



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.07.2017
CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

WEB COPY

Second Appeal (MD) No.158 of 2017
and
CMP.(MD) No.2720/2017

Anish Ahamed .. Appellant/Appellant/Defendant
vs.

Ramisha Beevi .. Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree dated 18.10.2016 made in A.S.No.73 of 2014 on the file of the Subordinate Judge, Paramakudi, confirming the judgment and decree dated 09.10.2014 made in O.S.No.56/2010 on the file of the District Munsif-cum-Judicial Magistrate, Kamuthi.

For Appellant : Mr.A.Arumugam
for M/s.Ajmal Associates

For Respondent : Mr.J.Bharathan

JUDGMENT

The unsuccessful defendant before the courts below has preferred the above appeal challenging the decree granting declaration and permanent injunction in favour of the plaintiff. The dispute is with respect to a pathway measuring about 5 feet x 38 feet.

2. The case of the plaintiff was that the pathway belonged to her maternal grand father. Thereafter, the pathway belonged to one Ahamed Ambalam, after whom, it was inherited by his son Mohammed Sikkander. After Mohammed Sikkander, his only daughter Jameela Beevi, got the same and the said Jameela Beevi, by way of settlement deed dated 27.03.1985 has settled the suit property in favour of the plaintiff and her daughters equally. Accordingly, the plaintiff has been enjoying the suit property including the suit pathway which is 5 feet x 38 feet till today. While so, with
<https://hcservices.industry.in/hcservices/> disturb the possession of the plaintiff in the suit property, the defendant planted a survey stone in the middle of the pathway. Hence, the plaintiff has filed the suit.



3. Denying the facts, in support of the cause of action, the defendant had contended that he had been in possession of the suit property, having purchased the same under Ex.B.1. According to the defendant, the plaintiff had put up a compound wall around his property. Therefore, the existence of 5 feet lane beyond the compound wall is unnecessary. Hence, he is not entitled to the relief of declaration.

4. Based on the above pleadings, the trial court has framed appropriate issues. In order to prove the case, on the side of the plaintiff, the plaintiff herself was examined as P.W.1 and as many as 9 documents have been exhibited as Ex.A1 to Ex.A.9. On the side of the defendant, he was examined as D.W.1 and as many as 11 documents have been exhibited as Ex.D.1 to Ex.D11. Apart from that an Advocate Commissioner has been appointed by the trial court and his Report, Rough Sketch and Surveyor Report were marked as Ex.C.1, Ex.C.2 and Ex.C.3 respectively. Having considered all the above, the trial court decreed the suit which was confirmed by the lower appellate court. That is how, the appellant is before this Court with this Second Appeal.

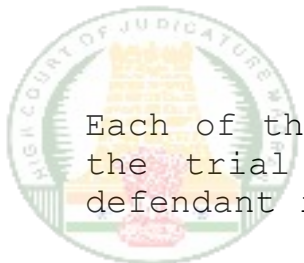
5. The Courts below, after considering the documents and the evidence, had decreed the suit in favour of the plaintiff. Aggrieved by the same, the above appeal has been filed. At the time of admission only, notice was issued to the respondent.

6. With the consent of both the parties, the Second Appeal itself has been taken up for hearing.

7. The learned Counsel for the appellant has contended that the plaintiff claimed right under Ex.A.5. However, she has not filed the Power of Attorney mentioned therein. It is the specific case of the plaintiff that the suit property is situated in Survey No.259/26. Therefore, the plaintiff cannot claim anything other than the said survey number.

8. The learned Counsel for the respondent had pointed out that Ex.A.2, a Registered Mortgage Deed, has been filed which is dated 22.04.1953. In the said deed, the suit property has been mentioned as North South Lane. In the subsequent documents Ex.A.3 and Ex.A.4 also, there is a mention about the suit lane. Thus, the documents produced on the side of the plaintiff clearly indicate that there has been an existence of suit lane belonging exclusively to the plaintiff which is being dealt with by her on her own right.

9. To disprove the case of the plaintiff, the defendant also ~~had filed the~~ documents from Ex.B.1 to Ex.B.11. The documents under which the defendant had purchased the property clearly mention that the defendant's property is situated in S.No.259/28.



Each of the document filed by the defendant has been discussed by the trial court and found that the property purchased by the defendant is within the specific boundaries.

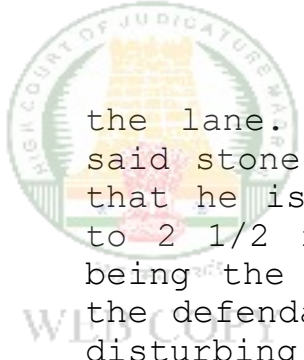
10. It is pointed out by the learned Counsel for the appellant/defendant that on the eastern and southern boundaries, it has been mentioned as a common lane. But on the western side, it only mentions that there is a lane. There is no specific averments that it is a common lane. If only the suit lane was enjoyed commonly by both the plaintiff and the defendant, the western boundary of the defendant property would have been mentioned as common lane and not simply mentioning as lane whereas the documents produced by the plaintiff clearly and categorically mentions about the suit lane. Thus, going by the description of boundaries given in the documents of both the parties, the plaintiff has established that there was a lane as claimed in the suit belonging to her and the defendant could not establish the existence of a common lane. The learned Counsel for the appellant/defendant contended that the plaintiff has to fall or succeed on his own merit and cannot pick holes in the case of the defendant and placed his reliance in Union of India and Others vs. Vasavi Co-operative Housing Society Limited and Others reported in (2014) 2 Supreme Court Cases 269. As discussed above, the plaintiff has established her case independent of the defendant's evidence. Hence the said contention is also rejected.

11. Insofar as the measurement of the properties are concerned, the documents filed by the plaintiff are clear and categorical whereas the documents filed on the side of the defendant, it is mentioned as 7 3/4 Carpentric cubits (Thatchu Muzham). So, converting the said measurement into metric unit, it should be only 21.31 feet. Even presuming that the defendant was entitled to 22 feet, by any stretch of imagination, it cannot be 24 1/2 feet as claimed by the defendant in Ex.B.1.

12. The Survey Report marked as Ex.C.3 also has stated that the east west measurement of the defendant's land is only 7 metres which is about 21 x 22 feet. Hence, the claim of the defendant is that he is entitled to 24 1/2 feet is only imaginary and the courts below have rightly rejected his claim.

13. In order to claim the suit pathway, the defendant had mentioned that on the 5 feet, the defendant is entitled to 2 1/2 feet and the plaintiff is entitled to the balance. To substantiate his claim, the defendant had planted a survey stone in the middle of the pathway which is taken note of by the Commissioner appointed by the Court.

14. The Report of the Commissioner also says that the suit pathway is 5 feet x 38 feet and the west of the pathway is the plaintiff's vacant site and the east of the pathway is defendant's vacant site. It is also mentioned in the report of the Commissioner that a stone has been planted by the defendant in the middle of



the lane. Merely because, the defendant had planted the above said stone, he cannot claim half of the suit lane i.e. contending that he is entitled for 2 1/2 feet and the plaintiff is entitled to 2 1/2 feet. The trial court as well as the appellate court being the final fact finding court has categorically found that the defendant is claiming more than what he is entitled to thereby disturbing the possession and enjoyment of the plaintiff on the suit claim and decreed the suit. There is no infirmity in the judgment of the courts below and there is no question of law arising for consideration in the Second Appeal.

15. In the result, the Second Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub-Assistant Registrar

To

1. The Subordinate Judge, Paramakudi.
2. The District Munsif-cum-Judicial Magistrate, Kamuthi.

Copy to:-

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

+2 cc to M/s.T.R.Jeyapalam, Advocate, SR.No.68538

+One cc to M/s.Ajmal Associates, Advocate, SR.No.68471

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S.A. (MD) No.158/2017