

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.483 of 1999

1.Iyyamperumal (Deceased) ... Appellant/Appellant/Plaintiff
2.Sundaram
3.Venkatesan
4.Santhi
5.Rajammal ... Appellants
(Appellants 2 to 5 brought on record as L.Rs of the
deceased sole appellant vide order of Court dated
21.01.2019 made in C.M.P.No.3788 to 3790/2018
in S.A.No.483/1999 (CVKJ))

...Versus...

1.E.Veerappan (died) Respondent/Respondent/Defendant
2.Chinnaponnu
3.Mariappan
4.Venkatachalam
5.Kannan
6.Mani
7.Sagunthala ... Respondents
(Respondents 2 to 7 are brought on record as
legal representatives of the deceased sole respondent
vide order of Court dated 26.04.06 made in C.M.P.No.
6155 of 2006)

PRAYER:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.215 of 1995 dated 06.05.1998 on the file of the First Additional District Judge cum Chief Judicial Magistrate, Salem confirming the judgment and decree made in O.S.No.677 of 1988 dated 05.11.1993 on the file of the Principal District Munsif, Salem.

For Appellant :: M/s.P.T.Ramadevi
For R2 to R7 :: Mr.N.S.Sivakumar
For R1 :: Died

J U D G M E N T

The plaintiff in O.S.No.677 of 1988 on the file of the Principal District Munsif Court, Salem is the appellant herein.

2. The judgment dated 05.11.1983, the suit was dismissed. Thereafter, the plaintiff filed A.S.No.215 of 1995 on the file of the learned First Additional District Judge-cum-Judicial Magistrate, Salem. By judgment dated 06.05.1998, the appeal was dismissed. The plaintiff had filed the present Second Appeal against that judgment. Pending the appeal, the plaintiff died and his legal representatives were brought on record as 2 to 5 appellants. The first respondent/defendant also died and his legal representatives were brought on record as 2 to 7 respondents.

3. It was the case of the plaintiff that he obtained title to the suit property through a settlement deed executed by his father dated 14.11.1979. The suit property was house and open vacant place in front of the house. It was stated that the defendant resided north of the plaintiff's house. Between the house of the plaintiff and the house of the defendant, there was an open place. The plaintiff claimed title to the said open place. He stated that he had put up a shed in the said open place. The defendant objected to it on 02.05.1988. Consequently, the said suit was filed seeking permanent injunction to protect possession.

4. In the written statement of the defendant, it was stated that the said vacant place was not the exclusive property of the plaintiff. It was a pathway leading to the main road. There were other houses also adjoining the pathway and all the residents used the said pathway. It was stated that the plaintiff cannot seek exclusive title over the pathway. It was stated that the suit should be dismissed.

5. The learned District Munsif found that the vacant space was actually a pathway. During trial, a Commissioner had been appointed and he had filed his report and sketch as Exhibits C1 and C2. In the report of the Commissioner, it was stated that the pathway was 1.2 meters in width in one place, 2.8 meters in another place and 2.1 meters in another place. There was also a well. The Commissioner had given a report regarding the pathway. Based on the said finding and also on the oral and documentary evidence, the learned District Munsif dismissed the suit.

6. The plaintiff filed A.S.No.215 of 1995. This appeal came up for consideration before the First Additional District Judge-cum-Chief Judicial Magistrate, Salem on 06.05.1998. Before the

First Appellate Court, the plaintiff filed I.A.No.11 of 1996 under Order 26 Rule 9 C.P.C seeking to set aside the report and sketch of the Advocate Commissioner filed before the trial Court and to appoint a fresh Advocate Commissioner. The plaintiff also filed I.A.No.6 of 1997 under Order 41 Rule 27 C.P.C to take as additional evidence a partition deed dated 09.12.1941. The learned First Appellate Court however, dismissed the application filed to appoint a fresh Advocate Commissioner by pointing out that the report of the sketch of the Advocate Commissioner filed before the trial Court was comprehensive. It was also specifically found that the plaintiff had not filed any objections before the trial Court.

7. According to the sketch - Exhibit C2, it was found that the width of the passage was 1.2 meters in one place, 2.8 meters in another place and 2.1 meters in another place. There was also a well in the passage. The house of the defendant was also pointed out. Since all the physical features were correctly noted, the First Appellate Court did not deem it fit to allow the said Interlocutory Application and consequently dismissed the same.

8. With respect to I.A.No.6 of 1997 namely to file as additional evidence, the partition deed dated 9.12.1941, the first Appellate Court held that no reason was given for not producing the documents before the trial Court and also found that the Survey No.195/2 had been mentioned and it was found that by taking on record the said partition deed, the finding of the trial Court would not be affected. It was found that the partition deed was not relevant. The First Appellate Court also confirmed the finding of the trial Court that the vacant space claimed by the plaintiff was actually a pathway and consequently held that injunction for exclusive use cannot be granted.

9. It is seen that both the Courts below have concurrently found as a fact that the pathway was used in common and that the plaintiff cannot claim exclusive title for its usage. The suit was also filed only for bare injunction and not for declaration of title. I hold that no issue of law arises and consequently the Second Appeal is rejected. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

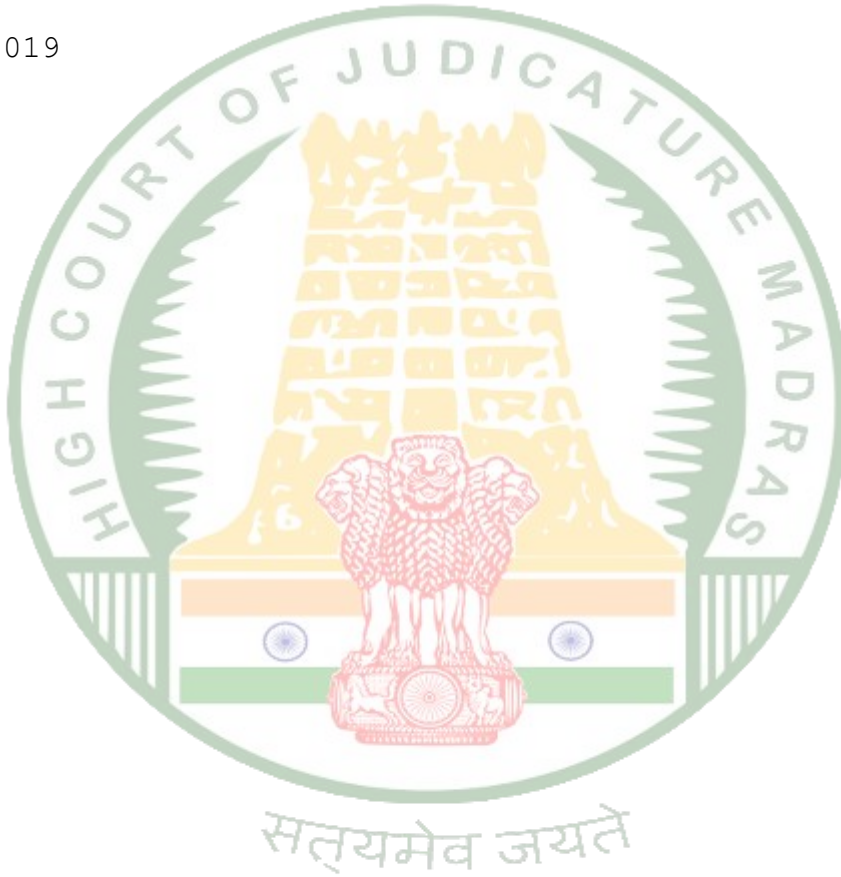
1.The First Additional District Judge cum Chief Judicial Magistrate, Salem

2.The Principal District Munsif, Salem.

3. The V.R.Section, High Court, Madras.

S.A.No.483 of 1999

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nr 22/07/2019



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