



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 31.08.2017

Coram

The HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

WEB COPY

S.A(MD)No.382 of 2017

Jeyalakshmi

... Appellant/Appellant/Plaintiff

Vs.

1. S.RM.Nachiappan

(Lunatic rep. Through his wife
and guardian Prema)

... 1st Respondent/1st Respondent /
1st Defendant

S.RM.Athappan (died)

2. Vairamuthu

3. Karthiga

4. Rajesh Kanna

... Respondents 2 to 4/Respondents 3 to 5/
Lrs of the deceased 2nd Respondent

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 01.02.2011 made in A.S.No.9 of 2011 on the file of the Sub Court, Devakottai, confirming the Judgment and Decree, dated 29.06.2010 made in O.S.No.92 of 2008 on the file of the Additional District Munsif, Karaikudi.

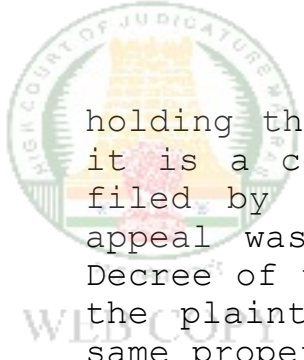
For Appellant : Mr.R.Sundar Srinivasan
For Respondent : Mr.T.Srinivasa Raghavan

JUDGMENT

The second appeal arises against the Judgment and Decree, dated 01.02.2011 passed in A.S.No.9 of 2011 on the file of the Sub Court, Devakottai, confirming the Judgment and Decree, dated 29.06.2010 passed in O.S.No.92 of 2008 on the file of the Additional District Munsif, Karaikudi.

2.The plaintiff, who lost before the Courts below in a suit for injunction, has filed the above second appeal.

3.The plaintiff claims right of usage of a common pathway measuring 4.5 feet X 75 feet, which is the suit property. Admittedly, the very same plaintiff filed a suit in O.S.No.55 of 2005 on the file of the Sub Court, Devakottai, seeking for declaration that the suit pathway exclusively belonged to her and for a consequential injunction. The said suit was dismissed



holding that it was not exclusive property of the plaintiff, but it is a common lane. Aggrieved by the same, an appeal was also filed by the plaintiff herein in A.S.No.37 of 2007. The said appeal was dismissed on 29.10.2007, confirming the Judgment and Decree of the trial Court. Now, the present suit has been filed by the plaintiff for the relief of injunction with respect to the same property with the same allegations.

4.The suit was resisted by the defendants on the ground that in view of the earlier Judgment and Decree passed in A.S.No.37 of 2007, the present suit is barred by res judicata, as the property in issue and also the parties in the earlier suit are one and the same and the suit had been decided on merits and the appeal has also been confirmed.

5.The Courts below have also found that the earlier claim of the plaintiff which was the exclusive claim of the property, was declined in the previous suit.

6.Heard the learned counsel for the appellant and the learned counsel for the first respondent.

7.Admittedly, the suit property is held to be a common pathway. When it is a common pathway, the plaintiff cannot claim the relief of injunction against the other owners. The plaintiff has also claimed right of easement, which was rightly dismissed by the Courts below, as the same has not been established by the plaintiff. Having failed in her earlier attempt, the plaintiff has come up with the present suit wherein also the Courts below have non-suited her.

8.In the light of the above facts and circumstances, as there is no infirmity in the findings of the Courts below warranting any interference and there is no substantial questions of law arising out of the same for consideration, this Second Appeal is dismissed at the admission stage itself. No costs.

Sd/-

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To

1. The Sub Judge,
Devakottai.

<https://hcservicescourts.gov.in/hcservices>
2. The District Munsif,
Karaikudi.



Copy to

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Ps

MK/KK/SAR-2/26.09.2017/3P/4C

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