

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.11.2016

PRONOUNCED ON : 17.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S. A.No.166 of 2011
and
M.P.No.1 of 2011

Navaneetham ... Appellant/Defendant
Vs.

Dhanaraj ... Respondent/Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 30.10.2010 made in A.S.No.16 of 2010 on the file of the Sub Court, Ranipet, confirming the judgment and decree dated 14.10.2009 made in O.S.No.48 of 2008 on the file of the District Munsif Court, Ranipet.

For Appellant : Mr.K.G.Vasudevan

For Respondent : Mr.K.G.Sethilkumar

JUDGMENT

Impugning the judgment and decreed dated 30.10.2010 made in A.S.No.16 of 2010 on the file of the Sub Court, Ranipet, confirming the judgment and decree dated 14.10.2009 made in O.S.No.48 of 2008 on the file of the District Munsif Court, Ranipet, the defendant has preferred this second appeal.

2. The suit has been laid for permanent injunction and mandatory injunction.

3. The averments contained in the plaint are briefly stated as follows:

The "A" schedule property is the ancestral property of the plaintiff. The plaintiff's father Rangasamy died several years ago intestate leaving behind his three sons viz., Sivalingam, Kanniappan and the plaintiff, Dhanaraj. The plaintiff and his two brothers had been in joint possession and enjoyment of their

ancestral properties and divided the same under the Koorchit dated 26.02.1990 and since the date of partition, the plaintiff is in possession and enjoyment of the "A" schedule property. The "B" schedule property is the common passage, which had been let out by the plaintiff and others for convenient enjoyment of their properties, which is running towards East to West and marked as ABCD in green colour in the rough sketch and the same is being used uninterruptedly by the plaintiff to have ingress and egress for the "A" schedule property and also, for taking out his cattle. The "B" schedule property had been used by the plaintiff's predecessors in title for having ingress and egress to the "A" schedule property from time immemorial. Other than the "B" schedule property, there is no way or access to take the cattle into the "A" schedule property. Hence, the "B" schedule property is being used as a common passage for the beneficial enjoyment of the "A" schedule property and while so, the defendant, without any authority, had unlawfully laid a foundation in the "B" schedule property deliberately, with a view to prevent enjoyment of the "B" schedule property by the plaintiff as a common passage. The defendant has no manner of right to prevent the plaintiff from enjoying the "B" schedule property as a common passage. Hence, the suit.

4. The averments contained in the written statement filed by the defendant are briefly stated as follows:

The suit is not maintainable either in law or on facts. The defendant is owning the properties on the eastern side of the plaintiff's property and Subramani & Menaga plots. The road is running from North to South and the defendant has got a right of way in between the plaintiff and Subramani's plot. The above said passage is also mentioned in the sale deed of the defendant and it is only the defendant, who has got right to enjoy the passage to his beneficial manner and the same absolutely belongs to the defendant and the plaintiff's plan is incorrect.

5. The plaintiff never used the "B" schedule property nor any necessity for the plaintiff to use the same. The plaintiff has got way of entrance from the western side road running from North to South. The "B" schedule property passage is only for the benefit of the defendant alone and the plaintiff is estopped to claim any right over the same.

6. The sewage water of the defendant has to be let out to the main road only through the passage in dispute and accordingly, the defendant has laid sewage water pipe line for the same. The water tanker for filling up water to the defendant's property also passes through the passage and the

defendant has got every right to use the same by erecting a water tank. Therefore, the plaintiff is not entitled to seek the relief sought for. Hence, the suit is liable to be dismissed.

7. In support of the plaintiff's case, PW1 has been examined and Exs.A1 and 2 were marked. On the side of the defendant, DW1 has been examined and no document was marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to decree the suit as prayed for. The first appeal preferred by the defendant also came to be dismissed. Hence, the present second appeal has been preferred by the defendant.

9. The "B" schedule property is the bone of contention between the rival parties in the present lis. The "B" schedule property is stated to be used as a common passage by the plaintiff and the others and in particular, by the plaintiff, for ingress and egress to the "A" schedule property and also, for taking cattle and the plaintiff and his predecessor in title have been using the "B" schedule property as such and inasmuch as the defendant attempted to interfere with the plaintiff's enjoyment of the "B" schedule property as a common passage by erecting a septic tank unlawfully, the plaintiff has been necessitated to lay the suit for necessary reliefs.

10. Per contra, it is the case of the defendant that the "B" schedule property is his exclusive passage meant for his personal use to have ingress and egress to his property situated on the eastern side and other than the "B" schedule property, there is no other passage for him to reach the main road and the plaintiff and the neighbouring plot owners are not entitled to use the "B" schedule property as a common passage. The plaintiff and other plot owners are not entitled to use the "B" Schedule property for ingress and egress for reaching their properties, as their properties are abutting the main road and as the defendant is entitled to use the "B" schedule property as his own, the defendant laid a septic tank on the property and the same cannot be questioned and hence, the suit is liable to be dismissed.

11. The courts below, from the plan attached to the plaint, have noted that various plots are abutting the "B" schedule pathway. It could be seen that to the north of the "B" schedule, the property owned by the plaintiff is situated. The

defendant's property is situated on the eastern side. According to the plaintiff, the defendant's property originally belonged to the plaintiff and his brother Kanniappan and that, Kanniappan had sold his property to one Palraj and the plaintiff had sold his property to the defendant and this could be seen from the copies of the sale deeds marked as Exs.A1 and A2. A perusal of Exs.A1 and A2, as found by the courts below, would go to show that the "B" schedule property has been described only as a common passage and from Palraj, the defendant had purchased the plot. Therefore, it could be seen that the defendant purchased only the right of passage to reach the B schedule property and not any absolute right. That apart, the defendant, in his evidence, has, during the cross examination admitted that church compound is situated to the East of his house and the plots of Subramani & Menaga and the common pathway are situated to the west of his property and the common pathway is situated to the north of plots of Subramanian and Menaga and also admitted the measurement of the "B" schedule property i.e. it is running 40 feet east-west and north-south 10 feet and the defendant has also further admitted that on account of the construction of septic tank in the "B" schedule property, he is unable to take four wheelers through the "B" schedule property to reach his house. Therefore, from the above evidence and the admission of the defendant, the Courts below have found that abutting the "B" schedule property, various plot owners are having properties and therefore, it could be seen that all the plot owners would have to use the "B" schedule property to have ingress and egress into their respective properties. As found earlier, the defendant has not purchased any absolute right over the "B" schedule property under the sale deeds. To establish that the defendant has purchased absolute right over the "B" schedule property under the sale deeds, the defendant has not come forward to produce the same. Be that as it may, when the title of the defendant in respect of his property situated on the eastern side of the "B" schedule property is not disputed and when it is found from Ex.A1 and A2 that the right of way is common under the above said documents, it could be seen that the defendant's claim that he has absolute right over the "B" schedule property does not stand scrutiny in the eyes of law. As rightly found by the courts below, if the defendant's case is accepted that he only has absolute right to enjoy the suit property, it could be seen that owners of the plots situated to the south of the "B" schedule property would not have any access to the main road. Therefore, the Courts below have rightly found that for the convenient enjoyment of abutting plot owners, the "B" schedule property has been used as a common passage by one and all to have access to their respective plots. Accordingly, it could be seen that inasmuch as the property of the plaintiff is situated to the North of the "B" schedule property, it could be seen that he was also using the "B" schedule property as a common passage

to have ingress and egress to his property. Merely because, the property of the plaintiff and Menaga are abutting the main road, it could not be contended that they have separate access to reach their house and therefore, they cannot use the "B" schedule property as a common passage. Even assuming for the sake of arguments that they have other way of access to reach the property, it has not been explained as to how the other plot owners namely the plot owners situated to the West of the defendant's property would have access to reach the main road.

12. The defence put forth by the defendant stems from the reason that inasmuch as he has purchased both plots situated on the eastern side, it seems that he claims absolute right over the "B" schedule property. However, the above contention does not merit acceptance. Even if the defendant had purchased both plots from erstwhile owners, by that alone, he could not be conferred any absolute right over the common passage, when it is found that the "B" schedule property is the only passage used by neighbouring plot owners for having access to their respective properties and merely because some plot owners have direct access to the main road, it cannot be contended that they are not entitled to use the "B" schedule property, which admittedly has been used as a common passage by the abutting plot owners and their predecessor in title since time immemorial.

13. In the light of the above discussions, it could be seen that the defendant has also not produced any material to hold that he has got any absolute right over the "B" schedule property. Therefore, no interference is called for to the findings of the Courts below that the "B" schedule property is only a common passage used by all the neighbouring land owners and in such circumstances, the defendant's action in putting up Septic Tank on the "B" schedule property is without any authority and against law. Therefore, it could be seen that the Courts below have rightly found that the plaintiff is entitled to seek the reliefs sought for in the suit.

14. The counsel for the appellant in support of his contentions relied upon the decisions reported in AIR 2006 SC 2234 (Hero Vinoth (minor) Vs. Seshammal), AIR 2007 SC 2306 (P.Chandrasekharan and Ors V. S.Kanakarajan and Ors), AIR 2006 SC 1971 (Anil Rishi V. Gurbaksh Singh) and 2010(6) CTC 225 (Bajaj Auto Ltd., State of Maharashtra rep.by s.Ravikumar V. TVS Motor Company Ltd.,). The Counsel for the respondent contended that the above decisions are not applicable to the facts and circumstances of the present case. Be that as it may, the principles of law enunciated in the above said decisions are

taken into consideration and followed as applicable to the facts and circumstances of the present case.

The above observations would go to reveal that the second appeal does not involve any substantial question of law for consideration. In conclusion, the second appeal is devoid of merits and dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

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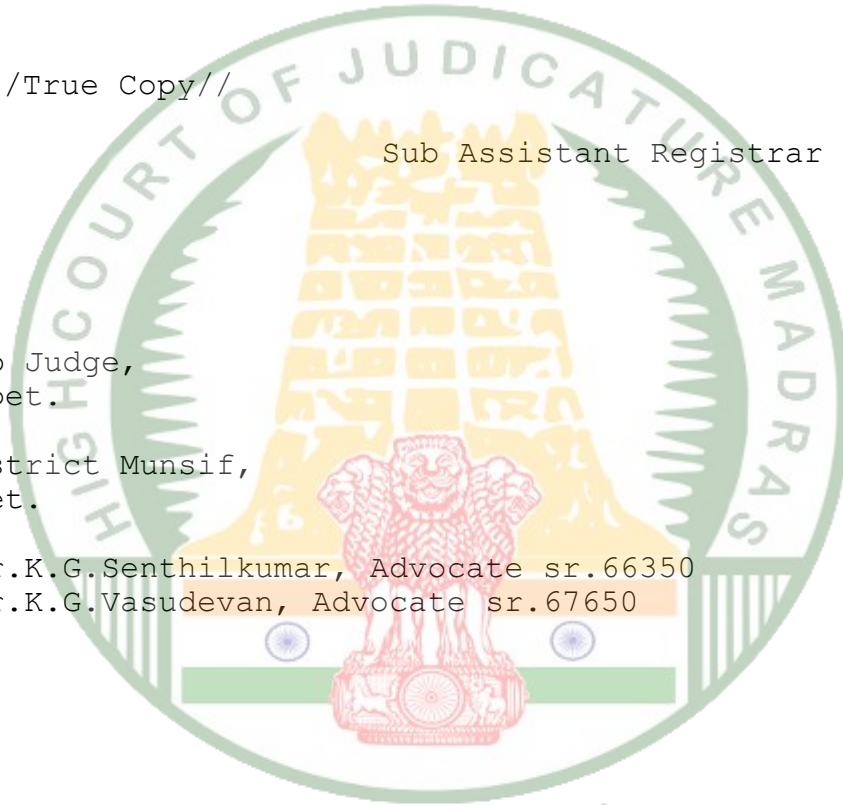
Sub Assistant Registrar

sms

To

1. The Sub Judge,
Ranipet.
2. The District Munsif,
Ranipet.

+1cc to Mr.K.G.Senthilkumar, Advocate sr.66350
+1cc to Mr.K.G.Vasudevan, Advocate sr.67650



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S. A.No.166 of 2011
and
M.P.No.1 of 2011

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