

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.09.2019
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.No.995 of 2007
and
M.P.No.2 of 2007

1.Ramasamy
2.Thangavel
3.Balasubramaniam
4.Easwaran

... Appellants/ Defendants in Trial Court
Vs

Chinnusamy Gounder Respondent/Plaintiff in Trial Court

Second Appeal filed under Section 100 of the Code of Civil Procedure as against the judgment and decree made in A.S.No.147 of 2000, dated 25.4.2005, on the file of the Sub Court, Namakkal, confirming the judgment and decree made in O.S.No.90 of 1988, dated 7.4.1992, on the file of the Additional District Munsif Court, Namakkal.

For Appellant : Mr.S.Muthukumar
For Respondent : No appearance

JUDGMENT

The instant second appeal has been filed challenging the concurrent findings of the Courts below. The appellants are the defendants in the suit in O.S.No.90 of 1988, filed by the respondent/plaintiff herein. The said suit was filed seeking for a declaration that 'A, B, C, E' marked portion in the plaint rough sketch is a lane in Vagurampatti Village and for a consequential injunction restraining the appellants/defendants from in anyway interfering with the access of the lane by the villagers of the said village.

2. The suit in O.S.No.90 of 1988 was decreed in favour of the respondent/plaintiff on 7.4.1992 by the trial Court. Aggrieved by the judgment and decree dated 7.4.1992, passed in O.S.No.90 of 1988, the appellants preferred a first appeal before the Sub Court, Namakkal in A.S.No.147 of 2000. The lower Appellate Court confirmed the findings of the Trial Court and dismissed the appeal. As against the same, the present Second Appeal has been filed by the defendants in the suit in

O.S.No.90 of 1988. At the time of admission of the appeal, the following substantial question of law formulated by this Court :

"Whether the Courts below have committed an error of law in relying upon the oral evidence of P.W.2 and Exhibit B.4 alone overlooking Exhibits A.2, A.3 and B.1 to B3, especially when the revenue records have not been produced before the Courts below and evidence of P.W.2 is based upon the revenue records?"

3. The dispute between the appellants and the respondent is a lane marked as 'A, B, C, E' in the plan filed along with the plaint. It is the case of the respondent, that it is a common pathway meant for usage by all the villagers of Vagurampatti Village. Whereas it is the case of the appellants, that it is their absolute property.

4. Before the Trial Court, the respondent has filed three documents which were marked as Exs.A1 to A3 and examined the respondent/plaintiff himself as a witness (P.W.1). On the side of appellants/defendants, four documents were filed, which were marked as Exs.B1 to B4 and three witnesses were examined as D.W.1 to D.W.3. Ex.A2 is the parent sale deed dated 10.5.1974 executed in favour of the appellants' vendor. Ex.A3 is the sale deed dated 14.2.1978 executed in favour of the appellants. In the sale deed dated 10.5.1974 (Ex.A2), the vendor of the appellants has not purchased the pathway namely 'A, B, C, E' portion marked in the sketch annexed to the plaint, whereas in the schedule to the sale deed dated 14.2.1978, through which the appellants purchased the property discloses a pathway. The vendor of the appellants can convey title to the appellants only to the extent of his entitlement. But, as seen from the documentary evidence produced before the Trial Court, the vendor of the sale deed dated 14.2.1978 (Ex.A3) has included in the schedule the pathway in favour of the appellants, which is marked as 'A, B, C, E' in the plan attached to the plaint, which he was not entitled to as per his title deed dated 10.5.1974 (Ex.A2). The principle, "A person cannot transfer a better title than he himself for" will apply. The appellants own witness namely Ramasamy (D.W.3) has deposed before the Trial Court during his cross examination contradicting his chief examination that the portion marked as 'A, B, C, E' in the plan attached to the plaint is a common pathway meant for usage by all the villagers of Vagurampatti Village. The Trial Court has considered the documentary evidence as well as the evidence of D.W.3 and only thereafter come to the conclusion that the portion marked as 'A, B, C, E' in the plan attached to the plaint is a common pathway and it is meant for usage by all the villagers and has rightly decreed the suit in favour of the

respondent. The lower Appellate Court has also considered the oral and documentary evidence available on record, including the judgment and decree dated 7.4.1992 passed by the Trial Court and has rightly confirmed the findings of the Trial Court and dismissed the appeal filed by the appellants.

5. The substantial question of law formulated by this Court at the time of admission of the appeal has been duly considered by the Trial Court based on the oral and documentary evidence produced by the respective parties and there is no perversity in the said finding. In view of the same, there is no question of law, much less a substantial question of law involved in this Second Appeal.

6. In the result, the judgment and decree dated 25.4.2005 made in A.S.No.147 of 2000 on the file of the Sub Court, Namakkal, confirming the judgment and decree dated 7.4.1992 made in O.S.No.90 of 1988 on the file of the Additional District Munsif Court, Namakkal is confirmed. Accordingly, the Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

ms
To

1.The Sub Judge,
Namakkal,

2.The Additional District Munsif,
Namakkal.

+lcc to Mr.S.Muthukumar , Advocate SR.No. 81371

A.SK(11/09/2020)

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