s IN THE HIGH COURT OF JUDICATURE AT MADRAS

[JUDGMENT RESERVED ON : 11.07.2019]
[JUDGMENT PRONOUNCED ON : 16.10.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1986 of 2002

Muthusamy : Appellant/Respondent/defendant

.. Vs ..

1.Arumugam (Died) : 1st Respondent/Appellant/Plaintiff

2.P.Sundaram : 2nd Respondent/L.Rs. of the 1st Respondent

[R-2 brought on record as the L.R. of the deceased sole respondent vide order made in C.M.P.No.13750 of 2018 in S.A.No.1986 of 2002, dated 14.11.2018]

Prayer : Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 16.04.2002 made in A.S.No.18 of 2001 on the file of the Sub Court, Mettur, reversing the judgment and decree dated 08.02.2001 made in O.S.No.281 of 1996 on the file of the District Munsif-cum-Judicial Magistrate, Omalur.

For Appellant : Mr.A.Nilaphar
for Mrs.R.Meenal
For R-1 : Died
For R-2 : Mr.C.Prabakaran

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JUDGMENT

The defeated defendant is the appellant herein, challenging the judgment and decree dated 16.04.2002 passed by the learned Sub Judge, Mettur, in A.S.No.18 of 2001, reversing the judgment and decree dated 08.02.2001 passed by the learned District Munsif-cum-Judicial Magistrate, Omalur, in O.S.No.281 of 1996.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. The plaintiff has filed a suit in O.S.No.281 of 1996 before the learned District Munsif-cum-Judicial Magistrate, Omalur, seeking for a declaration of his right to use the suit

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lane to reach the backyard of his house through the door way and for injunction restraining the defendant from interference and using the lane. The said suit was dismissed by the learned District Munsif-cum-Judicial Magistrate, Omalur, by judgment dated 08.02.2001. As against the same, the plaintiff has preferred an appeal in A.S.No.18 of 2001 before the Sub Court, Mettur, and the same was allowed on 16.04.2002. Aggrieved by the same, the defendant has preferred the present second appeal before this Court.

4. Learned counsel appearing for the appellant would submit that the Lower Appellate Court has allowed the appeal filed by the plaintiff only on two grounds viz., there was a common lane and even that common lane was not allotted to the plaintiff. But it was allotted to the plaintiff's brother. The next point is that since the vendor of the defendant has attested the document said to have been issued in favour of the vendor of the plaintiff, he had the knowledge of the contents of the document and the suit was decreed by the First Appellate Court.

5. At the time of admitting the above second appeal on 13.12.2002, the following substantial question of law was framed for consideration:

> "Whether, in law, the lower appellate court is right in failing to see that the respondent had not elected either his claim for title or his right under the easement of prescription, and that the suit based on such contradictory claims is maintainable vide AIR 1987 MADRAS 102 and 85 LW 819 (919)?".

6. Learned counsel appearing for the respondents would contend that the original plaintiff has filed the suit in O.S.No.281 of 1996 and he made submissions in support of the judgment of the Lower Appellate Court, wherein the suit has been decreed as prayed for.

7. Heard both sides and perused the records.

8. After hearing both sides, additional substantial questions of law are framed on 24.06.2019.

> [1] Whether in law that Lower Appellate Court was right in failing to see that while both boundaries and extents shown in the title deeds produced by the plaintiff read with the Commissioner's reports showed that the respondent had no claim in the suit property, the suit could not be decreed on mere conjectures.? and

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[2] Whether in law the Lower Appellate Court was right in finding that attestation of a document would impute knowledge of the contents vide 1987 (Vol.100) L.W. 363 [K.Nagarathinam and another Vs. K.Rajammal] = 1987 (1) MLJ 257?

9. It is seen from the records that the plaintiff has earlier filed a suit in O.S.No.753 of 1992 before the District Munsif Court, Mettur, and the same was re-numbered as O.S.No.281 of 1996 on the file of the District Munsif-cum-Judicial Magistrate, Omalur, seeking for a declaration of his right to use the suit lane to reach the rear side of his house through his Northern doorway and for injunction restraining the defendant from preventing him from using the lane. It is the case of the plaintiff that the lane is situated between his house to the North of his house and to the South of the defendant's property, was a common lane; that he always used it to reach his back and in that West; that after the defendant purchased his property in the year 1991, though the plaintiff had also wanted to buy it, a door way was fixed in the lane in the East for safety and that the expenses were borne equally by both of them and that the defendant was attempting to block the same by constructing a wall. He also claimed easement of prescription by his alleged use for over 70 years.

10. The defendant contested the suit stating that the lane belongs to him absolutely; that there was never any common lane between the houses of the plaintiff and the defendant; that the lane mentioned in the settlement deed by the plaintiff's mother was found on the North of the portion occupied by the plaintiff's brother; that the plaintiff and his brothers as well as his predecessors had made elaborate alterations in the original property; that the plaintiff had opened doorway in his Northern wall, in spite of his protests; that in a suit in O.S.No.358 of 1989 filed by the plaintiff against his brother's son Mohan, the plaintiff had admitted that the premises to his North belonged to his vendor and that his conflicting claims for easement by prescription and title could not be maintained.

11. It appears that pending trial, an Advocate Commissioner was appointed and he inspected the property and filed documents Ex.C.1-Report and Ex.C.2-Sketch. Thereafter, Ex.C.3-Advocate Commissioner's report and Ex.C.4-Sketch of the Advocate Commissioner also came into force. The Advocate Commissioner has filed his reports on inspecting the property twice and on the defendant filing his objections to the reports, the plaintiff did not even his brother to submit his objections. The Advocate Commissioner has measured the property with the help of a Panchayat Surveyor. The partition deed-Ex.A.3 showed the East-West length of the plaintiff's property as 34'. The

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Commissioner's Sketch-Ex.C.4 also showed the length as 34'6" on actual measurement. Further, Ex.C.4 showed that the suit lane stopped with the houses and did not extend to the North-South lane to the West of the plaintiff's house. Ex.A.1-Settlement Deed under which the plaintiff claimed the title, shows only the lane between the properties of Mahalingam and Subramaniam and not the lane subject matter of the suit. The Court found that the defendant's predecessor in title Ramasami Chettiar attested the document Ex.A.1 only on knowing its contents and admitted the same. The recitals in Ex.A.1 are binding on the defendant. The Lower Appellate Court has made a special finding that the plaintiff had abandoned his claim for title by easement.

12. It is seen from the documentary evidence of Ex.A.1 that both the Courts below have rightly come to the conclusion that Ex.A.1 was not disputed by the defendant and the same is a registered document and on the date of filing of the suit, Ex.A.1 being more than 30 years old, the Courts below held that Ex.A.1 is an ancient document as defined under Section 90 of the Indian Evidence Act and accordingly, admitted the document in evidence and there is no dispute as to the admissibility of Ex.A.1, which assumes significance. The vendor of the defendant Ramasamy Chettiyar has attested the document as one of the attestor and furthermore, the plaintiff, as P.W.1, had admitted that the said Ramasamy Chettiyar has a common right in the common lane.

13. The case of the plaintiff is that it is a common lane where both the plaintiff and the defendant are entitled to use it, while the case of the defendant is that the suit lane is the exclusive property of the defendant. Admittedly, the defendant has purchased the property from the said Ramasamy Chettiyear. Furthermore, on comparison of the boundaries as mentioned in Ex.A.1, both the Courts below have rightly come to the conclusion that the same relates to the suit lane and on a comparison of Ex.A.1 and Ex.A.3, the Lower Appellate Court has rightly come to the conclusion that on a combined reading of Ex.A.1 and Ex.A.3 from the houses that have been mentioned under Ex.A.1, there was a partition between the brothers of the plaintiff under Ex.A.2.

14. On a perusal of Ex.A.1, the common pathway viz., the common right in the suit lane has been specifically mentioned as spoken to by P.W.1, which assumes significance. As per Ex.A.3, in respect of the house allotted to the share of the plaintiff, the Northern boundary is shown as common lane. On comparison of the documents filed by the defendant, it is seen that the plaintiff has right over the property up to the defendant and from there, on the defendant has right over the property and therefore, the Lower Appellate Court has rightly come to the

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conclusion that the suit lane exists in between the two houses of the defendant and the plaintiff and accordingly, held that by easement, they are entitled to use the property. Though the learned counsel for the defendant would contend that there was no door or window from the house of the plaintiff towards the common pathway viz., the suit pathway, however, the same appears to be running contrary to the factual position as elicited in the Advocate Commissioner's report Ex.C.1 and Ex.C.2, which clearly supports the case of the plaintiff.

15. In view of the objections filed by the defendant, it appears that the trial Court has re-issued the warrant to inspect the suit property again and after re-inspection, the Advocate Commissioner has filed Exs.C.3 and C.4 wherein, it is stated that new "thatty" has even been put up between the door and the window, which also goes against the defendant and hence, this Court finds that there is a window and the door in the house of the plaintiff even at the time of the ownership of the vendor viz., the Ramasamy Chettiyar, which assumes significance and relevant, in view of the specific stand taken by the plaintiff.

16. Yet another point is that Ex.C.3 and Ex.C.4 also show that the plea put forward by D.W.1 that there was a "thatty" obstructing the window and the door, appears to be new and fresh one and hence, the Lower Appellate Court has rightly commented upon the new addition being placed in the suit property and the finding rendered by the Lower Appellate Court based upon Ex.C.1 and Ex.C.2 along with Ex.C.3 and Ex.C.4 that the plaintiff had constructed the window and put up the door even during the period of vendor of the defendant, appears to be just and proper and the same does not warrant any interference at the second appeal stage, as the same does not suffer from any irregularity or illegality and accordingly, this Court finds that the finding regarding enjoyment of the suit lane by the plaintiff as found by the Lower Appellate Court is hereby confirmed.

17. On verification of the factual position and documentary evidence, coupled with Exs.C.1 and C.2, this Court finds that the plaintiff has categorically proved his claim of title on the easement of prescription and in the absence of any contrary claim, the suit is held to be maintainable and furthermore, in view of the admission of D.W.1 in the cross-examination that the defendant's vendor has attested the document acknowledging the existence of common pathway viz., the suit pathway, this Court is of the considered view that in view of the admitted position, the additional substantial questions of law does not arise for consideration and the boundaries and the extent shown in the documentary evidence Exs.A.1 and A.3, coupled with the Advocate Commissioner's report clearly demonstrate that the suit lane is

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the common pathway referred to under Ex.A.1 and in view of the said finding, coupled with the Commissioner's report that upto the point of plaintiff's lane, the defendant has enjoyed the property as his own right and hence, the suit lane is only a common lane between the parties and hence, both the additional substantial questions of law are answered in negation against the appellant/defendant. Consequently, the earlier substantial question of law framed is also answered in negation against the appellant/defendant. Accordingly, the Second Appeal is devoid of merits and the same is liable to be dismissed.

18. In the result,

[i] The Second Appeal is dismissed and the judgment and decree dated 16.04.2002 passed by the Sub Court, Mettur, in A.S.No.18 of 2001, reversing the judgment and decree dated 08.02.2001 passed by the learned District Munsif-cum-Judicial Magistrate, Omalur, in O.S.No.281 of 1996, are confirmed.

[ii] However, there shall be no order as to costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

Jrl

To

1. The Sub Judge, Mettur.

2. The District Munsif-cum-Judicial Magistrate,
   Omalur.

+1cc to Mr.R.Subramanian, Advocate, SR.No.86669.

Judgment in
S.A.No.1986 of 2002

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