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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2016

CORAM:

THE HONOURABLE Ms.JUSTICE R.MALA

Second Appeal (MD) No.333 of 2016

and

C.M.P. (MD) No.3800 of 2016

Arunachalam

...Appellant

versus

1.Periyasamy Nadar

2.Samuthirapandian

3.Jothiappa Nadar (Died)

4.Ulaganathan

5.S.Karnan

6.Thambathi

(RR5 & 6 are impleaded as LR's
of the deceased R3)

...Respondents

Prayer: Second Appeal is filed under Section 100 of CPC., against the judgment and decree dated 17.07.2007 passed in A.S.No.83 of 2005 on the file of Subordinate Court, Srivilliputhur, as confirming the Judgment and decree dated 30.01.2004 passed in O.S.No.95 of 1997 on the file of Additional District Munsif Court, Srivilliputhur and allow the present second appeal.

For Appellant : Mr.M.P.Senthil

For Respondents : Mr.M.Thirunavukkarasu
for RR2 and 4

No appearance for RR1,3,5 and 6

JUDGMENT

The plaintiff, who lost in both the Courts below, has come forward with this second appeal stating that he filed a suit for declaration to declare the third item of property/pathway is common pathway for the plaintiff and the third defendant and the second item of property/pathway is common pathway of the plaintiff and the first defendant and also for injunction, restraining them to interfere with the peaceful possession and enjoyment of the pathway and also for mandatory injunction, directing the defendants 1 and 2, to remove the obstruction made in the second item of suit property stating that he is the owner of the first



item of the property. He is using the second and third item for maintaining his property. The first item has been inherited from his ancestors and enjoying the property for the past 50 years. Therefore, he filed a suit. To prove his case, he filed only Ex.A1, patta.

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2.The respondents raised a plea stating that the plaintiff has no right in the property. The properties are belonging to the defendants. During pendency of the suit, the fourth defendant was impleaded as party to the suit. He filed written statement stating that the lane is belonging to the second and third defendants and that is not a common pathway.

3.The trial Court, after considering the averments in the plaint, written statement, framed necessary issues and considering the oral and documentary evidence, dismissed the same stating that the plaintiff is not the owner and he has not used the pathway, since there is no plastering on the western wall. Against the said judgment and decree, he preferred A.S.No.83 of 2005 before the first appellate Court, where, the appeal was also dismissed, stating that the plaintiff has left only $\frac{3}{4}$ feet width in his property. Against which, the present second appeal has been preferred by the plaintiff.

4.Heard the learned counsel for the appellant and perused the materials available on record.

5.Considering the argument made by the learned counsel for the appellant and perusal of the materials available on records, this Court finds that except Ex.A1, patta, the plaintiff has not filed any other document. It is the finding of both the Courts below that while the plaintiff made construction, he left only $\frac{3}{4}$ feet i.e. 9 inches in all the sides. In such circumstances, he is not the owner of the suit properties i.e. suit lane and he has not left his own property and used as common pathway. Therefore, I am of the view that both the Courts below have rightly dismissed the suit and no question of law arises in this second appeal and the same is liable to be dismissed on the admission stage itself.

6.Accordingly, this second appeal is dismissed at the stage of admission. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar



To

1.The Subordinate Court, Srivilliputhur,

2.The Additional District Munsif Court, Srivilliputhur

+1 CC to Mr.C.MAYIL VAHANA RAJENDRAN, Advocate, SR No.30667

+1 CC to Mr.M.THIRUNAVUKKARASU, Advocate, SR No.30229

**Second Appeal (MD) No.333 of 2016
and**

**C.M.P. (MD) No.3800 of 2016
14.06.2016**

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