



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.09.2017

Coram

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The HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A(MD)No.721 of 2014

and

M.P(MD)No.1 of 2014

S.Venkatachalam

.. Appellant/Appellant/Defendant

Vs.

M.Rasool Mohammed

.. Respondent/Respondent/Plaintiff

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 04.12.2013 passed in A.S.No.25 of 2012 on the file of the Sub Court, Ambasamudram, confirming the Judgment and Decree, dated 28.02.2012 passed in O.S.No.149 of 2007 on the file of the Principal District Munsif, Ambasamudram.

For Appellant : Mr.M.P.Senthil

For Respondent : Mr.V.Meenakshi Sundaram Senior Counsel
for Mr.D.Nallathambi

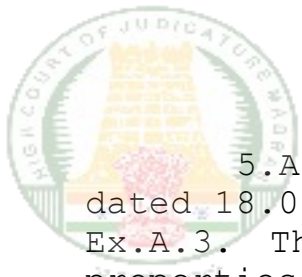
JUDGMENT

The second appeal arises against the Judgment and Decree, dated 04.12.2013 passed in A.S.No.25 of 2012 on the file of the Sub Court, Ambasamudram, confirming the Judgment and Decree, dated 28.02.2012 passed in O.S.No.149 of 2007 on the file of the Principal District Munsif, Ambasamudram.

2.The defendant in the suit, aggrieved by the concurrent findings of the Courts below, has filed the above Second Appeal.

3.The plaintiff had filed the suit for declaration that the suit second schedule property is an exclusive property and consequentially restraining the defendant from interfering with the possession and enjoyment of the plaintiff's suit second schedule property.

4.The suit second schedule property is a lane measuring 27 square feet on the Northern side, 1-3/4 feet on the Southern side and 27 carpenters cubic feet on the North-South. The second schedule forms part of the first schedule.



5. According to the plaintiff, he claims title under Ex.A.4, dated 18.07.1984 and the prior title deeds are marked as Ex.A.1 to Ex.A.3. The plaintiff claims to be in possession of the suit properties, which is also evident from Ex.A.5, which is a mortgage by the plaintiff, by dealing with the property. Whereas, the suit was opposed by the defendant claiming that it is a common lane belonging to both the plaintiff and the defendant. The defendant also filed a counter-claim of easementary right for the purpose of white washing and repairing his Eastern side compound wall. The defendant traced his title under Ex.B.4.

6. It is not the case of either of the parties that they have purchased the property from a common vendor. The Advocate Commissioner appointed by the trial Court had filed a report and plan, which are marked as Ex.C1 to Ex.C.3. Ex.C.1 to Ex.C.3 also confirm that only the plaintiff can have right over the suit schedule property.

7. Considering the documents and evidence, the trial Court had decreed the suit holding that the suit schedule property exclusively belonged to the plaintiff and also granted permanent injunction. The defendant has also raised a counter claim to declare the lane as a common lane and also for customary right for the purpose of white washing and maintenance. The trial Court dismissed the counter claim. The defendant had preferred an appeal in A.S.No.25 of 2012, which also confirmed the Judgment and Decree of the trial Court.

8. On analysis of documents and evidence including the report and plan of the Commissioner, it is evident that the suit property exclusively belonged only to the plaintiff. However, considering the claim of the defendant and also that he had made a counter-claim for easementary right, he should be given the right of white washing and repairing the Eastern wall atleast twice a year.

9. Accordingly, this Court is inclined to grant the relief of easementary right to the defendant/appellant. However, the right can be exercised by the defendant/appellant on the following conditions:-

i) Before exercising such a right of white washing or carrying out repair 15 days prior notice should be given to the plaintiff.

ii) The defendant may be permitted to carry out the white washing or repairs twice in a year, particularly, during Pongal festival time and Deepavali festival time.

iii) The defendant also has to indicate the number of days to have take for completion.



10. The learned counsel for the plaintiff/respondent cannot have any objection, as it is only a easementary right given to the defendant twice a year.

11. Accordingly, the Judgment and Decree of the Courts below is modified to the extent indicated and in other aspects, the Judgment and Decree passed by the Courts below are confirmed and the Second Appeal is disposed of in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

1. The Subordinate Judge,
Ambasamudram.

2. The Principal District Munsif,
Ambasamudram.

3. V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.D.Nallathambi, Advocate, SR.No.80406

+One cc to Mr.M.P.Senthil, Advocate, SR.No.80190

ps

RL/6C/3P/KK/SAR1/10/10/2017

S.A(MD)No.721 of 2014

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