeals fail and the same are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Principal Sub Judge,  
Principal Sub Court,  
Mayiladuthurai.

2. Principal District Munsif  
Mayiladuthurai.

3. The Section Officer,  
VR Section, High Court,  
Madras.

2 ccs to Mr.Sounthar, Advocate, sr.47516, 47517

1 cc to Mr.K.Mohanamurali, Advocate, sr.47558

Second Appeal No.1067 of 2015  
and

M.P.No.1 of 2015  
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kra 22.09.2016

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