



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.01.2019

Coram:

The Honourable Dr.Justice G.JAYACHANDRAN

Second Appeal No.2279 of 2004
& C.M.P.No.20465 of 2004

Ariya Vaisya Sangam,
Represented by its President,
Bakthavachalu Chettiar,
Nellikuppam. Appellant/1st Defendant

/versus/

1. Rakkammal,
W/o.Vellaisamy Naidu,
No.312, K.A.S.R. Road,
Nellikuppam,
Panruti Taluk. 1st Respondent/Plaintiff
2. The Commissioner,
Nellikuppam Municipality,
Nellikuppam. 2nd Respondent/
2nd Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 18.03.2004 in A.S.No.7 of 2003 on the file of Subordinate Court, Panruti modifying the judgment against the order dated 28.11.2002 in O.S.No.89 of 1991 on the file of District Munsif Court, Panruti.

For Appellant : Mr.R.Venkatesulu
for Mrs. Usha Raman

For R1 : Mr.A.S.Thambuswamy

For R2 : No appearance

J U D G M E N T

Heard the learned counsel for the appellant and the learned counsel for the respondents.

2. The suit filed by the 1st respondent herein seeking declaration her right to have a passage to the suit property

being a public lane and for an injunction restraining the first defendant (the appellant herein) from interfering her peaceful right of passage to the suit property and mandatory injunction to remove the wall put up in the B schedule property obstructing the free passage.

3. The trial Court, dismissed the suit. On appeal the Appellate Court has reversed the finding of the trial Court holding that the plaintiff is entitled to use the passage without any obstruction. The first defendant cannot obstruct the pathway and therefore declaration and mandatory injunction restraining the first defendant from obstructing the free passage was decreed. Further, the Lower Appellate Court has also granted mandatory injunction directing the first respondent to remove the shops put up in the area marked as "B" in the plaint.

4. Aggrieved by that the present Second Appeal is preferred.

5. The learned counsel for the appellant would submit that the description of the property not been properly mentioned in the suit. Therefore, even if the decree is passed, it could not be executed due to improper identification of the property. Further, it is contended that the title deeds of the plaintiff that there is no reference about the suit pathway and therefore, the judgment of the Lower Court declaring a right of passage and mandatory injunction to remove the structure put up by the plaintiff is contrary to law and evidence. While the plaintiff's claim S.No.19 as a pathway to reach her property situated in S.Nos.21, 22 and 23. The plaintiff has failed to explain the lie of S.No.20, which should naturally be in between the S.No.19 (pathway) and S.Nos.21 to 23 (the land of the plaintiffs).

6. Admittedly, the land in S.No.20 belongs to Sri Devanathaswamy Temple, in the absence of any implied or explicit reference about the right of passage through S.No.19, the Lower Appellate Court ought not to have allowed the suit.

7. Per contra, the learned counsel appearing for the first respondent would submit that the issue regarding the passage and the right of the appellant to prevent others from making use of the passage is no more res integra since Nellikuppam Municipality which is the owner of the subject suit passage has already succeeded in the suit filed by the appellant herein, in the earlier round of litigation. To verify the said submission, the Registry was directed to place the judgment copy of this Court passed in S.A.No.390 of 2000 dated 27.01.2009, accordingly the said judgement copy was placed before this Court.

8. Perusal of the judgment rendered in S.A.No.390 of 2000, it is clear as crystal that the appellant herein claiming to be a Charitable Trust has attempted to encompass the public pathway owned by Nellikuppam Municipality under the guise of re-constructing the compound wall of the Choultry. The Municipal Authorities has issued notice to the Trust that the place where the trustee constructing compound wall is a public lane. On receipt of the notice, the appellant herein has preferred O.S.No.470 of 1991 on the file of District Munsif Court, Panruti seeking permanent injunction restraining the Municipal Authorities from interfering the peaceful enjoyment over the lane.

9. The trial Court dismissed that suit and same was confirmed by the Lower Appellate Court. On appeal before this Court in S.A.No.390 of 2000, this Court has again reiterated the finding of the Courts below that the lane in S.No.19 is "Boosthi Sandhu" owned by the Municipality. The present Second Appeal which is under consideration is also in respect of the very same property. The difference is that the first respondent herein has preferred the suit since, her right of passage been prevented by the appellant herein by putting up construction across the lane.

10. The learned counsel would submit that the 2nd respondent/Nellikuppam Municipality has not shown any interest to remove the obstruction. So the first respondent herein cannot have a right to seek mandatory injunction for removal of the construction.

11. This Court is unable to accept the said submission. The lane being held to be a public lane by this Court in the earlier proceedings, the public whomsoever have right to have access through that lane. Any encroachment are bound to be evicted and if any construction put in the public lane is liable to be removed. Therefore, this Court find no grounds to interfere with the findings of the Courts below.

12. In the result, the Second Appeal is dismissed. Consequently, Connected Miscellaneous Petition is closed. No costs.

WEB COPY

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Subordinate Judge,
Panruti.

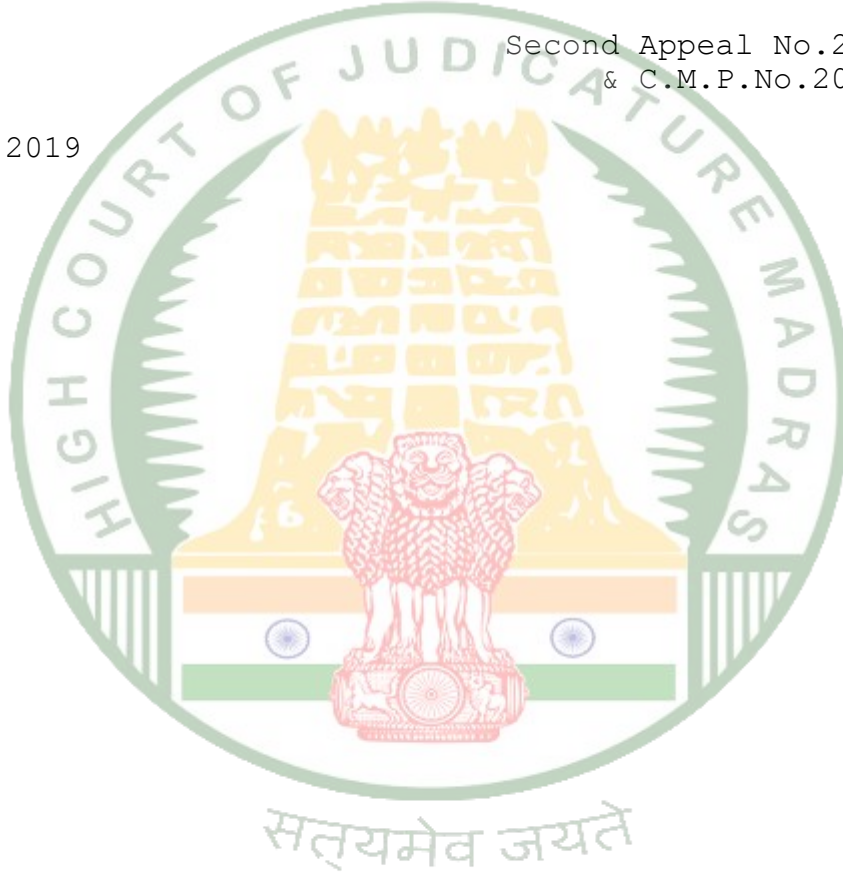
2. The District Munsif,
Panruti.

Copy To:

The Section Officer,
V.R.Section, High Court, Madras. (2 Copies)

MP (CO)
CSL/02.04.2019

Second Appeal No.2279 of 2004
& C.M.P.No.20465 of 2004



WEB COPY