

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.04.2018

CORAM

THE HON'BLE MR.JUSTICE R. SUBRAMANIAN

S.A.No.448 of 2008

and

M.P.No.2 of 2008

P.Sumathi

..Appellant/Plaintiff

.Vs.

R.Prema Krishna Kumar

..Respondent/Defendant

Prayer: Second Appeal filed under Section 100 Code of Civil Procedure against the judgment and decree dt.31.07.2007 made in A.S.No.426 of 2006 on the file of the Additional District Judge, Fast Track Court No.V, Chennai reversing the judgment and decree dt.18.01.2006 made in O.S.No.1113 of 2000 on the file of the VII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.V.Perumal
for M/s.T.Dhanyakumar

For Respondent : Mr.Mr.T.Sri Krisyha Bhagawat
for M/s.P.Subba Reddy

JUDGMENT

This Second Appeal is at the instance of the plaintiff in O.S.No.1113 of 2000. The suit in O.S.No.1113 of 2000 was filed seeking a permanent injunction restraining the defendant from preventing the plaintiff from entering the common passage for the purpose of maintenance of the drainage of her property, to direct the defendant to remove the cement slab put up on the plaintiff's building's drainage, to direct the defendant to remove the iron gate fixed at the entrance of the common passage, to direct the defendant to fix a gate in front of the "C" schedule property, and for costs.

2.A larger extent of property measuring about 1575 sq.ft. belonged to the mother-in-law of the plaintiff P.R.Rajam, W/o.Late Raju Naidu. The said P.R.Rajam had executed three settlement deeds in favour of her three sons viz., R.Bakthavachalam, R.Srinivasan and R.Premakrishna Kumar on 22.06.1981. Those documents were also registered as document

Nos.1071, 1072 and 1073/1981. While doing so, the Settlor had left 5 feet common passage on the Western side of the property from South to North leading up to the road on the Northern side. The drainage connection of the property that is settled on the husband of the plaintiff viz., R.Bakthavatchalam lies in the common passage.

3.Pursuant to the above settlement deed, according to the plaintiff, the entire property was sub-divided into three Door Nos.8/1, 8/2 & 8/3. The property that was settled on the plaintiff's husband bearing No. 8/1 was marked as "A" in the Plan annexed to the Settlement Deed. The property that was settled on the defendant was marked as "C" and the property on the Southern side settled on R.Srinivasan was marked as "B". Land measuring 5 feet by 37 ½ feet North toon the West of the "A" portion leading to the Street on the North was shown as common passage.

4.According to the plaintiff, the defendant had put up the gate on the Northern extremity facing the road thereby preventing the plaintiff from entering the common passage. The contention of the plaintiff is that the defendant is preventing the plaintiff from maintaining the drainage of her house which lies in the common passage. Therefore, the plaintiff has come forward with the above suit seeking aforesaid reliefs.

5. The defendant contested the suit mainly contending that the mother had not settled the common passage on any of the parties while executing the settlement deeds on 26.02.1981. Therefore, she had executed another settlement deed on 22.11.1999 which is marked as Ex.B-2. Under the said Settlement Deed, the Settlor viz., the mother of the defendant/mother-in-law of the plaintiff had settled the common passage measuring 5 feet by 37 ½ feet in favour of the defendant. Therefore, according to the defendant, he is the exclusive owner of the common passage, and the plaintiff has no right over the same.

6.On consideration of the pleadings and the evidence on record, the learned VII Assistant City Civil Judge decreed the suit concluding that having stated that the passage measuring 5 feet by 37½ is a common passage in the Settlement Deeds executed in the year 1981 which are marked as Exs.A-1 to A-3 & A-13, the Settlor viz., P.R.Rajam had no right to execute the second Settlement Deed viz; Ex.B-2 on 22.11.1999.

7.The learned trial Judge also found that the drainage connection of the plaintiff's house runs through the common passage. The learned trial Judge on the aforesaid findings granted a limited injunction to the effect that the defendant will be restrained by a decree for injunction from interfering with the plaintiff's right to repair the drainage connection

whenever there is a blockage and to maintain drainage connection. The learned trial Judge also granted a mandatory injunction directing the defendant to remove the iron gate put up by him on the Northern extremity of the passage where it meets the road, and a further mandatory injunction was also granted directing the defendant to remove the cement slabs put up by him on the drainage connection of the plaintiff's house which ultimately runs through the common passage.

8. Aggrieved by the said decree, the defendant filed an appeal in A.S.No.426 of 2006. The Lower Appellate Court reversed the judgment of the trial Court holding that in view of Ex.B-2, the defendant had become the absolute owner of the common passage, and therefore, the plaintiff cannot claim right over the said common passage. The Lower Appellate Court also took note of the fact that in the Settlement Deed in favour of the plaintiff's husband which have been marked as Ex.A-1 and Ex.A-13 no right has been given to the plaintiff's husband over the common passage.

9. On the aforesaid findings, the learned Appellate Judge reversed the findings of the trial Court and dismissed the suit. Aggrieved by the same, the plaintiff has come forward with this Second Appeal.

10. The following question of law was framed for determination in the appeal at the time of admission:

"a) Whether the Settlor under Exhibit B-2 has power to settle the disputed property to the defendant after execution of Exhibits A.1, A.2 and A.3 ?"

11. I have heard Mr.V.Perumal for Mr.T.Dhanyakumar, learned counsel for appellant, and Mr.T.Sri Krishna Bhagavat for Mr.P.Subba Reddy, learned counsel for respondent.

12. The execution of the Settlement Deeds viz., Ex.A-1 to A-3 and Ex.A-13 is not in dispute. It is also not in dispute that a Plan is annexed to the documents and in the said Plan annexed to the documents, the suit property viz., the land measuring 5 feet by 37 ½ feet was shown as common passage. It is also not in dispute that the drainage connection for the plaintiff's property runs through the common passage. The only ground on which the defendant seeks to deny the right of user of the common passage to the plaintiff is Ex.B-2 Settlement Deed. In Ex.B-2 Settlement Deed the, Settlor specifically claims that she had not settled the common passage while executing the Settlement Deeds Ex.A-1 to A-3 and Ex.A-13 dated 22.06.1981. Therefore, she is entitled to deal with the property. The Settlement Deed executed by the said P.R.Rajam on 22.06.1981 in favour of the defendant has been marked as Ex.A-2. In the said

document in the schedule the suit property is shown as common lane. The schedule to the document reads as follows:

"All that vacant land on the Western side admeasuring about 481 sq.ft. which thatched superstructure erected by the Settlee at No.8, Arunachaleeswarar Koil Street, 3rd Lane, Corporation Colony, Madras-81 measuring North to South 18 ½ feet, East to West 26 feet, bounded on the North by 5 feet common passage leading to street and R.Bakthavachalam property. On the South by R.S.No.3977/56, on the East by R.Srinivasan property and on the West by R.S.No.3977/44 shown in the sketch marked letter 'C' shaded Red in colour, situate within the registration District of North Madras and Sub Registration District of Royapuram."

13. Therefore, it is clear that what was settled on the defendant under the document Ex.A-2 dated 22.06.1981 is property within four boundaries along with the right to use the common passage. Even in the Plan annexed to Ex.A-13 dated 22.06.1981, the settlement deed executed by the said P.R.Rajam in favour of the plaintiff, the suit property is shown as a common passage. Having shown the suit property as common passage in the Settlement Deeds executed in 1981 it is not known as to how the Settlor would claim exclusive right over the same, and execute Ex.B-2 on 22.11.1999. A perusal of Ex.A-1, A-2 and A-13 would go to show that the Settlor had divested herself of the interest in the entire property by settling portions of the same and providing a common passage. In view of the same, she has no right to execute another settlement deed in 1999 under Ex.B-2 settling the suit property measuring about 5 feet by 37 ½ feet in favour of the defendant alone.

14. Therefore, the substantial question of law is answered in favour of the appellant. The Settlement Deed dated 22.11.1999 marked as Ex.B-2 would not give any exclusive title over the suit property in favour of the defendant. In view of the above conclusions, the Second Appeal is allowed, the judgment and decree of the Lower Appellate Court is set aside, and the judgment of the trial Court is restored. There shall be no order as to costs. Consequently, M.P.2 of 2008 is closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

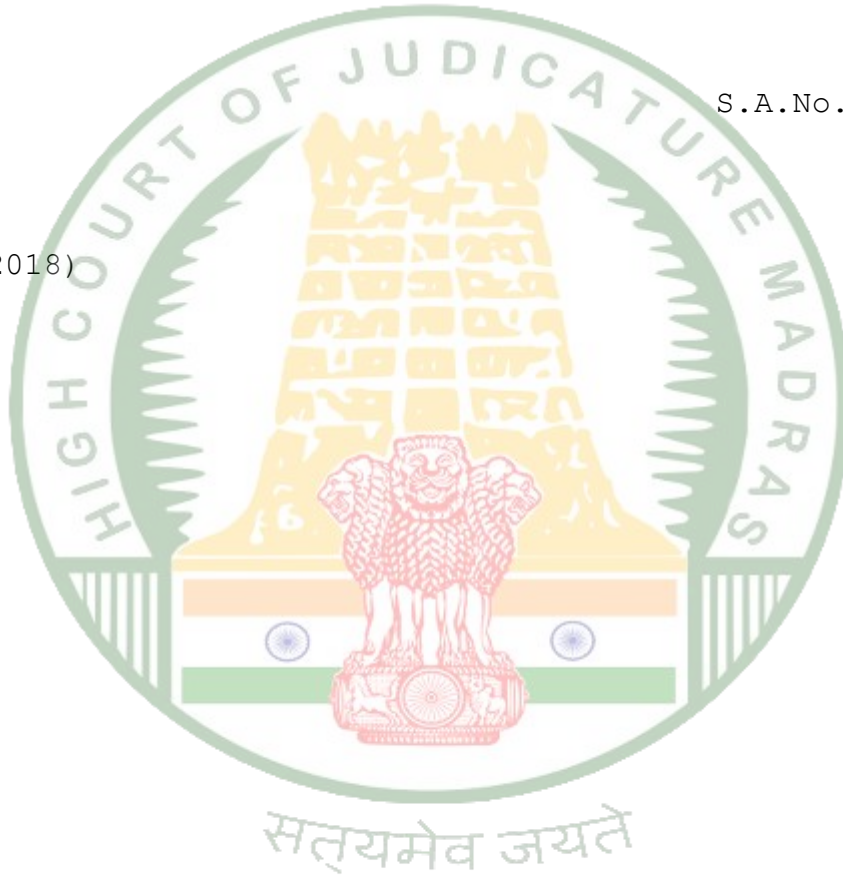
To

1. Additional District Judge,
Fast Track Court No.V,
Chennai.
2. VII Assistant Judge,
City Civil Court,
Chennai.

+1 CC to M/s.P.Subba Reddy, Advocate sr 28013.

S.A.No.448 of 2008

RSI (CO)
SP(11/05/2018)



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