



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.01.2019	Pronounced on: 08.01.2019
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Coram:

The Honourable Dr.Justice G.Jayachandran

Second Appeal No.1506 of 2004

- 1.Thangavel (Deceased)
Son of Manickam Pillai,
Residing at Kattu Udayarpalayam,
Ulundurpet Taluk, Villupuram District.
 2. Periyamayaki,
W/o.Late Thangavel,
 3. T.Jayabalan
S/o.Late Thangavel,
 4. T.Damodaran,
S/o. Late Thangavel,
 5. T.Venkatesan,
S/o.Late Thangavel,
 6. T.Gunasekaran,
S/o.Late Thangavel,
 7. T.Kamalakannan,
S/o.Late Thangavel,
 8. Kalavathy,
S/o.Late Thangavel,
 9. Senthamil Selvi,
(S/o.Late Thangavel, ... Appellants
- Appellants 2 to 9 brought on record as
LRs of the deceased sole appellant vide
ordered this court dated 30.11.2012 made in
CMP.No.2005/2008 in SA.No.1506/2004)
/versus/

1. Jayakumar (Deceased)
S/o. Raju Udayar,

2. Jayavelu,
S/o.Raju Udayar,
3. Jayakumari,
D/o. Raju Udayar,
4. Lakshmi Ammal,
W/o.Raju Udayar, ...Respondents/respondents/Plaintiff
5. Muthulinga Udayar,
S/o.Perumal Udayar, ...Respondent/Respondent/2nd Defendant

RR1 to 5 are residing at Kattu Udayarpalayam Village,
Ulundurpet Taluk, Villupuram District.

6. J.Selvi,
W/o.Late Jayakumar,
7. J.Jayaraja Lakshmi,
D/o.Late Jayakumar,
8. J.Jayapriya,
D/o.Late Jayakumar,
9. Minor J.Jayalakshmana Raja,
S/o.Late Jayakumar,
10. Minor Jayakodi,
D/o.Late Jayakumar ...Respondents

Minors 9 and 10 are rep. by their mother and Guardian J.Selvi,
RR6 to 10 are residing at No.4/12, Vadakku Street, Kattu Edaiyar
Madurapalayam, Ulundurpet Taluk.

RR6 to 10 Brought on record as LR's of the deceased R1 vide order
of Court dated 14.12.2018 made in CMP.No.445 to 447 of 2009 in
S.A.No.1506 of 2004.

PRAYER: This Second Appeal has been filed under Section 100 of
Civil Procedure Code, praying against the judgment and decree
dated 27.01.2003 made in A.S.No.54 of 2002 on the file of
Principal District Judge, Villupuram, confirming the judgment
and decree dated 06.11.2001 made in O.S.No.295 of 2000, on the
file of Principal District Munsif Court, Ulundurpet.

For Appellants : Mr.S.Muthu Kumar

For R2 to R4,
R6 to R10 : Mr.N.Senthil Kumar

For R5 : No appearance

For R1 : Died

J U D G M E N T

The Appellants herein are the legal representatives of the deceased first defendant in the suit filed by the respondents 1 to 4 herein. The plaintiffs have filed a suit for relief of declaration restraining the defendants from interfering with the plaintiffs peaceful possession and enjoyment of the suit schedule property.

2. The facts necessary to decide the Second Appeal is extracted below:

The plaintiffs have inherited the "A" schedule property as shown in the plaint through Raju Udayar. On the north of "A" schedule property, "B" schedule lane is in existence. When the plaintiffs have demolished the thatched house and constructed a house in the "A" schedule property, they have fixed windows and rain water drainage pipe through the "B" schedule property. Their possession and enjoyment of "B" schedule property is for more than 48 years. They have prescribed title by adverse possession over the "B" schedule property. On the north of "B" schedule property, the defendants residence is located and they have no right over the "B" schedule lane but after correcting their sale deed by deed of correction, they have tried to put survey stone in the "B" schedule property, claiming right over the "B" schedule lane. Since, the "B" schedule property belongs to the plaintiffs, declaration of the plaintiff's title and permanent injunction is sought for.

3. The case of the plaintiffs has been denied by the defendants stating that the plaintiffs have given a wrong measurement and boundaries of the suit schedule property. There is no lane in "B" schedule property as alleged in the plaint. The "B" schedule property and the property lies on the north of "B" schedule property with measurement east-west 30 feet and north-south 40 feet belongs to the defendants and one Kaluvarayan. Later, the Kaluvarayan sold the portion of land at south measuring east-west 30 feet and north-south 20 feet. The "B" schedule property never remained as a lane. Neither

plaintiffs nor the predecessors-in-title enjoyed it. "B" schedule property form part of the 2nd defendant property. The measurement given by the plaintiffs in the suit schedule are incorrect. Therefore, the suit is liable to be dismissed.

4. The trial Court, after framing relevant issues has examined two witnesses on behalf of the plaintiffs and three witnesses on behalf of the defendants. Ex.A.1 to Ex.A.9 were marked in support of the plaintiff, Ex.B.1 and Ex.B.2 were marked in support of the defendants. The Advocate Commissioner appointed by the Court has filed report and sketch which are marked as Ex.C.1 and Ex.C.2.

5. The trial Court, after considering the evidence has found that the plaintiffs are entitled for declaration and permanent injunction in respect of the "B" schedule property. On appeal by the defendants, the Appellate Court has re-appreciated the facts and evidence has held that except Ex.B.1, the first defendant has not produced any document or piece of evidence to show that the "B" schedule property forms part and parcel of the first defendant property. While the defendants rely upon the Ex.B.1 of the year 1978, the plaintiffs rely upon the Ex.A.1 of the year 1952. In the earlier document existence on the lane is referred. Whereas, in the later document, there is no reference about the lane but vendor of Ex.B.1 of the year 1978 was examined as DW.3. Admittedly, there is an outlet and sun shade available on the northern wall of the plaintiffs' house and abating to the northern wall of the plaintiffs' house, there is an open space.

6. Therefore, the finding and observations of the trial Court was confirmed by the Lower Appellate Court.

7. Aggrieved by the concurrent finding, the Second Appeal is filed. At the time of admission, the following Substantial Questions of law was framed:

(i). Whether the judgment and decree of both the Courts below are sustainable in law when there is no documentary proof to show the measurement of the "B" schedule property.

(ii). Whether the Courts below were right in ignoring Ex.B.1 and measurement of the property described in Ex.B.1. When in as much as the defendant has pleaded that the "B" schedule mentioned property forms part of Ex.B.1"

8. The Learned Counsel appearing for the appellants would submit that the Courts below has miserably failed to appreciate the fact in a proper perspective. Even according to the plaintiff, the "B" schedule property is a lane which connects road on either side. So declaration regarding title in respect of the "B" schedule property ought not to have been given in favour of the plaintiffs. Contrary to the title deed of the defendants which includes the open space marked as "B" schedule in the plaint and the Advocate Commissioners' report, the Courts below has allowed the suit and affirmed the same in appeal.

9. The learned counsel for the Appellants would further submit that since the defendants has lost in both the Courts, pending the Second Appeal, he has constructed a compound wall to his house without disturbing the lane and retaining the access to the premises through "B" schedule lane. The Appellants have expressed the apprehension that by virtue of the decree passed by the Courts below, the plaintiffs should not claim exclusive right over the lane and prevent the defendants from enjoying the lane. The plaintiffs have to be restricted only to the right of easement of light and Air and right to let out rain water through "B" schedule property as pleaded in the plaint and not exclusive title over the "B" schedule lane.

10. In support of his submission, the learned counsel for the appellant would also refer the sketch of the Advocate Commissioner marked as Ex.C.1 and the rough sketch annexed along with the plaint which indicates on east and west ends of the lane there is public passage.

11. According to Ex.C.2 sketch, "B" schedule lane runs from East to West. On the East of "B" schedule property Sri Mariamman Kovil lane is located. On the West of the "B" schedule property, there is a common lane. The property of the plaintiff is located on the South of "B" schedule property. The property of the defendant is located on the North of the "B" schedule property. The parties have constructed their compound wall excluding the "B" schedule property. While the plaintiff has proved that they have placed sun shade and allowing the rain water to fall on "B" schedule property and it has been used as a

common lane. It is suffice to point out that neither the plaintiffs nor the defendants in the suit or their successors in title, shall claim any exclusive right over the "B" schedule property and they can only use of the "B" schedule area to have access to the public lane fall on the either side of the "B" schedule property.

12. With these clarifications, the Second Appeal is disposed of. No orders as to costs.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

bsm
To

- 1.The Learned Principal District Judge, Villupuram.
- 2.The Learned Principal District Munsif,
Ulundurpet, Villupuram District.

+1 cc to Mr.S.Muthukumar Advocate sr2072/2019

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