

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal Nos.833 and 841 of 2016
and
C.M.P.No.16258 of 2016

Second Appeal No.833 of 2016

1. Rathinam

2. Mani

... Appellants/Defendants 1&3

vs.

1. Rathinasamy

2. Radha

3. Kala

4. Kumutha

5. Vijaya

6. Gomathi

... Respondents/Plaintiffs/
Defendants 5, 6, 2 & 4

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 07.03.2016 in A.S.No.48 of 2015 on the file of Principal Sub Court, Erode, confirming the decree and judgment dated 25.06.2015 made in O.S.No.606 of 2009 on the file of II Additional District Munsif, Erode.
Second Appeal No.841 of 2016

1. Mani

2. Rathinam

... Appellants/Plaintiffs

vs.

1. Rathinasamy

2. Radha

... Respondents/Defendants

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 07.03.2016 in A.S.No.47 of 2015 on the file of Principal Sub Court, Erode, confirming the decree and judgment dated 25.06.2015 made in O.S.No.100 of 2009 on the file of II Additional District Munsif, Erode.

For Appellants in
both the Appeals : Mr.S.Kaithamalai Kumaran

COMMON JUDGMENT

The defendants 1 and 3 in O.S.No.606 of 2009 and the plaintiffs in O.S.No.100 of 2009 are the appellants herein. The appellants as the plaintiffs filed their suit for bare injunction restraining the defendants from putting up any doorways, windows and sunshades facing the suit B-Schedule property and thereby causing any disturbance to their peaceful possession and enjoyment over the same. Whereas the respondents herein as the plaintiffs filed their suit in O.S.No.606 of 2009 against these appellants seeking for the relief of declaration to declare the very same B-schedule property as a common pathway; for injunction restraining the appellants herein from in any manner putting a wall in the B-schedule property and for mandatory injunction directing the appellants herein to remove the grill gate installed in front of the B-schedule property and also to remove the wall in the eastern side adjoining wall of A-schedule property.

2. Both the suits were tried together and the trial Court dismissed the suit filed by the appellants herein seeking for bare injunction partly decreed and the suit filed by the respondents herein seeking for declaration and mandatory injunction. However, the relief of injunction sought for by the respondents in their suit was not granted.

3. The case of the appellants is that the suit pathway shown as B-schedule, is their exclusive property used as an access to their own property situated on the southern side of the respondents' house which, is shown as A-schedule property. According to the appellants, the respondents have put up door and windows on the eastern side of the property facing the B-Schedule lane thereby causing hindrance to the appellants to have ingress and egress to their property. On the other hand, it is contended by the respondents

that B-schedule lane is a common lane meant for the use of appellants and the respondents and therefore, the appellants cannot seek any exclusive right over the same.

4. Both the Courts below, on consideration of the respective pleadings of the parties and appreciation of the evidence let in by them, came to the conclusion that the appellants are not having any exclusive right over B-schedule lane and on the other hand, it is a common pathway meant for both. It is also specifically found that the windows, doors and sunshades put up by the respondents herein in their own property facing the eastern side of their property is not causing any hindrance to the appellants as they do not project in the common pathway. In my considered view, such categorical findings rendered by both the Courts below on appreciation of evidence let in by both parties as well as the report and plan filed by the Advocate Commissioner, do not warrant any interference, as I do not find any substantial question of law arises for consideration. When the appellants can have access to their property through the B-schedule common pathway, the respondents' right to have doors and windows in their own property, cannot be construed as any hindrance to the appellants in reaching their property. Therefore, both the Courts below have rightly considered all these aspects and dismissed the suit filed by the appellants and decreed the suit in part filed by the respondents. Therefore, I find no ground to interfere with such concurrent findings of both the Courts below. Accordingly, both the Second Appeals fail and the same are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vsi

To

1. The Principal Subordinate Judge,
2. The II Additional District Munsif,
Erode.

+1 cc to Mr.A.K.Kumarasamy & Kaithamalai kumaran
Advocate sr 59257

Second Appeal Nos.833 and 841 of 2016

msm(co)

aa21/11/2016