

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 12.02.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Second Appeal No.785 of 2008

1. Manickam
2. Kaithamalai Mudaliar
3. Palanisamy Mudaliar
4. Kannan
5. D.Subramanian
6. Dharmalingam
7. Gangadharan
8. Jagannathan
9. Royappan
- 10.C.P.Krishnamurthy
- 11.Udayakumar
- 12.Marappan

....Appellants/Defendants 1,4 to
10 and 13 to 16

Vs

M.Palanisamy Respondent/Plaintiff

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 23.01.2007 in A.S.No.58 of 2005 on the file of the Subordinate Court, Tiruppur confirming the judgment and decree passed in O.S.No.250 of 2004 dated 25.07.2005 on the file of the District Musif, Tiruppur.

For Appellants : Mr.S.K.Rakhunathan

For Respondent : Mr.I.Abrar Md.Abdulah

JUDGMENT

Aggrieved over the concurrent finding of the Courts below in decreeing the suit filed for permanent injunction, the present Second Appeal has been filed.

2. The brief facts leading to filing of this Second Appeal is as follows :

The suit has been filed for permanent injunction restraining the defendants from interfering with the pathway which is available in the village which is used as an access to reach the plaintiff's property. It is the contention of the defendants that the suit property was originally classified as 'pavadi' and used by the weavers for their work and there is no car track as contended by the plaintiff. The trial Court framed necessary issues and on the side of the plaintiff P.W.1 to P.W.8 have been examined and Ex.A.1 to Ex.A.8 have been marked. On the side of the defendants, D.W.1 to D.W.12 have been examined. Ex.C.1 to Ex.C.3 have been marked as Court documents. The trial Court after analysing the entire evidence decreed the suit. The first appellate Court has confirmed the decree and judgment of the trial Court.

3. Heard the learned counsel for the appellants and the learned counsel for the respondent and perused the entire materials available on record.

4. Both Courts have analysed the entire aspects and concluded that the pathway is the only access to the plaintiff to reach his property and the so called 'pavadi', as alleged by the defendants is not in existence. The Commissioner report also clearly indicate that only a car track is available and the same has been used as a pathway. But the contention of the defendants that the suit property has been used 'pavadi' is found to be factually false. P.W.1 to P.W.8 have also asserted in their evidence that a car track is available in the suit property and the property is actually the Government property. The Commissioner report also substantiate their version.

5. P.W.1 to P.W.8, who were examined by the plaintiff, have also stated in their evidence that about 30 to 40 years the suit property was never used by the weavers for weaving purpose. D.W.1 has also admitted in his evidence about the existence of the car track and P.W.1 to P.W.8 have also admitted in their evidence that now they are not doing any activities in the suit property and they have no independent right to use the suit property. Based on the admission of both sides and the Commissioner's report, the Courts below factually found that the suit property is used as a car track and it is the access to the plaintiff's property. Since the Courts below have rendered judgments based on the documents and evidence and on the basis of the factual aspects, this Court is of the view that there is no substantial question of law in the appeal.

6. Accordingly, this Second Appeal is dismissed and the judgment and decree of the Courts below is confirmed. No cost.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Subordinate Judge,
Tiruppur

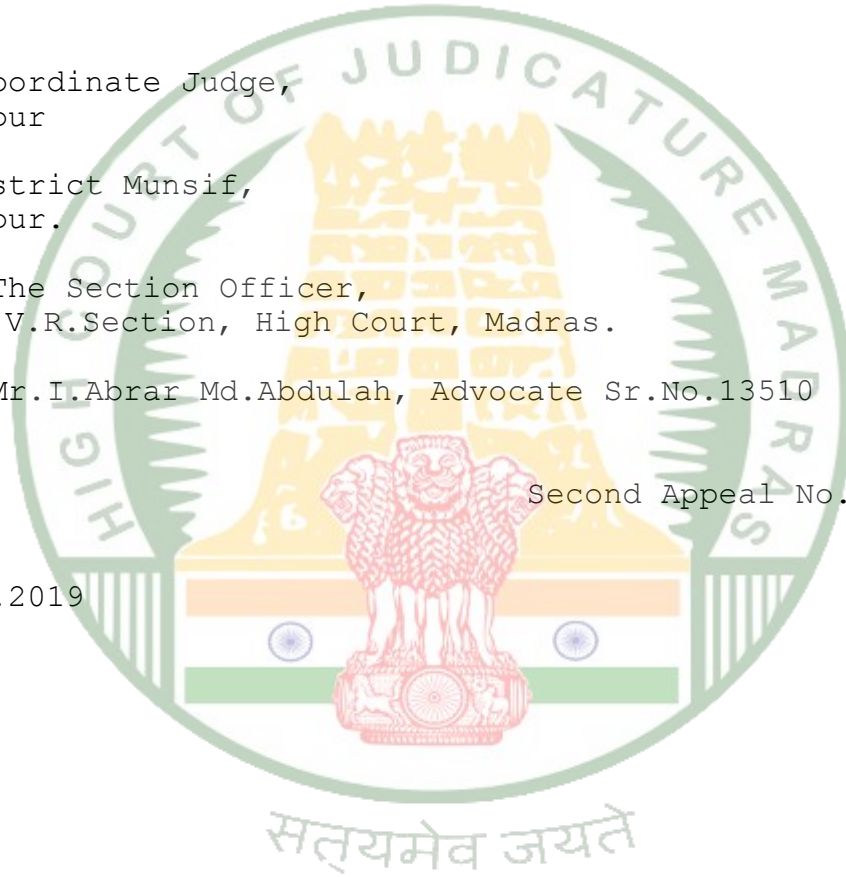
2. The District Munsif,
Tiruppur.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.I.Abrar Md.Abdulah, Advocate Sr.No.13510

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SV(CO)
CSL/11.06.2019



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